

Presentation to the West Linn City Council

14 January 2013



Help Save West Linn

Executive Summary – *Overturning the West Linn Planning Commission decision does nothing to solve West Linn's long term water issues*

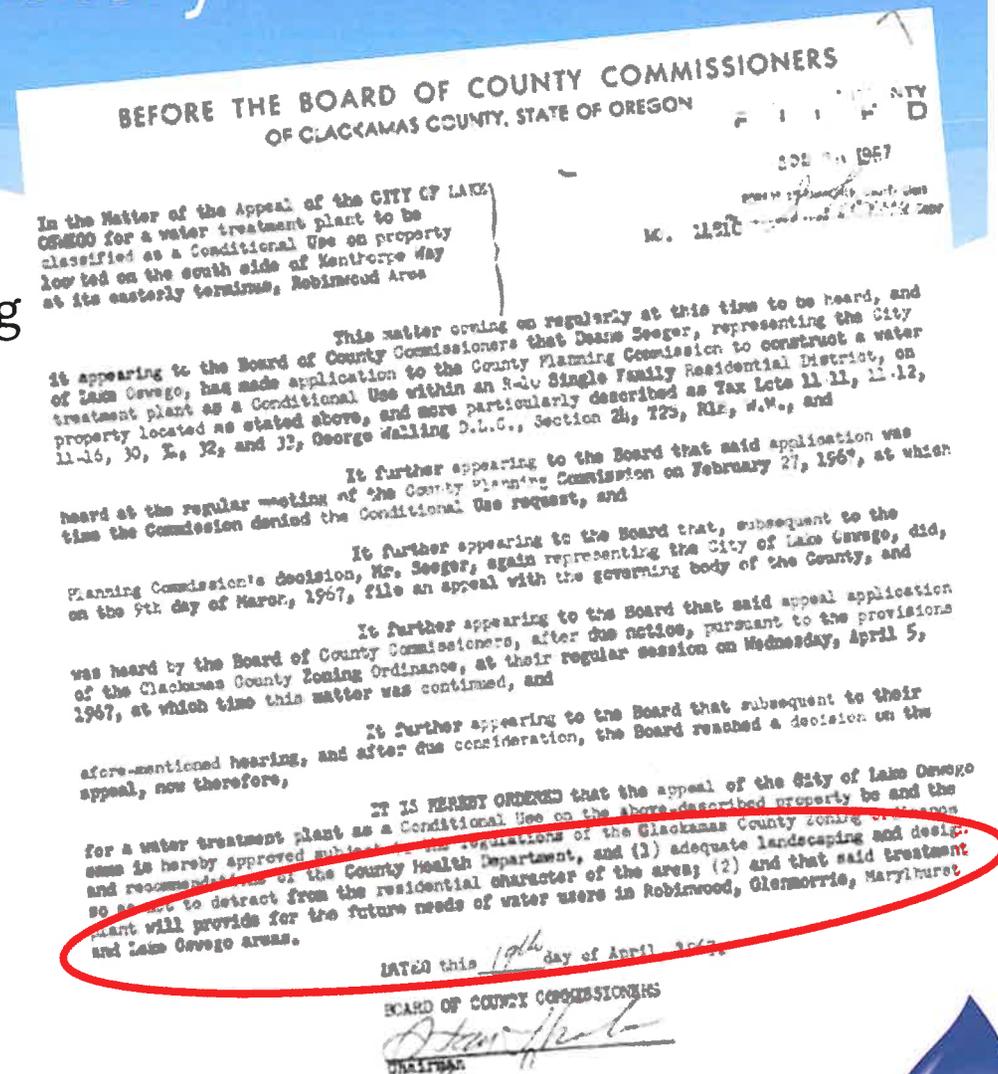
- The Planning Commission voted unanimously 7 to 0 that the LOT Plant and pipeline do not comply with West Linn City Code CDC 60.070
- West Linn Citizens need a comprehensive long term water plan
 - City Wide pipe replacement, improvements to Bolton Reservoir, and the LOT proposed plant are *mutually exclusive*
- The proposed community benefits outlined by LOT are mitigation requirements and/or are already in place
- Not compatible with West Linn CDC or Comprehensive Plan

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History

- February 27, 1967 documents highlight that the Planning Commission REJECTED the building of the plant – no benefit to the community
- April of 1967, without public deliberation or vote, the County Commissioners overturned the County Planning Commission
 - A required condition by the County Commissioners would be that water is provided to Marylhurst and Robinwood
 - Facility never connected their water to any residences in Robinwood, a failed promise to honor the original 1967 commitments



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Many Organizations Opposed

- West Linn Planning Commission (Unanimous)
- 7 of 11 Neighborhood Associations
 - Note: 3 of remaining are not meeting or have no representation, remaining 1 opposed but had no quorum
- West Linn Riverfront Association Board
- WaterWatch Oregon
- Members of Trout Unlimited (local chapter)
- Members of Coastal Conservation (local chapter)

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West Linn Business Speak Out

Lake Oswego Tigard Water Projects Harm Residents and West Linn Businesses!

