

Testimony for the West Linn City Council Meeting regarding LOT water plant

January 14, 2013

Lamont King

4257 Kenthorpe Way

West Linn. OR

My name is Lamont King and I have been a resident in West Linn for over fifty years. I first encountered the LO water plant back in 1967, when it was forced upon the residents over their objections because it was incompatible with the neighborhood. The Clackamas County Planning Commission said the industrial Plant didn't belong in the neighborhood, but several months later, arrangements were made with Clackamas County Commissioners and the okay was given. Now, the West Linn Planning Commission has made the same determination that it doesn't belong and lo and behold, another "arrangement" has been offered to our City Council.

The Facts:

- **This is a new major industrial project. It is not an "expansion" of an existing plant,** it is an entirely new plant with a 50 year life expectancy. This new plant is being built alongside the existing plant and virtually all of the existing plant is being removed. When completed, they will turn a valve to shift production from one plant to the other and remove the old plant. Would this council support a new plant such as this in one of our residential neighborhoods if someone else comes in and wants to build a similar plant?
- **The geology of the site was a major reason this project was rejected** by our Planning Commission. This area is mapped in a "red zone" for earthquakes by USGS. The site consists of at least 60 feet of liquefiable material which should preclude it from any industrial construction. This is evidenced by the approximately 1,000 pilings LOT is installing to protect the building from earthquakes but they are leaving the massive 48" pipeline under immense pressure totally unsupported. Our Planning Commission thought this was a major problem. LOT presented geological survey results that failed to show this project did not protect WL residents from major losses of property and even death in the event of an earthquake. LOT offered paid testimony there was no problems but under questioning by Commissioner Axelrod, LOT failed to show their data supported their claims.

- **Our planning commissioners are intelligent, diligent and extremely concerned** with doing their jobs on behalf of the city. They were not “unduly influenced” by WL citizens and made their decision entirely on the information presented and the applicable codes involved. I was told that all of you on the council served at various times on the Planning Commission. You know the people involved and the quality of the work they do. If they were wrong in their ruling, what has changed now?
- **The new intertie agreement actually provides less benefits** now because it has time limitations and no water is actually “guaranteed” only it will be made available if LOT has excess available. We already have similar guarantees with our other water partners and we have provided Lake Oswego water as many times as they have provided us in the last ten years. I believe the new intertie with contain higher costs for water than our existing one and now we will have to contend with Tigards’ needs as well. This has never been our only source of backup water and we already have two other intertie agreements in place that connect us all the way to Portland. LOT needs us as much as we need them.
- **The “five million dollar” franchise fee**, license fee or whatever you want to call it is just plain wrong. If it is a franchise fee, call it that and charge it yearly for the use of the right of way as is intended by state law. If it is a license fee, well, conditional use permits can now be bought from the City of West Linn regardless of codes and impacts on the citizens. Five million dollars may sound like a lot, but this project is designed to make millions of dollars for Lake Oswego and provide water resources far in excess of their needs on the backs of West Linn citizens who pay for their police, fire and other services.
- **The environmental reasons** include yesterdays’ in the Oregonian that reports the low water conditions on the Clackamas River currently limit access by boats. The extra water LOT is going to pull from the Clackamas River could have major impacts on residents in Clackamas County. Have you seen the trickle of water in August, September and October when water demand is at its highest.
- **LOT is complaining we are misrepresenting facts** while they have embarked on a major campaign to distort the truth. Examples include a 12’ emergency right of way during construction on Mapleton when the road is only 18’ in places and then you add in 6’ for a pedestrian path and at least 8’ for the trench. The math doesn’t add up. LOT contends a large dump truck leaving the Kenthorpe Plant every 6 minutes will have less than 1%

impact on traffic(4 seconds additional wait)which is ridiculous particularly when the school starts and closes.

