



AGENDA BILL 2012-01-14-01

Subject: Appeals of Planning Commission decisions in CUP-12-02 and CUP-12-04

For Council: January 14, 2013

Land Use Case Number: AP-12-02 and AP-12-03

Public Hearing

Required:

Optional:

City Manager's Initials: *CJ*

Attachments:

1. Staff memo to City Manager
2. Memo, dated December 10, 2012, appealing the denial of CUP-12-02 and CUP-12-04 and related permits
3. Planning Commission Final Decision for CUP-12-02 and CUP-12-04 and related permits
4. Staff Report for CUP-12-02/DR-12-04
5. New testimony received on November 1, 2012
6. October 26, 2012, memo to Planning Commission regarding new evidence, p. 43/583
7. Approved minutes from October 25, 2012, Planning Commission hearing
8. Public testimony

Initiated by:

Lake Oswego-Tigard Water Partnership (Partnership)

Budget Impact:

Not applicable to this quasi-judicial decision

Sustainability Considerations:

- The West Linn Water System Master Plan (WSMP) recommends partnering with the cities of Lake Oswego, Tigard and others to improve the capacity at the West Linn-Lake Oswego Emergency Intertie as the most economical means to meet the City's supply and reliability needs.
- The proposal completely avoids new impacts to water resource areas.
- The proposal would create temporary noise impacts during project construction.

Policy Question(s) for Council Consideration:

In its decision, the Planning Commission interpreted "community need" to include a number of specific factors not explicit in the CDC. The City Council's decision in this matter, and its interpretation of community need in the context of CDC 60.070(A)(3) may establish a precedent for future quasi-judicial decision-making with regard to conditional uses, specifically:

- Is the term "community," as used in the CDC, intended to describe facilities that are primarily intended to serve West Linn residents and are of a scale to serve West Linn residents only? If

yes, does West Linn establish a double-standard as it receives water delivered in pipes and treated at a facility in Oregon City – West Linn would be unable to access water from South Fork if Oregon City interpreted community in the manner prescribed in the recent Planning Commission decision.

- Does the determination of an overall community need require the applicant to demonstrate that their proposal will provide an overall net benefit to the community, accounting for anticipated costs and benefits accruing from the applicant's proposal for the life of the project?
- Where adopted plans, such as the WSMP, recommend policies (e.g., pursue development of a reliable emergency water supply capacity with the cities of Lake Oswego, Tigard and others) that could be implemented by a development proposal, but are opposed by participants in a quasi-judicial land use hearing, should the City defer to the popular opinion of those quasi-judicial participants to determine the community's needs in the context of 60.070(A)(3)?

Summary:

On November 1, 2012, the Planning Commission denied the Partnership's proposals to expand their existing Water Treatment Plant at 4260 Kenthorpe Way and install a new Raw- and Finished-water transmission line from Mary S. Young Park to the City's border with Lake Oswego. In its decision, the Planning Commission cited; 1) That the Partnership failed to provide a facility that is consistent with the overall needs of the community; 2) that the site was not suitable for the proposed uses nor was there adequate area for the needs of the proposed uses; and, 3) the proposal was inconsistent with the applicable policies of the Comprehensive Plan.

On December 10, 2012, the Partnership submitted an appeal of the Planning Commission's decision, stating: 1) Consistent application of West Linn policies and plans, including the call to upgrade the City of West Linn's regional water system, will significantly benefit the City of West Linn; 2) the Plant design is suitable for the site and compatible with the surrounding residential neighborhood; and, 3) quasi-judicial decisions must be based upon applicable approval criteria.

Staff Recommendation:

Staff recommends the City Council consider facts and evidence relevant to the applicable CDC criteria for Conditional Uses in reaching a decision on these matters.

Memorandum

Date: January 3, 2013
To: Chris Jordan, City Manager
From: Zach Pelz, Associate Planner
Subject: AP-12-02 and AP-12-03 – Responding to an appeal of the Planning Commission’s decision to deny applications filed by the Lake Oswego-Tigard Water Partnership for: CUP-12-02 (Water Treatment Plant) and CUP-12-04 (Raw- and Finished-water Transmission Line) and related permits.

Attachments:

Attachment 1: Applicant’s memo, dated December 10, 2012 appealing the denial of CUP-12-02 and CUP-12-04 and related permits (previously distributed)

Attachment 2: Planning Commission Final Decision for CUP-12-02 and CUP-12-04 and related permits (previously distributed)

Attachment 3: Staff Report for CUP-12-02/DR-12-04 (previously distributed)

Attachment 4: New testimony received on November 1, 2012 (previously distributed)

Attachment 5: October 26, 2012 memo to Planning Commission regarding new evidence, p. 43/583 (previously distributed)

Attachment 6: Approved minutes from October 25, 2012 Planning Commission hearing (previously distributed)

Attachment 7: Public testimony

Attachment 8: Applicant’s complete appeal submittal, December 10, 2012

Attachment 9: Affidavit of public hearing notice and mailing

Purpose

On January 14, the City Council will hear the Lake Oswego-Tigard Water Partnership’s (Partnership) appeals of the Planning Commission’s decisions to deny their applications for the required land use approvals and permits required to allow installation of a 42- and 48-inch raw- and finished-water transmission line in the City of West Linn and for a proposed expansion of the existing water treatment plant (WTP) at 4260 Kenthorpe Way (see Attachment 1). The purpose of this memorandum is to summarize the Planning Commission’s decision and respond to the arguments raised in the appeals in light of the facts and evidence included in the record for this decision. Per West Linn Community Development Code (CDC) Section 99.250, the City Council hearing on appeal will be conducted de novo and may include arguments and evidence not currently in the record.