- Bad for our Residents and Commuters
- Brings approximately 60,000+ construction vehicles = traffic congestion
 - Bad for our Local Businesses
 - Violates our City Code
- ZERO Tangible Benefits for the City of West Linn
- Significant Environmental Concerns
- Oswego/Tigard facility would provide water to Stafford area development conflicting with WL/Tualatin goals

- Paid for by West Linn Business Owners
- West Linn Tidings, 10 January 2013

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Planning Commission Summary

- Finding 1: The Planning Commission finds that the applicant filed to satisfy CDC 60.070 (A) (3) – “The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”
- Finding 2: The Planning Commission finds 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.”
- Finding 3: The Planning Commission finds that the application is not consistent with CDC Section 60.070 (A) (7) – “The use will comply with the applicable policies of the comprehensive plan.”
- Finding 4: The Planning Commission finds that the Partnership’s proposal fails 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....”

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The Problems with the LOT CUP / Plant / Pipeline in West Linn

Only one criterion needed to support a denial

→ many significant violations of the West Linn City Code and Comprehensive Plan

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14

- CDC (Community Development Code) non-compliance
 - **CDC 60.070(A)(7): “The use will comply with the applicable policies of the comprehensive plan”**
- The Comprehensive Plan
 - **Goals, Policies, and Recommended Action Measures**
 - **“The *goals* and policies contained within this plan have the force of law and the city is obligated to adhere to them in implementing the plan”**
 - **“A policy may not be the only action the city can take to implement the goals”**

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The Problems with the LOT CUP / Plant / Pipeline in West Linn , 1 of 14, cont.

- Comprehensive Plan Specific Goals, Policies, and Recommended Action Measures
 - Goal 2, Section 1, policy #8: “Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed use development, and other incompatible land uses”
 - Goal 2, Section 3, goal #4: “Protect surrounding residential areas from adverse effects of commercial development in terms of loss of privacy, noise, lights, and glare.”
 - Goal 2, Section 3, policy #4e: “Requires that any redevelopment of existing land or buildings be completed in a manner which conforms to the adopted neighborhood plan.”
 - Goal 2, Section 4 → Industrial Development “West Linn does not contain any additional lands suitable for large-scale industrial development. There are no remaining undeveloped areas in the City.....and suitable buffering from the residential development that characterizes most of the City.”

Use of Contextual / Compatible: “Capable of orderly efficient integration and operation with other elements in a system with no modifications or conversion required.”.....Webster’s “capable of living in harmony”



The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14, cont.

- **Additional Comprehensive Plan References for Non-Compliance**
 - City Council Goal #1: “Maintain and protect West Linn’s quality of life and livability”
 - GOAL #11 (Public Facilities and services):
 - Policy 13 (C): “The need to equitably distribute the cost based on the benefit received from the facility”
 - City Council Goal #1: “Maintain and protect West Linn’s quality of life and livability”
 - City Council Goal #2: “Actively support and encourage West Linn’s neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighbors real control over their future”
 - City Council Goal # 6: “Promote land use policies, both local and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality”
 - *Carrying Capacity* is defined in the Comprehensive Plan: “The level of use that can be accommodated without unacceptable damage to the environment, including air, land, and water quality, the transportation network, storm water management, and *overall quality of life*”
 - City Council 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”
 - GOAL #2 (Land Use Planning):
 - Section 1; policy #8: “Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed use development, and other incompatible land uses”
 - Section 1; policy #9: “Foster land use planning that emphasizes livability and carrying capacity”
 - GOAL # 6 (Air, water, and land resource quality):
 - Section 1: “The primary source of air pollution within the city of West Linn is automobile and truck emissions. At this time there are no known major single (point) sources of air pollution in the city. However, it is important to be aware of existing or future industrial facilities which could be major point”
 - Goal: “Maintain or improve West Linn’s air quality”
 - Section 4; recommended action measures (2): “Monitor and enforce conditions of approval for new development related to noise impact”
 - GOAL #7 (Areas subject to natural disasters and hazards):
 - Goal: “Protect life and property from flood, earthquake, and other geological hazards, and terrorist threats or attacks”

The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14, cont.