- **Our city staff lacked both budget and experience to do a meaningful study** on the impact of this project. It looks like our staff used LOT graphics during their presentation and most if not all of their testimony was based on data from LOT. During the first presentation, Joel Komerack commented on our staff presentation and said it sounded like he wrote it, he may have.
- I urge you to reject this appeal of our Planning Commissions' well thought out decision

Lamont King

Dear Honorable Members of the City Council:

I am a resident of West Linn. CDC 60.070(A)(1)+(2) community benefit

Lake Oswego speaks of regional and neighborly co-operation with all communities working together, yet at the very beginning of this entire process one of their very first actions taken by Lake Oswego was to file a lawsuit numbered Case Number CV1010184 in the Circuit Court of the State of Oregon, for the County of Clackamas against eighty-six of the residents of the City of West Linn to basically try to bully and intimidate these residents into letting them take over their neighborhood and their property rights.

Please let me show you what Lake Oswego personally greeted eighty six of our residents with in January of last year.

Many of our residents are elderly and have never been sued in their entire life, and this was and is a blow to them and I am certain has caused sleepless night for many of them.

As a result of Lake Oswego's concept of neighborly co-operation, residents of West Linn were all forced to hire attorneys to represent them costing thousands of dollars, money that many I am certain could not afford. We have had to pay for a stigma study/appraisal that costs over \$15,000 that this is not included in the attorney's fees.

To add to their pain inflicted, Lake Oswego proved totally non-responsive when they attempted to resolve these issues with them and they took the attitude of "crush and burn" anyone that got in their way, while holding out to the West Linn public the totally false face of reasonableness.

As the City Council knows, there is significant, committed opposition to this project. If what is being proposed was consistent with the overall needs of the community there would not be an outpouring of criticism against this proposal. The very fact that there is this much opposition signifies that what is being proposed is definitely not consistent with the overall needs of the community.

What is consistent with the overall needs of the community is that alternatives be found that take West Linn's interests into account.

We would urge the City Council to insist that Lake Oswego and Tigard meaningfully explore and implement alternative solutions. It is always easier to solve your problems on someone else's turf. The conditional use process exists to make certain that this doesn't occur when that turf will be spoiled.

The granting of the Lake Oswego Tigard proposal is totally inconsistent with the overall needs of the community and thus should be denied.

I have been a resident of West Linn now for 20 years and what is being proposed by Lake Oswego does not benefit the City of West Linn at all for the many reasons cited by the City Planning Commission, and for many other reasons cited by others, and the citizens of West Linn are simply asking the City Council please follow the decision of the City's Planning Commission and deny the City of Lake Oswego's request.

Thank you,

Rebecca Walters

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

CITY OF LAKE OSWEGO, an Oregon municipal organization

Plaintiff,

v.

Steven C. Blake and Julie N. Blake; Derek N. Tippner and Diane M. Tippner; Brandt L. Vroman and Shanon M. Vroman; Darryl L. Walters and Rebecca L. Walters; Brian M. Wheeler and Anna Marie Wheeler; Michael W. Cooper and Natalie J. Cooper; Alvin Benjamin Cora and Yvonne Faye Davis; Raymond L. Cozby and Kim D. Cozby; Casey P. Davidson and Amanda Davidson; Carl L. Edwards and Linda S. Edwards; Carol B. Ellsworth, Trustee under the Carol B. Ellsworth Revocable Living Trust Trust; Shaun Gavin and Georgia L. Gavin; Kenichi Hanawa and Rachel Yeoh Hanawa; Robert J. Henderson and Jenne R. Henderson; Jeane M. Jones, Trustee under the Jones Living Trust; Donald R. Kauffman, Jr. and Cindy L. Kauffman; Robert M. Knutson and Sharon A. Kramer; Michael McCarthy and Lisa McCarthy; Shane M. Medbery and Natascha L. Medbery; Angela Jennifer Niedermeyer; Michael B. Ragan and Donna C. Fausner-Ragan as Co-Trustees of the Fausner Ragan Family 1996 Trust; Neal F. Rea and Jana Jo Rea; David P. Robinson and Mary E. Robinson; Robert E. Rowning, Jr and Muriel I Rowning; Valerie Ann Sabo; Thomas J. Sieben and Gwen L. Seiben, Trustees under the Sieben Living Trust; Patrick Smith and Victoria Smith; Samuel I. Stephens; Dove Bar Properties, LLC and Cary K. Tamura and Denise J. Tamura; Anastasia Boudoures; C.S. Christensen, Jr. and Nathalie Christensen; Richard A. Constantino and Patricia C. Riner-Constantino; Brian A. Coons and Faviola P. Coons; Amy E. Cox; Ujahn B. Davisson and Tara T. Davisson; Thomas Holder; Stephen F. Hopkins and Nancy A. Hopkins; Charles K. Lanskroner, Trustee of The Charles K. Landsroner Revocable Trust; Timothy J. McAdams and Julie C. McAdams; Marilyn R. McComb; Raymond E. Nodurft and Viki L. Nodurft; Mukesh Patel; Scott W. Reid and Anna B. Reid; Ruth Emily Ruhnke, Trustee under Declaration of Revocable Trust; Liselotte Scheu; C.K. Siu, Trustee of the C.R Siu Revocable Living Trust; Ronald R. Sloan and Diane R. Sloan, Trustees of the Ronald and Diane Sloan Family Trust; Joan Swartz; Francisco Varela and Traci Lea Varela; and Victoriya Yatsula.