The Council has authority to approve, approve with conditions, or deny an application for a conditional use based on CDC Section 60.070, which contains seven applicable criteria. As explained below, the Planning Commission based its decision on three of these applicable criteria, which are the primary focus of this memorandum. Because the hearing before the Council will be de novo, and new evidence may be introduced, other relevant criteria not addressed in detail in this

memorandum may also need to be analyzed by the Council. However, at this time, staff believes the primary issues that will be discussed before the Council are outlined below.

Background

On April 18, 2012, the Planning Commission conducted a duly noticed public hearing to consider the application by the Partnership to expand an existing WTP at 4260 Kenthorpe Way. The Planning Commission agreed to continue the hearing to April 25 and again to May 2 to accommodate members of the public wishing to provide additional testimony. On May 16, 2012, the applicant submitted a written request to suspend the application for the expansion of the water treatment plant to allow them to address several areas of concern identified during the public hearing, and to allow procedural consolidation of the application with a pending related application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, 2012, the Planning Commission reconvened to consider the consolidated applications to expand the water treatment plant and install a new raw- and finished-water transmission line. On November 1, 2012, the Planning Commission made an oral decision to deny the applications after determining that:

1. The proposals are not consistent with the overall needs of the community (as required by CDC 60.070(A)(3));
2. The characteristics of the site are not suitable for the proposed use (as required by CDC 60.070(A)(2)) and that the site does not provide adequate area for the needs of the proposed use (as required by CDC 60.070(A)(1)(a)); and,
3. The proposal is inconsistent with applicable policies of the West Linn Comprehensive Plan (per CDC 60.070(A)(7)).

(See Attachment 2)(The Planning Commission's deliberations can be viewed at http://westlinn.granicus.com/MediaPlayer.php?view_id=2&clip_id=302. The Planning Commission minutes (Attachment 6), which were previously distributed, are available at: <http://westlinn.oregon.gov/planning/4260-kenthorpe-way-conditional-use-permit-and-design-review-proposed-expansion-water-treatm>)

Thereafter, the Planning Commission's oral decision was reduced to writing and issued as its final written decision denying the applications. In its appeal, the Partnership (appellant) contends that the Planning Commission misapplied certain Comprehensive Plan goals and CDC standards in reaching their decision (see Attachment 1). Specifically, the appellant asserts that:

1. Consistent application of West Linn policies and plans, including the call to upgrade the City of West Linn's regional water system, will significantly benefit the City of West Linn;
2. The plant design is suitable for this site and compatible with the surrounding residential neighborhood; and,
3. Quasi-judicial decisions must be based upon applicable approval criteria.

Consistent with the Planning Commission's findings and the appeal arguments from the appellant, staff's analysis focuses on three questions:

1. Is the proposal consistent with the overall needs of the community, as required by CDC 60.070(A)(3)?
2. Are the characteristics of the site suitable for the proposed use (CDC 60.070(A)(2))? And,

3. Is the proposal consistent with the applicable policies of the West Linn Comprehensive Plan (CDC 60.070(A)(7))?

In their decision, the Planning Commission interpreted “community need” to include a number of specific factors (outlined under question 1 below) not explicit in the CDC. The City’s Council’s decision in this matter, and its interpretation of community need in the context of CDC 60.070(A)(3) may establish a precedent for future quasi-judicial decision-making with regard to conditional uses, specifically:

1. Is the term “community,” as used in the CDC, intended to describe facilities that are primarily intended to serve West Linn residents and are of a scale to serve West Linn residents only?
2. Does the determination of an overall community need require the applicant to demonstrate that their proposal will provide an overall net benefit to the community, accounting for anticipated costs and benefits accruing from the applicant’s proposal for the life of the project?
3. Where adopted plans, such as the Water Master Plan, recommend policies (e.g., pursue development of reliable emergency water supply capacity with the cities of Lake Oswego, Tigard and others) that could be implemented by a development proposal, but are opposed by a majority of participants in a quasi-judicial land use hearing, should the City defer to the popular opinion of those quasi-judicial participants to determine the community’s needs in the context of 60.070(A)(3)?

1. **Is the proposal consistent with the overall needs of the community?**

CDC Subsection 60.070(A)(3) requires that conditional uses provide for a facility that is consistent with the overall needs of the community. The CDC provides little guidance for determining what constitutes an outcome that is consistent with the overall needs of the community. The CDC defines “need” as, “... a want of something, requisite, desirable, or useful” and/or “a condition requiring supply or relief.” (CDC Chapter 2 by reference to Webster’s Third New International Dictionary of the English Language). The CDC defines “community” as, “... a body of individuals organized into a unit or by some unifying trait; the people living in a particular place or region and usually linked by common interests; broadly, the region itself; such a group politically organized and recognized; a group linked by a common policy; society at large, people in general” ... (CDC Chapter 2 by reference to Webster’s Third New International Dictionary of the English Language).

In their deliberations on November 1, 2012, the Planning Commission determined that the proposed projects were not consistent with the overall needs of the community. In reaching this decision, the Planning Commission determined that the language of CDC Subsection 60.070(A)(3) is ambiguous and required interpretation. As such, they made the following interpretations and findings (Planning Commission findings are italicized and the appellant’s assertions and staff responses follow each of the findings):

Planning Commission finding 1(A) – *The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although the water treatment plant both as it currently functions and as proposed currently does and could continue to provide a supply of water to West Linn in the event of an emergency through an existing intertie with the West Linn water system, its primary purpose*

is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. There is no guarantee that the expanded treatment plant would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. Specifically, in conclusion, the scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.

Appellant's assertions: Consistent application of West Linn policies and plans including the call to upgrade the City of West Linn's "regional" water system will significantly benefit the City of West Linn.

