

Questions for AP-12-02 and AP-12-03

1. RNA Attorney stated that this is a new application. Is this a new application?

Answer: No. The public hearing process is designed to allow an applicant an opportunity to modify proposed plans in response to testimony from the public, staff and the decision making body. West Linn's CDC does not contain provisions establishing when modifications to a proposed plan require resubmittal, however, the City has historically required resubmittal where revisions would result in the application of substantial new code criteria (and where new criteria apply that were not included in the mailed and published notice of the public hearing).

In this case, removing one building and slightly reconfiguring visitor parking further reduces previously anticipated impacts (impervious area and construction duration) and does not require the application of new CDC criteria and therefore does not require resubmittal.

2. Testimony stated that this is a completely new facility and not an upgrade, especially considering the removal of the existing operations building. Is this an expansion of an existing plant or a new plant?

Answer: Because a water treatment plant exists on this site, this is considered an expansion and alteration. It would be considered a new plant if one had not previously existed on this site. Expansions of approved conditional uses are however, subject to the same review criteria as a new conditional use (CDC 60.070(A)). Staff has reviewed this application to modify/expand a conditional use relative to all the same criteria that would be applied to a new conditional use.

3. Lake Oswego did not look at alternative Water Treatment Plant sites. Is there an obligation to require an alternative site analysis?

Answer: No. Major utilities are allowed as conditional uses in all zoning districts. Except in water resource areas, the CDC does not require that conditional use proposals evaluate alternative sites. CDC Chapter 32 requires that where roads, paths, trails, utilities or other similar facilities are proposed to be constructed through a water resource area, the applicant shall submit an alternatives analysis demonstrating that the proposal has the least impact to the resource area. In this case, the Partnership's pipe alignment avoids water resource areas and keeps impacts to areas already disturbed (existing streets).

4. What year did the City of West Linn annex the Water Treatment Plant and residential area into its corporate boundary?

Answer: The Lake Oswego Water Treatment Plant and surrounding areas were annexed into the City of West Linn on July 28, 1967. The Lake Oswego Water Treatment Plant was approved by the Board of County Commissioners three months prior to the annexation.

5. Did the Robinwood Neighborhood Association ask the Partnership to pay compensation?

Answer: Yes. The Robinwood Neighborhood Association and its subsidiary, the Great Neighbor Committee, submitted multiple proposals for compensation to the Partnership throughout the application process. Most recently, the RNA passed a resolution requesting full improvements on Highway 43, for the length of the proposed alignment, consistent with the Highway 43 Concept Plan. The December 12, 2011, mitigation list presented to the Partnership from the GNC requests funds for the Robinwood Station, payments to compensate anticipated lowered property values during construction, funds to offset hardship property sales during construction, insurance to homeowners for the life of the facilities, funds for the restoration of Trillium Creek, among other requests. This mitigation list is in the record under Attachment 11 to the January 3, 2013, staff memo to City Council.

6. Does the renewal of the intertie IGA rely on the approval of the Partnership's proposal to expand their WTP and install the RWP/FWP?

Answer: Lake Oswego is currently unable to supply water to West Linn through the existing intertie during peak usage periods. As population and water demands in Lake Oswego and West Linn continue to grow, the reliability of the intertie during non-peak times of the year will continue to decline. The existing intertie IGA will remain effective until a party subject to the agreement initiates termination of the agreement. Termination of the IGA has not been initiated at this point.

If the Partnership's proposal is approved, the IGA would need to be revised to add Tigard as a party to the agreement and to add the 4 MGD commitment until at least 2041.

7. The IGA can be terminated with a 3-year notice. What concerns should we have with this arrangement?

Answer: The IGA can be terminated by giving 36-months notice to the other affected parties. The length of the termination clause provides the city an opportunity to pursue alternative sources of emergency water given a desire by one of the parties to terminate the agreement. The benefit of a termination clause is that it provides the City with opportunities to pursue alternative agreements if another more cost effective solution becomes available – flexibility to deal with future challenges that were not considered at the time the contract was executed. On the other hand, a termination clause also provides flexibility for the Partnership. If the Partnership chose to terminate the contract, it would force the City to find an alternative solution to its emergency water supply problems. The proposed IGA has not been approved by West Linn. Therefore, West Linn can propose changes should the Council desire.