Defendants.

Case No. CV12010184

COMPLAINT

(Proceedings in Eminent Domain)

(Claim Not Subject to Mandatory Arbitration)

This is a copy of the caption of the lawsuit that Lake Oswego filed against eighty-six of the residents of West Linn.

The goal of this lawsuit is condemnation of the entire neighborhood's covenants which protects their peace, quiet and property values by limiting use of platted lots to residential.

Lake Oswego speaks of neighbors working together and of regional co-operation.

Yet Lake Oswego never showed good faith and filed this lawsuit against eighty-six of our West Linn residents many who are elderly and have limited resources.

Intimidation and bullying with lawsuits that costs your West Linn neighbors tens of thousands of dollars to defend is not what one would call "neighbors working together or regional co-operation."

January 14, 2013

Dear West Linn City Councilors:

I am the Managing Member of the 71,011 square foot Robinwood Shopping Center, LLC and as such I feel compelled to respond to Ed Sullivan's letter of January 7, 2013 to the City Council, to Jeff Selby's and Dennis Koellermeier's memorandum of January 4, 2013 which was attached to said letter to the City Council as Exhibit F, to Eric Day's (Senior Planner for LOT) memorandum of January 7, 2013 to Zach Pelz, and to the very merits of this project.

Mr. Sullivan states in his letter that the Partnership (LOT) "bears the burden of proving that the applicable criteria are satisfied," **but he has not carried this burden of proof.**

Mr. Sullivan also acknowledges that no alternative site analysis was conducted. This is absolutely stunning and irresponsible considering the personal and financial harm that this project will cause to so many of the citizens and businesses of West Linn.

To fulfill your duties as our City Councilors, we ask you as the leaders of all of the citizens of West Linn to require an in depth alternative site analysis before any decision at all is made on this project. This is the very least that is owed to the citizens of West Linn. To have this plan go forward without the exploration of other alternative sites would be a huge disservice to all of the citizens of West Linn.

Additionally, I would like to address several factually incorrect and misleading statements Mr. Sullivan makes in his January 7, 2013 letter to the City Council.

For one, he states, "Although we appreciate the support that we have received from some of the larger businesses..."

Mr. Sullivan in this statement infers that some large businesses support LOT's project, which is absolutely false and misleading since absolutely no large business whatsoever supports what LOT is proposing.

All of the exhibits from larger businesses, which are attached and were submitted by Mr. Sullivan, clearly show his statement to be false.