- Utility system demands and supply are shared by all citizens and communities alike. Consider West Linn's water supply comes from South Fork Water Board which also serves the cities of Oregon City and Gladstone - it is a regional water system located within a residential zone. The Tri-City Sewer District is also a regional utility provider.
- The City's Water Master Plan directs the city to "pursue development of reliable emergency supply capacity with the cities of Lake Oswego, Tigard and others..." This Water Master Plan is an integral and required part of the state's requirement for comprehensive land use planning.
- The greatest advantage for a municipal retail water service provider comes from having the infrastructure and inter-governmental agreements necessary for immediate and safe transmission of that public commodity to any customer in its service area upon demand. Wholesale water facilities and mutual aid agreements are regional by their very nature. The City of West Linn does not currently enjoy any agreed to minimum back-up water supply adequate to meet its present or future needs. This lack of a regional solution profoundly impacts the citizens of West Linn.
- Concurrent adoption of the IGA proposed by the Partnership will provide a more reliable emergency backup water supply than is available through any other municipal water provider through at least 2041. Assurance of this quantity of water will allow West Linn to move forward with its Bolton Reservoir improvements while eliminating the risk of water service reductions while construction takes place.
- Upgrading old underground pipes serving the intertie will provide the City of West Linn long-term access to 53 million gallons of combined reservoir storage and redundant supply sources from throughout the region.
- The Partnership has the ability to move water as appropriate to meet various community needs. However, when sizing this facility, a legal obligation is imposed upon the Partnership to provide sufficient capacity to serve its existing urban customers as well as those that may become customers within the 30-year planning horizon. The City of West Linn shares this planning for service obligation as well. The suggestion has been made that the proposal is designed and oriented to serve the Stafford area, which service is contrary to both the Lake Oswego and West Linn comprehensive plans. Providing any such service to Stafford will require: (1) the Court of Appeals to affirm the pending reserves challenges; (2) an adjacent city to amend their comprehensive plans to allow the annexation of Stafford; (3) a likely city-wide voter approval of annexation of Stafford; and (4) re-zoning of Stafford to urban densities. Only after all of these steps are accomplished

and it has met its service obligations to the City of West Linn, could service be further extended from the Partnership.

Staff response: CDC Subsection 60.070(A)(3) does not clearly establish the parameters for determining what constitutes a community need; it does not clearly delineate the boundaries of the community; nor does it resolve whether a need is something that is desired, required or a condition requiring relief. In responding to this criterion in the project staff reports, specifically the phrase “overall needs of the community,” staff concluded that the city’s adopted Water Master Plan, as a supporting document of the Comprehensive Plan, was an appropriate basis for establishing the community’s need in this context. Staff found (Attachment 3, Staff Report for CUP-12-02/DR-12-04, Finding No. 6, p. 28, 4/18/2012) that the Water Master Plan directed the City to improve its emergency water supply reliability by partnering with Lake Oswego, Tigard and other cities as outlined in the following excerpt from the Water Master Plan:

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 and 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 City of Lake Oswego is currently in discussions with the City of Tigard concerning long-term water supplies.

With the Tigard/Lake Oswego emergency supply connection operational, Lake Oswego could supply an equal amount of water to the City through the West Linn/Lake Oswego supply connection. A preliminary review indicates that this connection may have a hydraulic capacity in excess of 6mgd, potentially making an equal amount available to the City in an emergency event. Pursuing this option involves negotiating intergovernmental agreements (IGA) and probable participation in funding a portion of the transmission system intertie improvement. A preliminary review of potential project costs associated with this approach indicates that it has a lower cost... Based on input from and discussions with City staff and policy makers it is recommended that Solution Approach C be pursued... It was further directed to pursue development of reliable emergency supply capacity with the cities of Lake Oswego, Tigard and others in accordance with Solution Approach C.

Staff also found that the proposed expansion of the Lake Oswego Water Treatment Plant (WTP), from its current capacity of 16 mgd to a proposed capacity of 38 mgd, in addition to the Partnership’s offer to commit to an intergovernmental agreement (IGA) that would supply 4 mgd of emergency water supply to West Linn until at least 2041, would have potential to increase the availability and reliability of emergency water at the West Linn/Lake Oswego water intertie and was therefore consistent with the overall needs of the community, as established in the Water Master Plan.

Staff’s findings (Attachment 3, Staff Report for CUP-12-02/DR-12-04, Finding No. 6, p. 28, 4/18/2012) also pointed to other community benefits, such as, right-of-way improvements on Mapleton Drive and Kenthorpe Way; community open spaces; and a public trail connection between Mapleton Drive and Kenthorpe Way through the applicant’s site that would accrue from the development of the applicant’s proposal. In addition, the recommended conditions of approval provided for a new intertie connection since the proposed pipeline alignment rendered the current intertie obsolete.

The CDC lists public safety facilities (such as police and fire), schools, major utilities, religious institutions, recycling centers, post offices and medical and dental offices as conditional uses allowed in residential zoning districts. The CDC does not explicitly restrict these uses from serving

customers or residents outside of West Linn. Moreover, there are a number of examples of regional and cooperative services operating as conditional uses in West Linn: Tualatin Valley Fire and Rescue (TVF&R) provides fire services to West Linn as well as other cities and rural areas in Clackamas and Washington Counties; the West Linn-Wilsonville School District operates primary and secondary educational facilities in West Linn serving residents in West Linn, Wilsonville, unincorporated portions of Clackamas County as well as residents in other parts of the Portland Metropolitan area (through open enrollment); the Veterans Administration clinic on Blankenship Avenue and other medical and dental providers throughout West Linn are also examples of conditional uses providing services beyond West Linn's corporate boundary.

