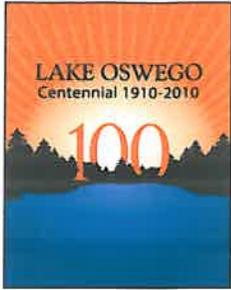


**ATTACHMENT 1**  
**APPLICANT'S MEMO, DATED DECEMBER**  
**10, 2012**

**FILE NO.:** AP-12-02 and AP-12-03

**REQUEST:** Appeal of Planning Commission decision in CUP-12-02 and CUP-12-04 denying application to expand Water Treatment Plant and install new Raw- and Finished-water transmission line



## MEMORANDUM

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**TO:** Honorable Mayor and Councilors of the City of West Linn

**FROM:** Joel Komarek, P.E., Director, Lake Oswego-Tigard Water Supply Partnership  
Edward J. Sullivan, Legal Counsel, Lake Oswego-Tigard Water Supply Partnership  
Eric Day, Senior Planner, City of Lake Oswego

**SUBJECT:** Appeals for Lake Oswego – Tigard Water Partnership:  
CUP-12-02/DR-12-04 (water treatment plant) and  
CUP-12-04/DR12-14 (water transmission line)

**DATE:** December 10, 2012

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Pursuant to West Linn Community Development Code (“CDC”) 99.250, the applicant Lake Oswego Tigard Water Partnership (“Partnership”) hereby appeals two decisions made by the Planning Commission for a water treatment plant and water transmission lines. The applicable city file numbers are identified above. The applicable filing fee covering both appeals is also enclosed.

The Partnership is a party to these proceedings and has standing to pursue these appeals under CDC 99.140 because it is the applicant in both cases and Partnership representatives participated both orally and in writing during the proceedings before the Planning Commission.

Although an appellant need not identify any particular grounds in order to perfect an appeal under CDC 99.250, the Partnership intends to raise at least the following issues before the City Council:

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.
  - 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 2008 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 City has never before imposed rigorous “community need” obligations on other conditional uses seeking to locate in residential zones within the City.
- The record shows that the guaranteed provision of water for a 30-year period, replacement of an 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.
- 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.
- 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.

2. 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% 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%. The net result is a plant footprint that is approximately only 9% 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.
3. 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.

We respectfully request you join us in helping to provide this necessary public benefit to the citizens of our West Linn, Tigard and Lake Oswego.