8. If the intertie is not renewed, when will we lose access to LO water?

Answer: See response to question 6 above. As previously noted, the current IGA requires parties to it to give 36-months notification of termination. The exact date that Lake Oswego would be unable

to supply any water to West Linn through the intertie depends on future demand or the initiation to terminate the agreement by a party to the IGA.

9. What are the implications of the next best emergency supply alternative from the Water System Master Plan?

Answer: The next best alternative to improving the emergency supply at the West Linn-Lake Oswego Intertie is to install a new Willamette River crossing to the South Fork System (Division Street Pump Station) in Oregon City. This alternative would cost approximately \$11.6 million, would not provide the full system redundancy of an alternative intake and water treatment plant offered by the Lake Oswego-Tigard proposal, would not provide access to water sources in Portland and Washington County, and would require the installation of pipes similar in size to the LOT proposal through the Bolton neighborhood in West Linn.

10. Without the Partnership, what is the cost for West Linn to build a secure water system and adequate storage (what is adequate storage?) and catch up on the maintenance of the pipes? What would be the monthly impact to rate payers?

Answer: The attached document from MSA identifies that another \$11.6 million (at a minimum) would be needed for the river crossing in addition to the costs already identified in the master plan (including storage). The rate increase required for the additional \$11.6 million is estimated at \$7.15/month/customer. This is in addition to previously identified rate increases necessary to implement the Capital Maintenance and Capital Improvement Plans proposed in the adopted Water Master Plan.

11. What is the status of the covenants condemnation proceedings?

Answer: The details of this lawsuit are confidential. Further, the CCRs are not germane to this quasi-judicial matter.

12. With the Partnership, what are the intertie possibilities after 2041?

Answer: The Partnership estimates that beyond 2041, the reliability of the intertie to supply at least 4MGD during all times of the year would begin to decrease. The Partnership anticipates that water would be available to the intertie beyond 2041, however at this they anticipate being unable to guarantee 4MGD during all times of the year beyond this date (In the record as part of the applicant's rebuttal on November 1 and responses to Planning Commission questions).

13. What is the extent of potential damage to Nixon Ave. during construction?

Answer: For approximately 3-months, during pipeline installation on Mapleton Drive, and between the hours of 7am and 7pm, residential traffic east of the pipeline construction zone will be required to access Highway 43 via a detour utilizing Nixon Ave and Cedar Oak Drive. The only impacts to Nixon Avenue resulting from the Partnership's proposal are the additional residential vehicles using

this detour. Construction vehicles will access Highway 43 via Mapleton Drive and Kenthorpe Way and will not use Nixon Avenue.

14. What can the Partnership do for the elderly and those who sleep during the day?

Answer: This is a question for the applicant at the public hearing. There is potential to introduce new evidence in response to this question. The City of West Linn does not regulate construction-related noise between the hours of 7 am and 7 pm.

15. List the precedents set by the Planning Commission decision and what they could mean for the City's future?

Answer: 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. Upholding the Planning Commission's interpretation of "community need" in the context of 60.070(A)(3) means that future conditional uses may be required to demonstrate they have been designed and sized to serve primarily residents of West Linn. This interpretation would also mean that future conditional uses would be required to demonstrate that they would provide an overall net benefit to the community of West Linn for the life of that conditional use in the community. Finally, a decision that upholds the Planning Commission interpretation of community need would mean that the proposal is supported by the majority of people who participate in the quasi-judicial hearings, regardless of any direction established in the City's Comprehensive Plan or supporting documents.

The burden is on an applicant to demonstrate whether an overall net benefit exists and meeting this burden, along with the uncertainty of whether an application would be supported by a majority of the participants in a future land use hearing, will very likely discourage future conditional uses throughout the City. It is likely that conditional uses such as libraries, community centers, public safety facilities and religious institutions would resort to locations where these uses are permitted outright. It's important to note that certain uses, such as schools, religious institutions and community centers are not permitted outright in any zone.