Furthermore, the City of West Linn is a member of the South Fork Water Board, in partnership with the cities of Oregon City and Gladstone, for the purpose of supplying a cost effective supply of drinking water to West Linn residents. The City also partners with Gladstone and Oregon City (Tri-City Service District) in the provision of sanitary sewage treatment. Both the South Fork Water Board Water Treatment Plant and Tri-City Service District Sewage Treatment Plant reside in Oregon City.

Based on the above analysis, staff concluded that the proposed applications were consistent with the CDC's mandate that a conditional use be consistent with the overall needs of the community, as interpreted in reliance on the City's adopted Water Master Plan and the proposed projects' furtherance of the Plan.

Planning Commission Finding 1(B) – *The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of that facility’s existence in the community and commensurate with the impacts of the proposed facility. As discussed above, there is no demonstration that a need for water will be met by the expanded facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term and long term impacts on the immediate neighborhood. Although the term “benefit” does not appear in this criterion, the term “overall needs” can be interpreted to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. In addition, the applicant presented a portion of its application using the term “benefits” to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term “benefit.” The Planning Commission finds that it is reasonable to include the concept of “benefit” as articulated here and in the Robinwood Neighborhood Plan as addressing the “overall needs of the community” criterion given the significant impacts of the project on the Robinwood Neighborhood.*

Appellant's assertions: The record shows that the guaranteed provision of water for a 30-year period, replacement of a seismically vulnerable water treatment facility and conveyance system, the resurfacing and providing sidewalks along Mapleton and portions of Kenthorpe streets (when the pipelines and plant proposals will not require any road removal activities on Kenthorpe), improvements to Mary S. Young Park, and all construction impact mitigation activities that have been identified, except for those that would serve to extend the inconvenience, are included as part of this proposal. Net benefit must be considered over the life of a proposed project and within the context of the community need as a whole. This proposal meets that standard.

Staff response: CDC 60.070(A)(3) requires that conditional uses be consistent with the overall needs of the community. It does not specify that the conditional use must provide a benefit to the community for the duration of that facility's existence in the community and commensurate with the impacts of the proposed facility. The term "benefit" is not used in the CDC. The Comprehensive Plan however, does use the term "benefit" in its definition of Conditional Use:

"A proposed use of land which may be allowed after the City Planning Commission has determined that the proposed use is appropriate for the site, compatible with surrounding uses, is supported by City public facilities, and is of *overall benefit to the community* and meets all other relevant criteria (emphasis added)."

The standards in CDC 60.070 implement the definition of conditional use in the Comprehensive Plan and therefore, the CDC is the more appropriate regulation that should be considered when resolving the question of whether a conditional use meets an overall community need.

The distinction between "need" and "benefit" is important in the Council's decision on the appeal. Council will need to determine how best to apply the CDC requirement that the proposal meet an "overall community need." As noted, staff did not apply the term "benefit" in the staff's initial analysis, relying instead on the term "need" as this is the term used in the CDC. Council will be required, as part of the final decision on the appeal, to make an interpretation of the CDC standard. Staff submits that application of the term "need" as contrasted with the term "benefit" could result in a different analysis, and as such this distinction is not without consequence.

Planning Commission finding 1(C) – *The applicant's offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounted to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per 60.070(A)(3) was not satisfied.*

Appellant's assertion:

- Concurrent adoption of the IGA proposed by the Partnership will provide a more reliable emergency backup water supply than is available through any other municipal water provider through at least 2041. Assurance of this quantity of water will allow West Linn to move forward with its Bolton Reservoir improvements while eliminating the risk of water service reductions while construction takes place.
- Upgrading old underground pipes serving the intertie will provide the City of West Linn long-term access to 53 million gallons of combined reservoir storage and redundant supply sources from throughout the region.
- The Partnership has the ability to move water as appropriate to meet various community needs. However, when sizing this facility, a legal obligation is imposed upon the Partnership to provide sufficient capacity to serve its existing urban customers as well as those that may become customers within the 30-year planning horizon. The City of West Linn shares this planning for service obligation as well. The suggestion has been made

that the proposal is designed and oriented to serve the Stafford area, which service is contrary to both the Lake Oswego and West Linn comprehensive plans. Providing any such service to Stafford will require: (1) the Court of Appeals to affirm the pending reserves challenges; (2) an adjacent city to amend their comprehensive plans to allow the annexation of Stafford; (3) a likely city-wide voter approval of annexation of Stafford; and (4) re-zoning of Stafford to urban densities. Only after all of these steps are accomplished and it has met its service obligations to the City of West Linn, could service be further extended from the Partnership.

Staff response: West Linn uses an average of 2.6 million gallons of water per day and has a storage capacity of approximately 5.5 million gallons of water. In the event of an emergency that interrupts the South Fork Water Treatment Plant, or the transmission line from South Fork to West Linn, West Linn has approximately 2 days' worth of water in its reservoirs to serve residents under average use conditions. West Linn's Water Master Plan recognizes that, under peak use conditions, the current Lake Oswego Water Treatment Plant is unable to supply emergency water to West Linn through the West Linn-Lake Oswego emergency intertie.

The Intergovernmental Agreement (IGA) offered by the Partnership is located in Attachment E of the *October 17 staff report to the Planning Commission (Attachment 3)*. Proclamation number 8, Quantity of water supply, outlined on page 4 of the IGA states: Upon agreement between the Parties to make use of the intertie pursuant to Paragraph 3 of this Agreement, the supplying water shall endeavor to supply the maximum feasible quantity of water requested by the receiving Party, and take all reasonable actions necessary to accomplish the same, so long as such actions are not detrimental to the operation of the supplying Party's own water system. Provided that Lake Oswego's supply facilities are expanded to a treatment capacity of 38 million gallons per day, Lake Oswego and Tigard can provide West Linn and Board with redundant water supply facilities and a reliable source of emergency water supply sufficient to meet West Linn's average day demand of 4 mgd through at least 2041.