- **Additional CDC References for Non-Compliance**

- 60.070(A)(3): “The granting of the proposal will provide for a facility that is consistent with the overall needs of the community”
- 60.070(A)(7): “The use will comply with the applicable policies of the comprehensive plan”
- 60.070(A)(2): “The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features
- 60.070(A)(1): “The site size and dimensions provide a) adequate area for 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
- 60.090 ADDITIONALCRITERIA FOR TRANSPORTATION FACILITIES
- 60.090(A)(2): “The project design is compatible with abutting land uses in regard to noise generation and public safety and is consistent with the applicable zoning and development standards and criteria for the abutting properties
- 60.090(A)(3): “The project design minimizes environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities, and a site with fewer environmental impacts is not reasonably available”

Only one for either the CDC or the Comp Plan needed to support a denial

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Compatible / Contextual ?

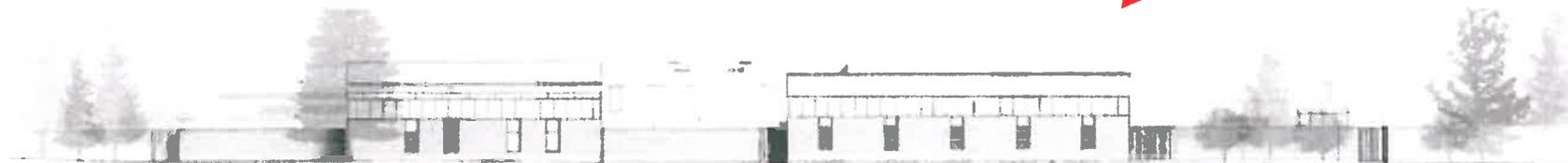
EXISTING



PROPOSED



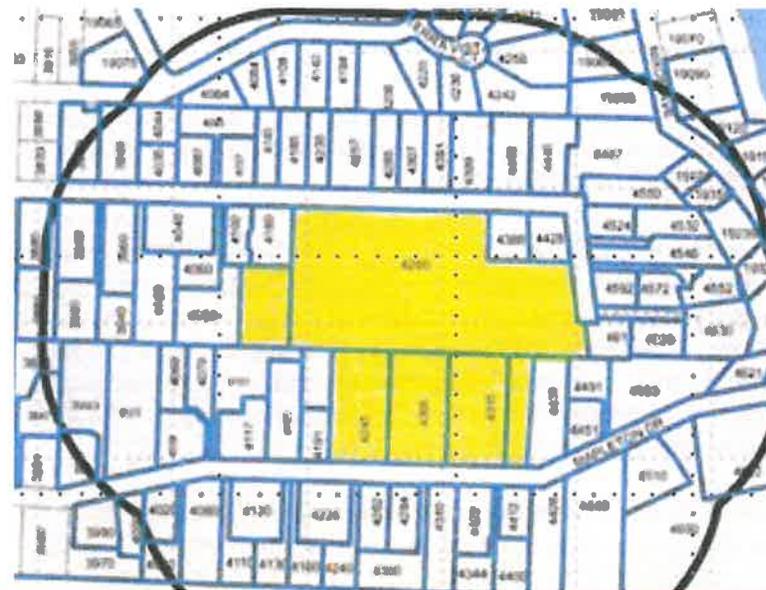
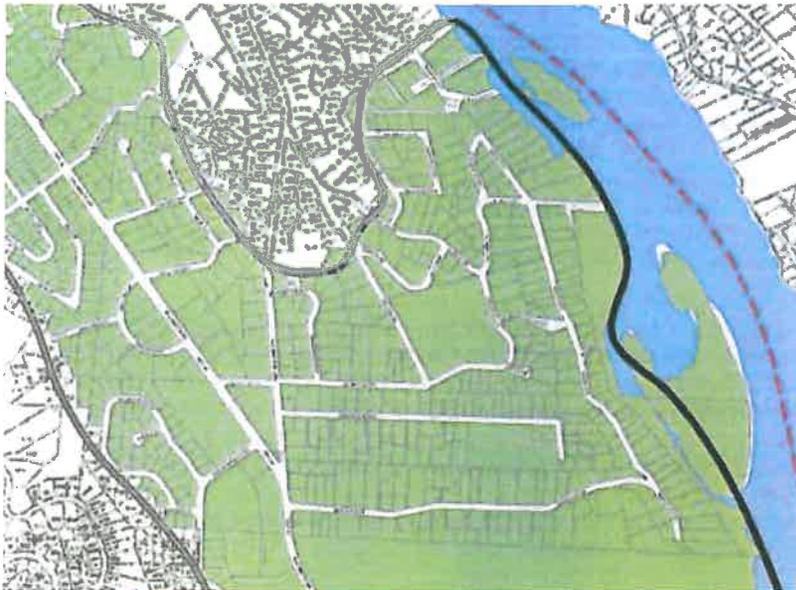
NORTH ELEVATION
10-10



SOUTH ELEVATION
10-10

The Problems with the LOT CUP / Plant / Pipeline in West Linn, 2 of 14

- **Goal 10 (Housing)**
 - Goal (1): “Preserve the character and identity of established neighborhoods”