These are the statements by the large businesses that Mr. Sullivan references:

1. McDonald's says, "As a company, we do not take positions on public policy matters. Our company, therefore, does not oppose or support the Lake Oswego Tigard Water Partnership's proposal to install a water pipeline through a portion of HWY 43 in West Linn."
2. Wells Fargo says, "As a company, we do not take positions on public policy matters and therefore, we do not oppose or support the Lake Oswego Tigard Water Partnership's (the Partnership) proposed water pipeline through a portion of Hwy 43 in West Linn."
3. U. S. Bank says, "Our company ... does not oppose or support the Lake Oswego Tigard Water Partnership's proposal to install a water pipeline though a portion of HWY 43 in West Linn."
4. West Linn Burgerville says, "our position is to neither oppose nor support any Conditional Use Permits or this project as a whole."
5. And Walmart does not say that they support or oppose the project, but says, "any construction that takes placed in front of our store has the potential to make access difficult for our customers."

Additionally, I and almost all small businesses along Highway 43 have officially opposed it as demonstrated in the petitions by businesses against the LOT project which has been submitted to the City Council.

Mr. Sullivan makes another misrepresentation when he states, "we regret that many owners, especially operators of small, single location businesses have been induced not to communicate with Partnership representatives".

This is another total misrepresentation of the truth for us, and I am certain for all other property owners.

Approximately three months ago our Property Manager was approached by several tenants who were very concerned about their businesses being substantially economically hurt by the LOT project.

My manager and I were not at all aware of the LOT Project at that time, but as a result of our tenant's concerns, we spoke to almost all of our other tenants who were also very fearful of the project.

We then studied LOT's proposal in depth and spoke with Zach Pelz and others. Prior to our initiating these calls, no one had ever spoken to us or mailed us anything other than a generic mailer during the holidays, which we did not know about.

After a thorough study and review of the project details we decided that our tenants were indeed justified in their concerns about losing business and being financially harmed, and we decided to do everything that we could to help them.

In his letter, Mr. Sullivan makes other statements that are preposterous, such as, "Despite this pressure, several business owners have met with our representative only **to report that their opposition is based upon fear of losing their leases, rent increases** or of an organized boycott".

There is no basis for this statement to be true, and it fails in the face of logic. The actual opposite is true in that we "jump through hoops" for all of our tenants. In fact we have helped many tenants during these rough economic times when they have needed it. If our tenants ask for our help, as they have in this instance since they do not want this LOT project, we are there for them.

Most retailers on Highway 43 have struggled for the last four years due to a difficult economic environment. As a result, owners have assisted them when needed, not threatened them with increased rent or losing their leases.

We ourselves currently have three vacancies, and up until just recently for several years have had an approximate sixty-two percent (62%) vacancy. The very concept that we or other owners would threaten our tenants with losing their leases or rent increases is absolutely ridiculous.

However, if the LOT construction work occurs, many tenants on Hwy. 43 will financially suffer with some businesses closing. It will also be extraordinarily difficult for us to fill the vacancies that we currently have.

Jeff Selby and Mr. Koellermeier write of people feeling pressured to oppose LOT's plans and they state various alleged incidents, but it appears that LOT is

the one trying to put pressure on people, and they just have not been able to bully them enough.

None of these three parties submit any names or affidavits supporting any of these statements. Everything is hearsay. They merely attack nameless owners and others with nameless accusers.

If LOT makes an allegation, they should substantiate it with affidavits, names and hard facts so that false accusations can be addressed by those who are being falsely accused.

Mr. Day states that "four large 24/7 businesses along Hwy. 43 have submitted written testimony stating that they are not opposed to the project". By this statement he as Mr. Sullivan did is inferring that these four businesses are for the project. These statements, which are attached, clearly show that they are not for the project. The letters specifically state that they are not for or opposed to the project as large companies normally take positions of not getting involved in these types of matters no matter how much harm they may suffer.

I would argue that these types of misrepresentations made by Mr. Sullivan, Mr. Selby, Mr. Koellermeier and Mr. Day, key representatives of LOT, and which have been used by LOT throughout these proceedings and are replete in other locations in Mr. Sullivan's letter and also in Mr. Day's memorandum, totally discredit their veracity and should disqualify the applications for consideration.