The Partnership's offer to supply 4 mgd of emergency water to West Linn (via the potential Lake Oswego-West Linn intertie connection) until at least 2041, provides additional time, during this period, for the City to get its system back online while providing continuous water service to its residents.

On this basis, staff concluded that the proposed project satisfied the requirement to demonstrate an overall community need, as the enhanced emergency water supply and redundancy were beneficial to the reliability of the City's water supply, a critical need for the community and envisioned in the Water Master Plan.

Planning Commission finding 1(D) – *To determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. Potential benefits provided by the facility in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period which as noted above constitute a portion of the "community" identified in this criterion. West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and*

potentially diminishing the ability to sell a dwelling along the affected streets and likely impeding property owners' ability [to] sell their property if necessary as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility.

Moreover, the Partnership's offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership's municipal insurance coverage, in the event of damage to property due to a failure in the proposed project the amount was inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

Appellant's assertion: The City has never before imposed rigorous "community need" obligations on other conditional uses seeking to locate in residential zones within the City. An evaluation of recent West Linn Planning Commission rulings demonstrates that the public benefit standard applied to the proposed plant expansion and pipeline applications was unreasonably rigorous when measured against all recent Planning Commission rulings. Good public policy dictates that consistent application of land use plan policies and regulations results in reliable and predictable decision-making.

Staff response: CDC 60.070(A)(3) requires applicants to demonstrate a proposal, "is consistent with the overall needs of the community." Neither this criterion, nor another CDC standard or Comprehensive Plan policy speaks of a requirement that conditional uses demonstrate a net benefit to the community. Additionally, the CDC does not include a methodology for performing a cost benefit analysis as suggested by the Planning Commission finding above.

The City has not historically interpreted this criterion to require an analysis of costs and benefits. Of the 10 conditional use proposals approved by the City of West Linn since 2009, the City has not required an applicant to demonstrate that the anticipated benefits that would accrue from their developed proposal would outweigh the costs incurred by residents and businesses during construction and operation.

Moreover, with few exceptions, the CDC is silent on its applicability toward construction-related activities. The purpose of the CDC is to "promote the general health, safety and welfare of the public, and includes standards and procedures governing the *development and use of land* in West Linn..." CDC 1.020 (emphasis added) This purpose statement implies that CDC regulations govern not only the finished use of the land but also development or construction activities that establish a use. Also, in 2009, the Oregon State Land Use Board of Appeals (LUBA) decided, in *Horsey v. City of West Linn* (LUBA No. 2009-017), that a maximum disturbance area standard of 5,000 square feet in a water resource area (CDC Chapter 32) applied to both temporary and permanent disturbances, such as those created by a home and the construction activities required to build the home.

Many more CDC standards, however, refer to "uses" of land: i.e., "The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features" (CDC 60.070(A)(2)); and, "Adequate public facilities will be available to provide service to the property at the time of occupancy" (CDC 60.070(A)(4)). A "use" is the "purpose for which land or a

structure is designed, arranged, or intended, or for which it is occupied or maintained.” (CDC Section 2.030)

This implies that the CDC is concerned with the situational and operational characteristics associated with the use of a site, building or structure and not the erection or alteration of that structure. Further, the West Linn Public Works Standards and Building Codes regulate the erection or alteration of structures in the public and private realm through separate permitting processes.

The record contains evidence to support claims that the Partnership’s proposal will create both short- and long-term impacts as well as will provide short- and long-term benefits. The record includes documentation from the Partnership and staff as well as testimony from members of the public regarding a range of potential impacts from the proposal, including: increased congestion and increased public safety risks associated with construction-related traffic; noise; increased emergency response times; increased risks during a seismic event; impacts to local businesses; and impacts to private property/home-owners attempting to sell property adjacent the construction zone. This information is summarized as follows:

- *Impact – Increased congestion from construction-related traffic:* The Partnership estimates an average daily one-way traffic volume of 28 trips and a peak of approximately 141 one-way construction trips split between Mapleton Drive and Kenthorpe Way during construction of the Water Treatment Plant (WTP)¹. This traffic impact applies similarly to Highway 43, as all construction-related traffic would access the WTP site via Highway 43. Total WTP construction-related traffic for the duration of construction is estimated by the Partnership to be 18,816 trips.

According to the Partnership’s traffic study, average daily traffic (ADT) on Kenthorpe Way is currently 200 trips and ADT on Mapleton Drive is 350 trips. ADT on Highway 43 is estimated by the Partnership at 17,000. The Partnership estimates that WTP construction-related traffic would increase the total traffic volume on Mapleton Drive by 4 percent and by 7 percent on Kenthorpe Way. WTP construction-related traffic would increase total traffic on Highway 43 by 0.2 percent (Attachment 4, New Testimony Received on November 1, 2012, p. 2-8/17).

A West Linn resident supplied evidence to support her arguments that the Partnership had underestimated construction-related traffic. Her traffic study (Attachment 5, October 26, 2012, memo to Planning Commission regarding new evidence, p. 43/583) concluded that total WTP construction-related trips were nearly 180 percent greater (33,569 WTP construction trips as opposed to 18,186 reported by the Partnership) than reported by the Partnership. (The Partnership rebutted these findings on November 1, 2012 (New Testimony received on November 1, 2012, p. 2-8/17) by explaining that the resident had erroneously doubled, rather than halved, one-way trips, to produce round trips.)