Appellant requesting Zoned Residential Use to set aside 10 acres for Industrial Plant, right next to homes, school, & West Linn's largest park

The Problems with the LOT CUP / Plant / Pipeline in West Linn, 3 of 14

- **Preservation of Stafford**

- Adopted City Policy, Council Goal #9 of Comprehensive Plan: “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”
- Justification of Carollo report, and the assumptions for required capacity by LOT, assumes complete development of Stafford
 - Stafford development also referenced in the Department of State Lands application

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 4 of 14

- **The Inter-Tie** is already in place, used by both parties 7 times since 1998 → offering this as a new benefit is inappropriate
- Don't be misled there are other reasons that LOT wants to amend the IGA and it's not to benefit West Linn:
 - "... Lake Oswego has entered into a partnership with Tigard necessitating a change to the IGA so as to include Tigard as a party." – 8/3/2012 Memo from Chris Jordan, City Manager to John Kovash, Mayor, Members, West Linn City Council – This doesn't sound as if the goal is to benefit West Linn
 - "In many respects the new IGA is similar to the 2003 version. Most importantly, the purpose remains the same: to describe how and when the intertie will be used to the benefit of any of the parties. This is not contingent on approval of Lake Oswego's land use application." – 8/3/2012 Memo from Chris Jordan, City Manager to John Kovash, Mayor, Members, West Linn City Council

Our City Manager states that the IGA and the CUP are separate so approving the CUP does not confer a benefit to West Linn via the IGA

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 4 of 14 cont.

- There is **no guarantee of 4MGD** – based upon availability
 - “This extra water could be available year-round up through 2026 — up through 2041 outside of peak seasons, according to Joel Komarek, LOT project director.” – The Lake Oswego Review, Dec 22, 2011.
 - Note: If this is a real benefit then why not stipulate it in the new IGA agreement? Otherwise it is an empty promise not enforceable under the IGA.
 - Note: if no power from PGE, there is no back-up water for West Linn
 - In fact, the IGA relieves LOT of any obligations.....
 1. Either party can terminate IGA Agreement with at least 36 months notice prior to effective date of termination
 2. Utilization of the water intertie is triggered by mutual consent of the executive officer

The introduction of the inter-tie is not a benefit to West Linn

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 5 of 14

- Inappropriate use of the Conditional Use Permit
 - *Conditional Use* is defined in the Comprehensive Plan:

“A proposed use of land which might 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.”

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 6 of 14

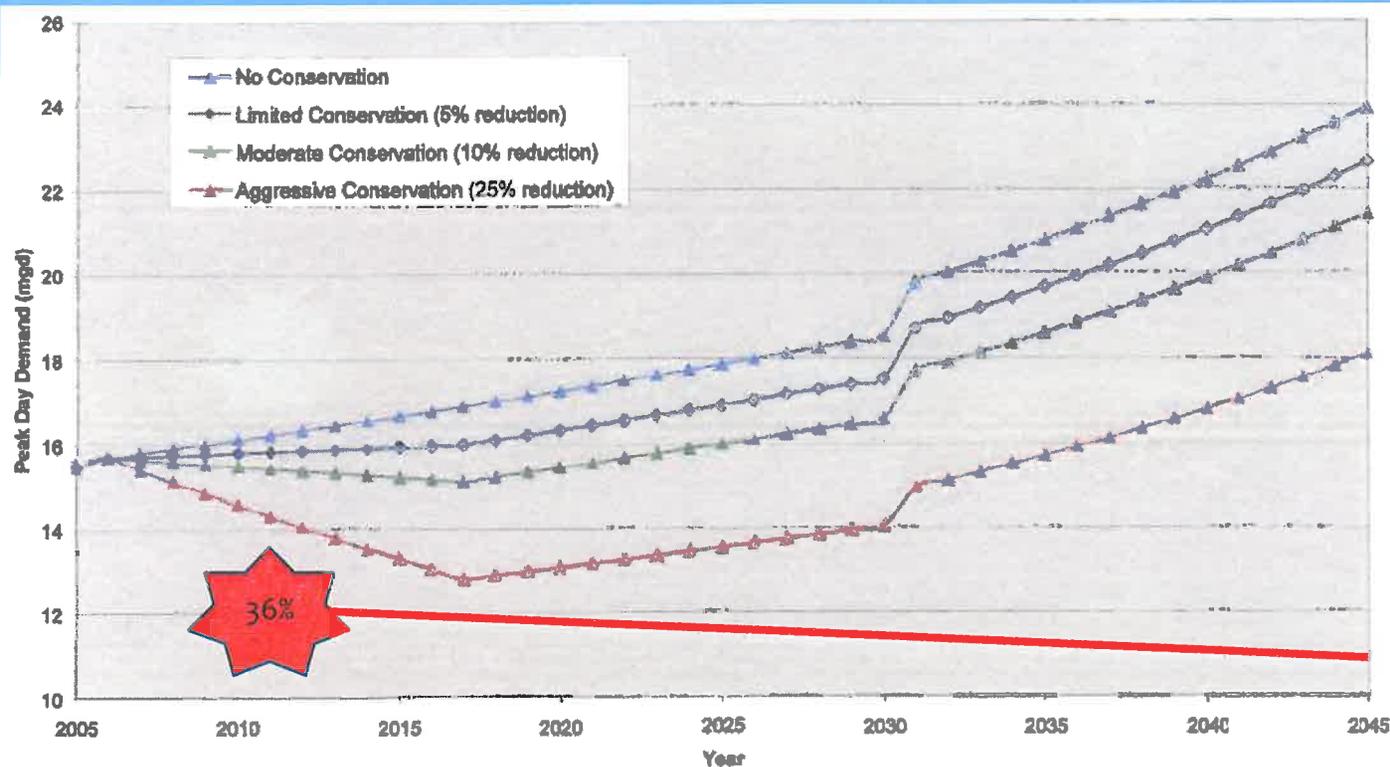
- **LOT Plan built on faulty assumptions purchased through the Carollo Report**