If LOT will submit these types of blatant misrepresentations to the City Council at this stage, what can we expect as the process evolves and especially when problems set in as they inevitably do with any construction job?

What LOT proposes is a total tear down of an existing facility, and a total rebuild of a larger facility with far greater industrial capacity and which can do greater harm. This is not an expansion as LOT has characterized it, but a demolition and a larger re-build, and it is in violation of the codes.

LOT claims direct benefits for the community when people in the community, people who should know and who should count, do not believe in these so called "benefits".

LOT claims that since they have reduced the size of the new plant by two percent (2%), (which is minuscule), from what was originally proposed and since they also increased the intensity of the work to be performed by shortening the time period of work by four months, (which really only intensifies the work and creates more havoc), that you should overturn the City Planning Commission's decision.

These inconsequential changes do not provide a basis for overturning something that was decided by a seven to zero unanimous vote.

I would like to also address several other related and non-related points as I feel that the LOT proposal does much harm to the community with no meaningful benefits and which to demonstrate, I have attached a list of many, but not all, of the minuses of the project to which others will speak.

Regarding the earlier point of no meaningful alternatives ever being considered by the applicant two months ago I called Zach Pelz, the author of the staff's recommendations, and said that there must be a better alternative than what LOT was proposing.

To my surprise, Zach specifically said that he agreed, that he thought that there was a better alternative than what LOT was proposing.

When I asked him why an alternative had not been pursued by at least the City's Planning Department, he said there was not enough time to consider other alternatives due to a 120 day deadline to decide on the applicant's submission.

Interestingly, when I asked Norm Eder, who is working with LOT on the project, why LOT had not looked into alternative sites he dismissed me with, "we are the applicant and we do what we want to do."

This I personally found incredibly arrogant especially when Lake Oswego is coming to West Linn and asking West Linn to approve something that benefits the citizens of Lake Oswego and Tigard and which is going to harm many of the citizens and businesses of West Linn.

Fortunately, the City Planning Commission's seven members got it and subsequently ruled unanimously against the project.

After the ruling I called Zach again to re-urge an alternative solution and to urge the city to address water problems with a guaranteed and permanent solution as opposed to what is currently being proposed.

I also did not understand why this project was even being considered since West Linn already has an emergency water agreement with Lake Oswego.

Zach said that although West Linn has an emergency water agreement with Lake Oswego that the benefit was effectively "zero" since Lake Oswego during the summer does not have enough water to supply West Linn in an emergency and the agreement is only based upon availability.

Zach said that even the new proposed agreement is only based upon Lake Oswego having the water available in the future and that with the new agreement, that if Lake Oswego does not have enough water available, then West Linn will not get any water.

Zach said this emphatically, and I found it shocking that even with all of the work proposed that West Linn will still not be guaranteed water in an emergency situation if the water is not available, and therefore LOT's proposed agreement is worthless to West Linn if Lake Oswego does not have water available. Plus it is only good for twenty-nine years.

Now it has become public knowledge through updated Lake Oswego data and reports that there really is not a problem with West Linn's access to emergency water as stated by Zach Pelz and others.

The attached City of Lake Oswego WMCP Progress Report, Exhibit 4, which was recently submitted by the City of Lake Oswego to the Oregon Water Resources Department, shows that from 2006 to 2011 Lake Oswego has reduced its water consumption by 35.53%.

In 2011 Lake Oswego used 766.73 million gallons less of water than it did for 2006 per the Progress report and letter to the Oregon Water Resources Department.

Specifically, in 2006 the total water consumption was 2157.94 million gallons versus the total consumption for 2011 of 1391.21 million gallons which shows a steady decline in water consumption since 2006.

Therefore, this proposed expansion is absolutely not necessary except for Lake Oswego to sell Clackamas River water to Tigard or to expand the Stafford Triangle.

This report is proof that these Projects are not necessary for West Linn and should not be permitted, and that the City Council should uphold the unanimous vote of the City Planning Commission.