The Partnership estimates that pipeline construction will add approximately 24,274 one-way trips split between Mapleton Drive and Highway 43. According to the Partnership, pipeline construction traffic represents a 13.9 percent increase over existing conditions on Mapleton Drive and a 0.5 percent increase over existing conditions on Highway 43. Taken together, the Partnership estimates a 0.7, 17.9 and 7 percent increase in ADT on Highway 43, Mapleton Drive and Kenthorpe Way, respectively, as a result of traffic related to the construction of the WTP and pipeline.

¹ This estimate has been revised in the Partnership’s appeal submittal (WTP site plan and construction management plan modified to eliminate one building and shortens the construction duration by 4-months) to estimate a peak one-way construction traffic volume of 151 trips split between Mapleton Drive and Kenthorpe Way.

Over the long-term, the net change in ADT from the Water Treatment Plant site would decline by approximately 25 ADT. Expanded operations of the plant would increase ADT from 14 to 19 trips; however, the site would eliminate three residential lots on Mapleton Drive that produce 10 ADT each.

- *Impact – Public safety risks associated with increased vehicle and heavy-vehicle trips and increased emergency response times:* Witnesses at the public hearings testified that the Partnership’s proposal would create adverse public safety risks for pedestrians and particularly children using Mapleton Drive and Kenthorpe Way to access schools and other nearby community destinations. Additionally, opponents raised concerns about potential increased emergency response times during construction periods when emergency responders would be required to detour along Nixon Avenue to access homes on Mapleton Drive.

The Partnership referred to their traffic study, which showed construction-related trips associated with both projects anticipated to increase ADT on Highway 43, Mapleton Drive and Kenthorpe Way by 0.7, 17.9, and 7 percent respectively, as evidence that public safety, and pedestrians would not be adversely impacted from increased traffic associated with the Partnership’s proposal.

Tualatin Valley Fire and Rescue (TVF&R) Division Chief, Brian Sherrard and Deputy Fire Marshal, Karen Mohling testified that TVF&R had reviewed the Partnership’s emergency response plan and found it included the necessary elements to ensure the Fire District could provide timely and effective emergency service (Attachment 6 – Planning Commission minutes from October 25, 2012).

- *Impact – Seismic risk:* Members of the public and Planning Commission were concerned with the pipeline alignment through areas susceptible to seismic liquefaction in West Linn. Similarly, residents were concerned with a water treatment plant in the same area. The Partnership asserted that both the existing water transmission line and the existing WTP were constructed before the State of Oregon regulated seismic resistance for facilities such as a water treatment plant. The Partnership supplied evidence (Section 17: Final Geotechnical Report, Applicant Submittal for Water Treatment Plant, Amended 8/20/2012) to support their claim that both the proposed pipeline and expanded water treatment plant would be designed in accordance with the highest seismic standard available and would be able to withstand a magnitude 9.0 Cascadia Subduction Zone (CSZ) event. The seismic standard is discussed more fully below in the analysis of CDC 60.070(A)(2) with respect to suitability of the site for the proposed use.
- *Impact – construction-related traffic will negatively impact local businesses:* Local business owners testified in person and submitted written testimony arguing that construction-related traffic and roadway construction on Highway 43 associated with the installation of the water transmission line would create congestion that would negatively impact their businesses. The Partnership asserted that per ODOT mandate, all work on Highway 43 would be conducted between the hours of 8 pm and 6 am, with the roadway surface restored to full capacity and all equipment moved off of the roadway each day. The Partnership argued that only two businesses open between 8 pm and 6 am do not have an alternative site access other than Highway 43. For these businesses (Philadelphia Steaks and Cheese and Burgerville), the Partnership proposed to keep their Highway 43 access driveways open until these businesses closed each evening.
- *Impact – difficulty selling property adjacent construction zone:* A number of residents testified that they were concerned that they would experience difficulty if they attempted to sell property adjacent Mapleton Drive or Kenthorpe Way during plant and/or pipeline

construction. The Partnership was uncertain about the impact of construction on residents' ability to sell homes and argued that it would be difficult to distinguish between the impact of the recession on home prices and the impact from the construction of their project.

Public testimony, the staff report and the Partnership also cited a number of short- and long-term benefits that could be expected from the project: improved emergency water supply reliability; full system redundancy; pedestrian connection between Mapleton Drive and Kenthorpe Way; improved aesthetics; new public open space; improved seismic resiliency.