2007 Carollo Report Fiction	Fact - Actuals
Doubling of the population served	Actual population growth at <.5% per year
50% more water required for Lake Oswego service area	5% actual Lake Oswego build-out (Stafford Triangle development included in assumptions)
Estimates 0.5% conservation per year	2011 actual conservation was 36% (source: LO report to Water Resource Board)
Cost of Project = \$128M	Current estimates greater than \$250M
Plant Expansion required	w/ trending conservation and current capacity, plant not required for LO

Assumptions paid for during pre-financial crisis time should not be a basis for maximizing capacity....purpose of Carollo report was a justification to 'VEST' all of their Clackamas water rights making LOT a regional water powerhouse



Faulty Carollo Report Estimates



Lo50714.1-7525.a1

Figure 4.1
CONSERVATION IMPACTS ON LAKE OSWEGO FUTURE DEMANDS
JOINT WATER SUPPLY SYSTEM ANALYSIS
CITY OF LAKE OSWEGO AND TIGARD WATER SERVICE AREA

Conservation of 36% between 2007 & 2011 – nullifies any assumptions that new plant & infrastructure might be required



The Problems with the LOT CUP / Plant / Pipeline in West Linn, 7 of 14

- Multiple Financial Shortcomings for West Linn
 - 1 – Loss of tax revenue for West Linn due to tax exempt status
 - 2 – LO expands its tax base with expanded services for property, plant, and equipment in West Linn residential zone
 - 3 – Business Risk
 - 4 – Use of all WL municipal services – for free
 - No SDC (system development charges)

FOOTHILLS URBAN RENEWAL

The City Council is scheduled to meet on December 4 to conduct a public hearing and vote on an ordinance to adopt the proposed Foothills Urban Renewal Plan. This meeting was previously scheduled for November 20. If adopted, the Urban Renewal Plan would authorize the use of tax increment financing up to a maximum indebtedness of \$43.2 million over a projected 22-year time period. Upon commitment of private investment in the area, the Plan would begin funding needed public infrastructure (roadways, pathways, water, wastewater, and storm water). The Plan also provides assistance in the development of affordable housing.

Urban renewal does not increase property taxes; it allows for tax revenues from incremental growth of property values within a defined urban renewal area to be reallocated to investment in urban renewal projects rather than going to overlapping taxing jurisdictions.

Visit www.ci.oswego.or.us/eo/100thills, for more information.

City Council Public Hearing Notice Foothills Urban Renewal Plan

The Lake Oswego City Council will hold a public hearing and consider an ordinance for the adoption of the proposed Foothills Urban Renewal Plan.

Tuesday, December 4, 2012. Meeting scheduled to begin at 6 p.m. (subject to change)
City Hall, City Council Chambers
380 A Avenue, Lake Oswego

A copy of the ordinance, the proposed Foothills Urban Renewal Plan and accompanying report may be obtained by contacting Sidaro Sin, 380 A Avenue, Lake Oswego, OR 97034; 503-697-7421; ssin@ci.oswego.or.us or visiting the City's website.

The proposed maximum indebtedness of the Plan is \$43,200,000. The ordinance, if approved, is subject to referendum. The adoption of the Plan may impact property tax rates for general obligation bonds approved by voters prior to October 6, 2001.