I urge the new leadership of West Linn to please listen to the seven Neighborhood Associations that are against this project along with all of the many residents, businesses and others who have voiced their opposition.

It makes no sense for West Linn to continue to spend time, money and energy on this project, and on needless appeals that unquestionably will be filed by the community to LUBA and the Court of Appeals, and I believe also by LOT, on a project that the community does not support when if we all worked together we could do something much better for both sides.

All of our citizens want to solve our long term water problems through any intelligent means possible, and do not mind contributing in whatever way that makes sense, but it has to make sense and be for the good of the community.

Let's re-unite our community and work together as a whole to come up with a meaningful long term water plan for the future.

To that end, we ask you to please uphold the City Planning Commission's unanimous decision.

Sincerely,

A handwritten signature in cursive script that reads "William J. More".

William J. More
Robinwood Shopping Center



Greentree Enterprises, Inc.
8655 SW Citizens Drive
Suite 201
Wilsonville, Oregon 97070
(503) 685-5002
Fax: (503) 682-5998

West Linn City Council
22500 Salamo Road
West Linn, OR 97068

December 13, 2012

Dear West Linn City Council:

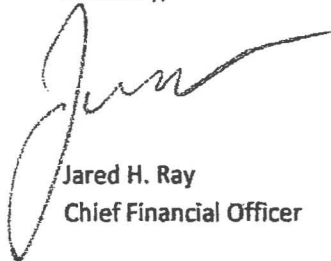
Greentree Enterprises, Inc. owns and operates the McDonald's franchise at 18850 Willamette Drive in West Linn. As a company, we do not take positions on public policy matters. Our company, therefore, does not oppose or support the Lake Oswego Tigard Water Partnership's proposal to install a water pipeline through a portion of HWY 43 in West Linn.

It was brought to our attention that an employee of our store signed and submitted a petition regarding the Conditional Use Permits under consideration for the Partnership project. I am writing to state that:

- this employee is not an owner of the organization;
- he was not granted authority to represent Greentree or McDonald's in any such matters; and
- our position is to neither oppose nor support Conditional Use Permits or this project as a whole.

After meeting with Partnership staff on November 28, 2012, I do not feel that night time construction will have a significant impact on our business.

Sincerely,



Jared H. Ray
Chief Financial Officer

Community Banking
West Coast Division
19181 Willamette Drive
West Linn, OR 97068
503-699-5600



January 7, 2013

Mayor John Kovash
West Linn City Council
22500 Salamo Road
West Linn, OR 97068

Dear Mayor Kovash:

Wells Fargo Bank has a bank branch at 19181 Willamette Drive in West Linn. As a company, we do not take positions on public policy matters and therefore, we do not oppose or support the Lake Oswego Tigard Water Partnership's (the "Partnership") proposed water pipeline through a portion of Hwy 43 in West Linn.

In various communications with the Partnership staff we understand that the construction impacts to our operations will be minimal because work will occur at night. Jeff Selby, a Partnership representative, indicated that customers and employees will have access to the branch at all times, and that branded signs will let customers know we are open during construction.

We feel that the construction impacts will be minimal and that the Partnership will address any of our concerns or questions.

Sincerely,

Sonya Brinkerhoff
Branch Manager

Wells Fargo Bank, N.A.

Together we'll go far





109 W 17TH STREET VANCOUVER, WA 98680

TEL 360.894.1921 FAX 360.894.9114

12/12/12

West Linn Planning Commission,

Representatives from our property management team and West Linn Burgerville met recently with staff from the Lake Oswego-Tigard Water Partnership to discuss the construction that is proposed to occur along Highway 43 in front of our business.

It was brought to our attention that employees of our West Linn Burgerville had signed and submitted petitions regarding the Conditional Use Permits required for the Water Treatment Plant currently under consideration for the Partnership project. I am writing to state that:

- these employees are not owners of the organization;
- they have not been granted authority by our Board of Directors to represent us in any such matters; and
- our position is to neither oppose nor support any Conditional Use Permits or this project as a whole.