- *Benefit – improved emergency water supply reliability:* Under peak use conditions, Lake Oswego is currently unable to supply water to West Linn during an emergency. Increasing the capacity of the Lake Oswego WTP would allow Lake Oswego to supply 4 mgd to West Linn during an emergency until at least 2041, per a proposed IGA signed by the cities of Tigard and Lake Oswego.
- *Benefit – full system redundancy:* The Lake Oswego WTP treats water pumped from Lake Oswego's Clackamas River Intake Station via a transmission line under the Willamette River. This system operates completely independently of West Linn's primary source of potable water (South Fork Water Board system). Although West Linn has access to surplus water from the North Clackamas County Water Commission (NCCWC) System during times of need, this system delivers water to the South Fork Treatment Plant in Oregon City and then to West Linn via West Linn's primary supply line on the Abernethy Bridge. West Linn cannot access water from NCCWC if the South Fork Plant is non-operational or if the supply line on the Abernethy Bridge is compromised. If the City were to construct a second supply line to the South Fork Treatment Plant, the City would still be vulnerable to operational issues at the South Fork Plant as well as failures or obstructions at the South Fork Intake on the Clackamas River.
- *Benefit – improved seismic resiliency:* The WTP and transmission pipeline were originally constructed in 1967, before the State of Oregon developed seismic standards for essential facilities such as water treatment plants. The WTP has undergone upgrades since that time, in part to improve seismic resiliency. The Partnership asserts that their plant and pipeline have been designed to withstand the highest seismic standard in use today, a 9.0 CSZ event. This is the standard used for schools, hospitals, water treatment plants and other essential facilities in the State of Oregon.
- *Benefit – pedestrian connection between Mapleton Drive and Kenthorpe Way:* The Partnership has offered to construct an asphalt path connecting the east end of Kenthorpe Way with Mapleton Drive. This connection is intended to improve pedestrian and bicycle mobility in the area. The Partnership further asserts that their emergency vehicle access from Mapleton Drive could be used by residents during emergencies (i.e., if an obstruction on Kenthorpe Way blocked access to or from homes, residents could detour through the WTP site to Mapleton Drive).
- *Benefit – new public open space:* The WTP site plan includes two areas designed for public use (see 8/20/2012 Applicant Submittal, Section 21, Sheet 3.1A).
- *Benefit – improved aesthetics:* The Partnership has proposed a building design and landscaping that it believes is more compatible with the neighborhood than the existing WTP. The record includes testimony in opposition to the building design stating that it is not in character with the neighborhood. The pipeline will be completely underground and is not an aesthetic concern.

In conclusion, Staff interpreted the criterion – overall community need – as not requiring a cost-benefit analysis such as that undertaken by the Planning Commission. Council will need to

determine the correct interpretation of the standard; if such an analysis is deemed appropriate, the above summary of the evidence can be considered by the Council as part of its deliberations.

Planning Commission finding 1(E) – Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process.

Appellant’s assertion:

- The City's Water Master Plan directs the city to "pursue development of reliable emergency supply capacity with the cities of Lake Oswego, Tigard and others..." This Water Master Plan is an integral and required part of the state's requirement for comprehensive land use planning.
- The greatest advantage for a municipal retail water service provider comes from having the infrastructure and inter-governmental agreements necessary for immediate and safe transmission of that public commodity to any customer in its service area upon demand. Wholesale water facilities and mutual aid agreements are regional by their very nature. The City of West Linn does not currently enjoy any agreed to minimum back-up water supply adequate to meet its present or future needs. This lack of a regional solution profoundly impacts the citizens of West Linn.
- The strongly held emotional views of those who testify about the presence of the existing plant and the proposed project should play no role in how the applicable criteria are applied by the hearing body.

Staff response: Oregon Revised Statute (ORS) 227.173(1) states that, “approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.”

This statute is intended to inform property owners of the range of allowable uses on their property and provides a reasonable degree of certainty as to the applicable regulations governing a development proposal. The Planning Commission’s finding in (E) above, that “community need should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing” does not provide any certainty to a property owner or potential property owner regarding allowable uses of their property until public testimony is delivered, after an application for development has been submitted.

Further, the finding implies that the community is predominately represented by those in attendance at the hearing and that their perspective is paramount. The City’s Comprehensive Plan and its supporting documents, such as the Water Master Plan, are developed with citizen participation and adopted following public hearings before the City Council. Staff found (see Attachment 3, Staff report to Planning Commission for CUP-12-02/DR-12-04, p. 28, 4/18/2012)

that the Water Master Plan directed the City to improve its emergency water supply reliability by partnering with Lake Oswego, Tigard and other cities as outlined in the above (page 4 of this document) excerpt from the Water Master Plan. In staff's opinion, placing the opinion of participants in a land use hearing, who are most impacted by a project, above the Water Master Plan, undermines the intent and effectiveness of comprehensive planning for infrastructure needed to serve the entire community.

The Partnership asserts that West Linn's lack of an agreed to minimum backup water supply adequate to meet its present or future needs profoundly impacts the citizens of West Linn. The Partnership argues that in recognition of this situation, the West Linn Water Master Plan directs West Linn to, "*pursue development of a reliable emergency water supply capacity with the cities of Lake Oswego, Tigard and others...*" The Partnership states that the project will provide a net benefit to the citizens in West Linn over the life of the project and therefore the community need standard is met.

2. Are the characteristics of the site suitable for the proposed use?

The Planning Commission found (Attachment 2) that the application is not consistent with CDC Section 60.070(A)(2) – "*The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.*" The Planning Commission disagreed with the Partnership's testimony regarding the suitability of the WTP site given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the plant. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership's submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the WTP site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership attesting this buttress was present. The Planning Commission was not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 CSZ seismic event in this area.

The Planning Commission also found that the Partnership's proposal failed to satisfy CDC Section 60.070(A)(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* - in that the Partnership's proposal created safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

Appellant's assertion: The plant design is suitable for this site and compatible with the surrounding residential neighborhood.

- Before the Planning Commission, the Partnership proposed a consolidated site design that resulted in a 12 percent increase in the overall footprint of structures. The Partnership is now proposing to remove the operations building, reducing the overall footprint by an additional 3 percent. The net result is a plant footprint that is approximately only 9 percent larger than the existing plant. This change also reduces overall construction duration from 32 months to 28 months.