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 8 of 14

- Inappropriate Application of West Linn **Transportation System Plan (TSP)** – no recognition of Robinwood Neighborhood Plan (adopted by PC and CC of West Linn)
- TSP to Highway 43 are being ignored
 - Comprehensive Plan, Goal 12, Transportation, Action Measure 3 “to assure that new development pays needed improvement to transportation facilities of city wide importance”
- Transportation Project – “not a pipeline project” from PC meeting – triggers the code requirement – new standard which was confirmed by Atty Beery
 - The 48” pipe to run along Highway 43 must be upgraded to current standards
 - **Note:** This is not a benefit to West Linn, this is a requirement



What Highway 43
Is Approved to
Look Like

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 9 of 14

- The Exploitation of Mary S. Young a Violation of voters rights
 - “Staging Area” with large machinery and drilling within 150 meters of this sign
 - Interferes with city owned greenway, cedar island and beach
- ***Construction activity above ground eliminates user parking and access, this requires approval of voters per the City Charter***



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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 10 of 14

- Traffic and Safety
 - CDC 60.090 A(2) “compatible with abutting land uses in regard to noise generation and public safety”
 - Emergency Vehicles access 24 x 7
 - Large construction vehicles over 28 month period of construction → safety
 - Precarious ‘hair pin’ turn of Nixon and Mapleton



Paid consultant GreenLight Engineering
“280 feet visibility”, page 51 → not accurate
– yield & truck size not considered

The Problems with the LOT CUP / Plant / Pipeline in West Linn, 10 of 14, cont.

- Traffic and Safety, cont.



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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 11 of 14

- Traffic and Congestion
 - CDC 60.090 A(2) “compatible with abutting land uses in regard to noise generation and public safety”
 - 24 hours a day of construction
 - ~50,000 Diesel trucks trips in residential neighborhoods & West Linn city streets
 - Workforce traffic unquantifiable
 - Staging of equipment & materials unknown



How to lie with numbers:
*Does a loaded dump truck
equal a car? Impact to
congestion along all
intersections vs. Highway 43
unquantifiable*

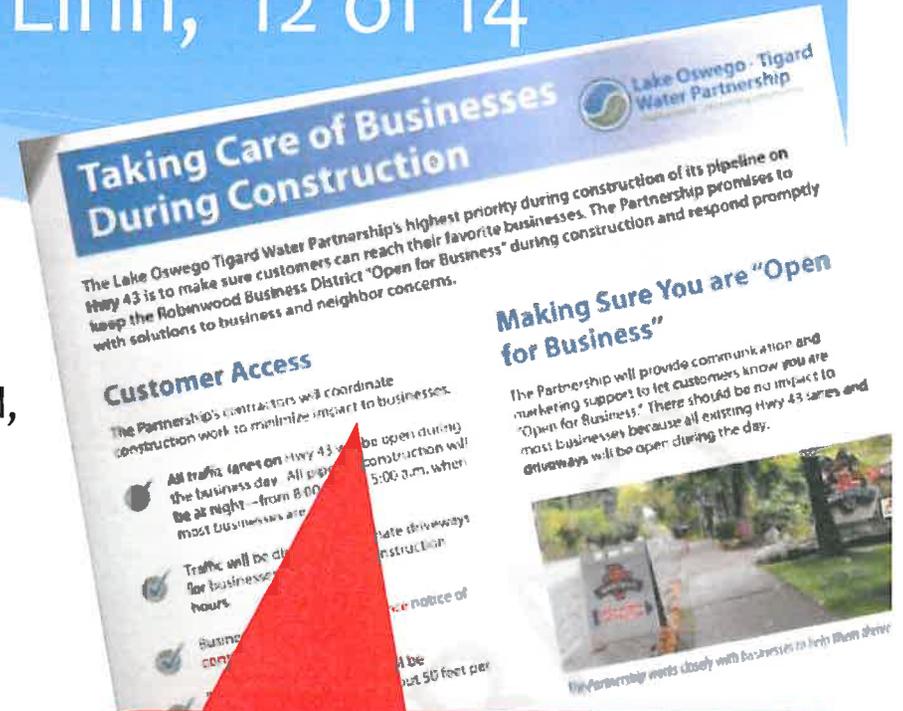
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The Problems with the LOT CUP / Plant / Pipeline in West Linn, 12 of 14

- **Business Impact**

- No safety net for businesses in the event of severe reduction in traffic or revenue
- Side effects from slowed traffic, alternative routes because of torn up road, etc.
- No benefit to businesses at the end of the work, in fact, trickle down effect un-measurable and irreversible
 - Job losses
 - Reduction in business values
 - Reduction in commercial real estate values
 - Stigma of bankruptcy and/or perception of business activity in West Linn
 - Implications to tax base for continued and needed infrastructure improvements



LOT first 30 months of discussion: "there will be no impact to business"
LOT Published Last Thursday, 1/7/13: "we will promote businesses to keep them open"