16. How much pipe will the Partnership install in the streets of Lake Oswego?

Answer: The complete alignment between MSY Park and the Waluga Reservoir in Lake Oswego is approximately 7.75 miles long. Approximately 5.85 miles of pipe are planned in Lake Oswego.

17. Can the City require the Partnership to install a backup generator at the intertie pump station?

Answer: The City can use one of our existing portable trailer mounted generators for backup power if needed (or rent one in a worst case scenario). Modifications to the intertie (an additional pump) are currently included in the master plan. When pump modifications are done at the intertie a quick switch to generator power could be added. Based upon past experience, the need for the intertie

has not necessarily overlapped with a power outage. The proposed LOT plant won't be powered by generators; they are using two different power sources (lines from two different locations) as a means of redundant power. This approach could also be used at the intertie as another option. The City could include these items in the IGA with the Partnership if agreeable to both parties but not in a quasi-judicial proceeding where it is not required by an approval criterion.

18. Give a brief overview of the implications for West Linn's water rights on the Clackamas River.

Answer: West Linn's water rights on the Clackamas River are senior to Lake Oswego's rights. The Partnership's proposal does not impact West Linn's ability to draw water from the Clackamas River.

19. Does the Partnership's construction management plan address dust mitigation?

Answer: Materials stockpiles will be managed to control dust and runoff (WTP CMP 11/19); site access driveways will include features to prevent tracking or flowing of sediments onto public rights-of-way. Clean gravel drive aprons and tire wash stations will be installed at each site access used by the contractor (WTP CMP 11/19). CDC Chapter 31 and WLMC 8.105(2)(a) require building permittees to install erosion control measures consistent with the Clackamas County Erosion Prevention and Sediment Control Plan. This plan requires the installation of dust control measures where necessary. The City therefore, has the authority to enforce all necessary dust enforcement measures.

20. Did the City's mailed and published notices contain the proper information?

Answer: Testimony was submitted claiming that the City's notices failed to: list grounds for the appeal; state that the hearing is de novo; and, state that both the record and application were available for review. The CDC does not require that appeal applications state grounds for appeal and subsequently, the applicant did not state any formal ground for their appeal. Consequently, no grounds were included in the notice (the applicant's appeal submittal did outline a series of issues they intended to discuss at the appeal hearing. These items are the subject of a January 3, 2013, memo from staff to the City Council. Furthermore, the location of the applicant's submittal materials are referenced in the notice and were available for review at least 10 days prior to the hearing). The content of the notice regarding public testimony could only pertain to a de novo hearing and the staff memo states that the appeal will be de novo. Finally, the notice indicated that the application was available for review. During the hearing, the City's Attorney opined that the notice met the legal requirements.

21. Does the pipeline alignment through Mary S. Young Park require a vote per Chapter XI of the City of West Linn Charter?

Answer: No. Chapter XI of the West Linn Charter states that a vote of the public shall be required for the non-authorized use of City-owned park or open space. Mary S. Young Park is owned by the State of Oregon and therefore, a vote is not required.

22. Will the pipeline installation result in disruption of residential water service for 8-hours per day for 7 weeks?

Answer: Section II of the Partnership's January 25, 2013, Case Summary (page 4, Section III Roads, Assertion A) states that the applicant believes that the new pipes and service lines can be switched over from the existing line in a single work shift.

23. Would the emergency vehicle detour on Mapleton Drive, during the three times when the pipe crosses the street, make it difficult for emergency responders to access homes on Mapleton Drive in a timely manner?

Answer: TVF&R has publicly stated that they are comfortable with the Partnership's emergency response plan and are accustomed to working around construction projects. Additionally, staff conversations with TVF&R reveal that the Mapleton Drive area currently receives below average emergency response times due to their close proximity to the Bolton Fire Station.

24. Does recent slide activity in this area indicate the area is not suitable for these proposed uses?

Answer: Opponents to the Partnership's proposal went on the record to state that many small slides have occurred in the Mapleton/Nixon Area in recent years. The Partnership submitted a geotechnical review of this claim and found that recent slide activity is a result of rainfall and not seismic events. The Partnership's geotechnical engineer states that slides caused by rainfall events are not a concern for pipeline stability.