- The current plant design is sterile, cold, and institutional in appearance, which the neighbors have testified, and earlier West Linn decisions found, is compatible with the neighborhood. The proposed design is much softer, incorporating residential design elements and materials.
- Understanding of seismic risk and construction and material technology has improved dramatically since the existing pipeline and plant was constructed. Removal of this out-of-date system and replacement with a state-of-the-art facility can only serve to reduce the seismic risk and enhance safety and reliability to the Robinwood neighborhood and community of West Linn.
- All of the qualified expert testimony submitted into the record, coupled with the Partnership's long-standing record for safe operations at this site, suggests that all industry-standard safety precautions will be taken; pipe removal, installation, facility upgrades, and operation will be done in a way that protects the neighbors as well as their property.
- Where new lighting or noise generation is proposed, the Partnership has responded by increasing the landscape buffering or sound baffling necessary to mitigate these impacts.
- Inconveniences to pedestrians and vehicles travelling or accessing properties along Mapleton Drive will extend for only a three-month period rather than 32-months as the Planning Commission found. Moreover, construction on Mapleton Drive will occur during the winter months when pedestrian activity is likely to be lighter than during the spring, summer or fall.

Staff response: The Partnership contends above that the record includes qualified expert testimony to support their claim that the site has been designed to withstand a magnitude 9.0 CSZ event. The Partnership further contends that our collective understanding of seismic risk and construction material has dramatically improved since the existing pipeline and plant were constructed and replacing the out-of-date system with a state-of-the-art system can only serve to reduce seismic risk and improve safety and reliability.

The Partnership's response to safety concerns for children walking to school is outlined above. Additionally, the 32²-month construction duration includes all tasks necessary to complete the expansion of the WTP and installation of the transmission line. The transmission line construction zone on Mapleton Drive will occupy a maximum area 150-feet in length and will move west along Mapleton Drive at a rate of approximately 50-feet per day. The Partnership anticipated that transmission line installation on Mapleton Drive will last for approximately 3 months.

The issue before the Council is purely factual in nature. As the Council is reviewing the application de novo, the Council must weigh the evidence outlined above and make its own assessment of the evidence in order to determine whether the characteristics of the site are suitable for the proposed use.

3. Is the proposal consistent with the applicable policies of the West Linn Comprehensive Plan?

Finally, the Planning Commission found that the Partnership's proposal was not consistent with CDC Section 60.070(A)(7) – *"The use will comply with the applicable policies of the comprehensive plan"* – and the West Linn Comprehensive Plan based upon the following findings:

² This has been reduced to 28-months in the Partnership's most recent submittal.

Planning Commission finding 3(A) – *The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states “Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.” The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing plant was uniformly described as a “good neighbor” the new building would be significantly larger, more industrial in appearance and would have exterior lighting that would be more invasive than the current plant. Based on the Applicant’s revised site plan, the buffering and setbacks are not sufficient to adequately protect the neighborhood from the dominant appearance of the project. Significantly more chemicals must be brought to the site to treat the greatly increased water being processed, and such chemicals are potentially hazardous putting nearby residents at increased risk. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed plant presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.*

Appellant’s assertion: As a quasi-judicial proceeding, review must focus solely on the applicable approval criteria.

- The strongly held emotional views of those who testify about the presence of the existing plant and the proposed project should play no role in how the applicable criteria are applied by the hearing body.
- By allowing a "major utility" as a use conditionally permitted within the R-10 zone, temporary construction impacts are contemplated so long as the compatibility and benefits criteria are met.

Staff response: The Partnership asserts that the Comprehensive Plan and CDC contemplate temporary construction impacts and major utilities in residentially-zoned areas of the City as demonstrated through the inclusion of major utilities as conditional uses in the R-10 zone. Staff found (see Attachment 3, Finding No. 25, p. 50/101) that the proposed WTP structures are compatible with the adjacent structures in the vicinity: “The WTP design draws cues regarding material articulation, scale, and form. The neighborhood is primarily made up of single-story ranch-style homes... predominant roof forms... tend to be low slope shed roofs...cladding tends to be lapped siding... Many of these ranch-style homes sit with their broad side facing the street...” Finally, the Partnership has supplied evidence to support their claim that the WTP and transmission line has been designed to withstand a 9.0 CSZ event, consistent with standards for essential facilities in the State of Oregon.

Staff continues to believe that the CDC implements the provisions of the Comprehensive Plan, unless a policy is stated as directly relevant. If major utilities are deemed inherently incompatible with residential uses, they should not be allowed as conditional uses in residential zones as they are at present. Staff does not believe the policy in question is directly applicable to this application based on the CDC’s treatment of major utilities.

Planning Commission finding 3(B) – *The Partnership’s proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, “Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities.” The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled “goals” and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership’s initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.*

Staff response: Staff determined that the 2003 City Council goals referred to in the comprehensive plan are “aspirational declarations” and as such are not intended to be used as independent approval criteria in a quasi-judicial decision. The CDC refers to the “*applicable policies of the comprehensive plan.*” The referenced Council goals are not Comprehensive Plan policies. The pending applications would allow for expansion of a WTP and installation of a new transmission line in the City of West Linn; the request does not include development or urbanization of the Stafford Triangle. The record shows (based on the applicant’s presentation and rebuttal) that the Lake Oswego Comprehensive plan does not provide for urbanization of the Stafford Triangle. In order to serve that area, the Comprehensive Plan would have to be amended and the Urban Growth Boundary would have to be expanded.

Planning Commission finding 3(C) – *The Partnership’s proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) Goal 1: Maintain and protect West Linn’s quality of life and livability. See Finding 1(C). The Partnership’s proposal fails to protect residents’ quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;*

Goal 2: Actively support and encourage West Linn’s neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;

Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality; and

Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn’s land use process.

Staff response: As stated above, Staff determined that the 2003 City Council goals referred to above are “aspirational declarations” not intended to be used as independent approval criteria in the context of quasi-judicial decision making, and further that the referenced Council goals are not Comprehensive Plan policies. Staff further determined that the CDC contemplates impacts from

major utilities in residential zones as demonstrated through the inclusion of major utilities as a conditional use in the R-10 zone.