The Problems with the LOT CUP / Plant / Pipeline in West Linn, 13 of 14

- **Environmental Responsibility**
 - Two water resource areas along Mapleton (Trillium Creek and Heron Creek)
 - CDC Chapter 32.020 D (8) → loose interpretation of disturbed area
 - Applicant states they will stay within the 'paved areas' → pipe in violation
 - Implications:
 1. Multiple sensitive areas and streams on top of proposed pipes and traffic impact
 2. Many residents have been denied the right to disturb streams and trees in this area
 3. LOT drilling and driving equipment outside of disturbed area

NOTE: geotech reference of work being done during winter/rainy season introduces the most risk to environmental



The Problems with the LOT CUP / Plant / Pipeline in West Linn, 14 of 14

- **Geological Instability**

- “Red Zone” → level 5, most unstable land for development
 - Soil subject of Liquifaction
- LOT Claim → a “basalt ridge” might prevent landslide
- **FACT** Planning Commission determined that known Basalt ridge is too far south in Mary S Young
- **IMPACT** → LOT location at highest possible risk to landslide
- LOT response: nearly 1,000 pilings required to support the plant & clearwell
- 42” and 48” pipes subject to same risks

LOT Geologists testimony paid for; attempts made to hire firm and none would risk losing future business from government agencies



The Problems with the LOT CUP / Plant / Pipeline in West Linn, 14 of 14 cont.

- **West Linn City Code NOT being adhered to** with regard to distance from other services
 - Implications of a 42” Pipe under the Willamette, through Mary S. Young & 48” Pipe through Residential Neighborhoods
 - 42” pipe risk
 - 3,800 feet under the river
 - 950 feet within the city of West Linn
 - 1,500 feet of ‘open cut’
 - 48” pipe risk
 - 1,850 on Mapleton
 - 5,200 on Highway 43

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An Unexpected Christmas Present — Failure of a 48-Inch Waterline

by James M. Crook, E.I.T. (Lockwood, Andrews & Newnam, Inc., 2925 Briarpark Dr., 3rd Floor, Houston, TX 77042-3720)
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Section: Infrastructure Assessment/Monitoring 1, pp. 558-565. (doi: [http://dx.doi.org/10.1061/41138\(386\)54](http://dx.doi.org/10.1061/41138(386)54))

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Document type:
Part of:
Abstract:

Conference Proceeding Paper
Pipelines 2010 Climbing New Peaks to Infrastructure Reliability: Renew, Rehab and Re
In the early morning hours of December 25, 2008, a 48-inch prestressed concrete cylinder pipe (PCCP) section of a waterline failed, flooding the area near a major state highway in the southern part of Houston, Texas. The failure flooded the neighborhood near Alameda Road. Service was maintained in the area due to multiple groundwater wells at the South West Pump Station refill line. Lockwood, Andrews, & Newnam, Inc. (LAN) and a Houston (City) Utility Maintenance crews to assess the extent of damage and restore the waterline. Assessment of the PCCP portions of the W. Bellfort 48-inch included visual observation, electromagnetic survey and materials testing. The failed PCCP pipe section was removed with approximately 64 LF of a 48-inch steel pipe. This paper will present the findings and measures taken to restore the roadway and water line to service quickly.

2008 Pipe failure w/ flooding

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The Problems with the LOT CUP / Plant / Pipeline in West Linn, *one last CDC*

The City's noise standards are based on Department of Environmental Quality (DEQ) regulations. The applicant proposes to design and landscape the site to be consistent with DEQ daytime and nighttime noise limits in a residential neighborhood. The application contains a noise study prepared by ENVIRON, a licensed acoustical engineering firm. The acoustical engineer concluded that the proposed WTP can meet DEQ daytime standards. However, ENVIRON was not able to reach a definitive conclusion regarding nighttime compliance at the WRWTP based on the available measurement data, due to non-plant related noise generated by the architectural water feature along the west side of the WRWTP and a gravel producing operation to the east.

Source:
West Linn Staff Report to Planning Commission
17 Oct 2012

- **Noise**, Comprehensive Plan reference Section 4; recommended action measures (2): “Monitor and enforce conditions of approval for new development related to noise impact”
 - Today
 - Trucks idling for 10 minutes or more
 - Removal of trees on Christmas Eve
 - Next Century
 - Unknown → planting more trees does not solve the problem
 - But, the City Staff can approve ANY variants (e.g before 7 a.m. or after 7 p.m.)