25. Is the \$5 million a bribe?

Answer: CDC 60.070(A)(3) requires that a conditional use provide a facility that is consistent with the overall needs of the community. The Partnership's proposal would provide a facility that meets the overall community need for emergency water supply through a more robust and reliable West Linn-Lake Oswego emergency intertie able to supply at least 4 MGD to the City of West Linn until at least 2041.

The fee for use of the City's right-of-way is independent of the City's decision in this quasi-judicial matter. The City has the authority to charge a fee for use of its right of way but that is not an approval criterion in these applications. However, the City can require the execution of a franchise agreement as a condition of approval.

26. Are there any other examples of Conditional Uses in residential areas in West Linn? Are there any recent examples of large construction projects taking place in West Linn?

Answer: The West Linn-Wilsonville School District recently completed construction of a 67,000 square foot Trillium Creek Primary School near the intersection of Hidden Springs Road and Rosemont Road. Construction of this project took approximately 19 months and required many heavy truck trips.

Another example of a large construction project in West Linn is the recently completed restoration of the West Linn-Oregon City Historic Arch Bridge, connecting Highway 43 in West Linn with downtown Oregon City. Work on the bridge necessitated its closure for more than 2 years. During the bridge closure, Highway 43 traffic was detoured on I-205. The Partnership's proposal to install a 48-inch finished water line in the Highway 43 right-of-way between Mapleton Drive and Arbor Drive proposes to conduct all work during the hours of 8pm and 5am, as required by ODOT, and will restore the roadway to full capacity outside of these hours. The Partnership anticipates that pipeline installation, and nighttime work on Highway 43, would take approximately 5 months to complete.

27. How can the City approve this project when it opposes development of the Stafford Triangle?

Answer: There are several reasons why the City cannot use its opposition to development of the Stafford Triangle as a basis for denying this proposal. First, the City must review the proposal before it in light of the applicable development standards in the CDC and the Comprehensive Plan. The CDC requires consideration of applicable Comprehensive Plan policies. Therefore, the goal calling for opposition to urbanization of Stafford is not applicable. In addition, on the merits, Ed Sullivan noted in his presentation that a Lake Oswego Comprehensive Plan policy opposes urbanization of Stafford. So to serve it with water, the urban reserve designation would have to be upheld, the comprehensive plan would have to be amended, the UGB would have to be expanded, and voters would have to approve annexation. Further, the application submitted by the Partnership requests approval for the expansion of an existing water treatment plant at 4260 Kenthorpe Way under existing City standards and criteria. Whether Lake Oswego has specific intentions with respect to the Stafford Triangle is not relevant to any of the applicable standards or criteria.

By comparison, while there is a remote possibility that water from the proposed expanded water plant could eventually serve a portion of the Stafford area, the recently approved Trillium School along Rosemont Road serve residents of Stafford as well as West Linn.

28. Reference to the Lake Oswego Water Treatment Plant expansion in the Robinwood Neighborhood Plan was done outside of the public process.

Answer: A member of the Robinwood Neighborhood Association presented testimony that the City of West Linn and Lake Oswego inserted a reference in the Robinwood Neighborhood Plan that anticipated the expansion of the Lake Oswego Water Treatment Plant without public input or acceptance. This is not accurate. Robinwood Neighborhood Plan policy 3.9, "Ensure that the Lake Oswego Water Treatment Facility on Kenthorpe Drive remains compatible with the surrounding residential areas and provides benefits to Robinwood's residents as well as those of Lake Oswego," first appeared in the April 16, 2007 draft of the Robinwood Neighborhood Plan. The Robinwood Neighborhood Association held a special meeting on June 12, 2007, to recommend approval of the draft plan (including the reference to the future expansion of the Lake Oswego Water Treatment Plant). Further, the reference to the expansion of the Lake Oswego Water Treatment Plant remains

in all subsequent drafts of the Plan and was later adopted by the City Council after a public hearing on May 12, 2008, more than 1 year after the reference first appeared.