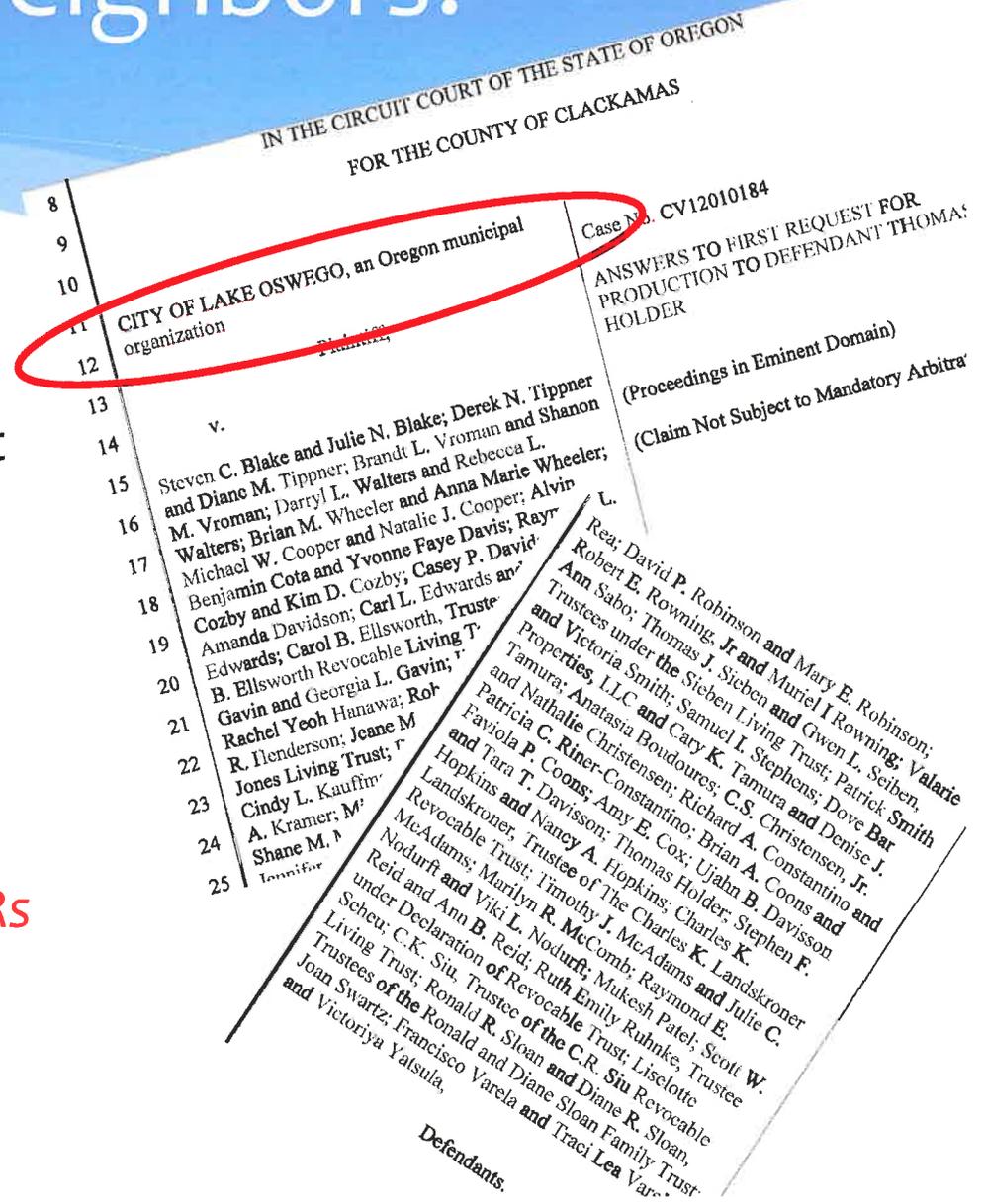
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GREAT Neighbors?

- Complete Disregard for Good Neighbor Plan
- Lawsuit still maintained against individuals of West Linn
 - Approved by the government officials of LO and Tigard
 - Legal fees to simply defend is thousands of \$ per household

Is the complete disregard for CC&Rs a precedence that we want for West Linn neighborhoods?



Next Steps

As Citizens and Voters of West Linn -
Humble Request to Vote Unanimously to
Deny the Appeal and Support the
Planning Commission

Executive Summary – *Overturning the West Linn Planning Commission decision does nothing to solve West Linn’s long term water issues*

- There is no new benefit to West Linn with the building of the LOT Plant and associated pipeline – per the CDC 60.070 and Comprehensive Plan
- West Linn Citizens want a comprehensive long term water plan to determine an autonomous water solution
- This is NOT an expansion, it is essentially a new plant
- Any reference to a one-time \$5M franchise fee is not a community benefit; is not appropriate for 100+ years of water revenue
 - *also a violation of ORS 221.470.....”shall not be granted for longer than 20 years”*
- Opportunity Costs!! (many: economic, political, perception)
 - *Lowest political effort for LOT to build in West Linn*
 - *Tigard now becomes the majority partner*
 - *Highest cost for expansion burdened by West Linn w/ no benefit*