It is our understanding that the work will be conducted during the night only, minimizing impact to businesses. We were told the hours of construction would be 8 pm to 5 am.

We have been and continue to be a stand for thriving, sustainable communities in which we live and work.

If we can assist in this matter in any other way, please contact Jennifer Mears, our Property Manager and Corporate Secretary, at jenniferme@burgerville.com.

Sincerely,

Thomas W. Mears

Chairman of the Board

The Holland, Inc.

jm/TM



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www.walmart.com

Public Affairs & Government Relations

Jennifer Spall, Director, Oregon & Washington

November 29, 2012

Honorable John Kovash
Mayor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Dear Mayor Kovash:

I am contacting you regarding the planned construction of a water pipeline by the Lake Oswego Tigard Water Partnership (LOTWP). The pipeline will run from the Partnership's water treatment plant to Lake Oswego, along Highway 43. The Walmart Neighborhood Market is located on Highway 43.

We understand LOTWP has a traffic mitigation plan to help minimize impacts by scheduling construction between 8pm and 5am, outside of normal operating hours for most businesses along the highway. Unfortunately, our store is one of a few that operates 24 hours a day. So, the impacts will be felt despite this fact. We have reviewed the Partnership's construction management plan and understand that they intend to accommodate our needs for unimpeded customer access by ensuring that only one access point into our store from Highway 43 will be impacted at any time. Side street access points to our store will not be impacted by the pipeline construction. These are positive steps to ensuring full customer access.

At the same time, any construction that takes place in front of our store has the potential to make access difficult for our customers. We would appreciate if you could identify for us a point of contact within the City of West Linn, ODOT and LOTWP who we could work with to ensure proper access and the least disruption to Walmart's business, and if any problems arise that require immediate attention.

Thank you for your consideration, and we welcome any questions you may have.

Sincerely,

Jennifer Spall, Director
Walmart Public Affairs and Government Relations



All of **us** serving you[®]

West Linn City Council
22500 Salamo Road
West Linn, OR 97068

November 29, 2012

Dear West Linn City Council:

I am writing on behalf of the Usbank branch at 19060 Willamette Drive in West Linn. As a company, we do not take positions on public policy matters. Our company, therefore, does not oppose or support the Lake Oswego Tigard Water Partnership's proposal to install a water pipeline through a portion of HWY 43 in West Linn.

I have met with the Partnership staff and was assured that the impact to the branch business would be minimal. I was told that the construction would be after we are closed and prior to our opening. I was also told that our ATM would be accessible during the project.

I am confident that construction impacts will be minimal and that I have a point of contact with the Partnership if I have any concerns or questions.

Sincerely,

Lee Evans
Branch Manager
West Linn Office
503-534-0180

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

1. CDC, City Charter, and City Comprehensive Plan Non Compliance and other Plan Problems

- The Two Lake Oswego-Tigard proposals for the water plant and the pipeline do not comply with the requirements of the West Linn Community Development Code.
- The proposals do not comply with the goals of the City's Comprehensive Plan.
- Construction activity above ground eliminates user parking at Mary S. Young Park, which requires approval of the voters per the City Charter.
- The 48" pipeline is a transportation project and as such the entire length of Hwy 43 used for the pipeline must be upgraded to current standards per the West Linn Transportation System Plan and the Hwy 43 Conceptual Design Plan.
- There are better alternative sites for this project which were never fully explored such as the industrially zoned Foothills district in Lake Oswego.
- Loss of tax revenue for West Linn due to tax exempt status while LO expands its tax base.
- Supports the development of the Stafford area with new water supply.
- The Carollo Report demonstrates this project and water taking is unnecessary and not a benefit to citizens of Lake Oswego or Tigard.
- In 1967 the Clackamas County Planning Commission found that the plant was not in the community's benefit.
- In 1967, without public deliberation or vote, the County Commissioners overturned the County Planning Commissions denial, but required a condition that Lake Oswego would provide water to Marylhurst, Glenmorrie and Robinwood. Lake Oswego **never** connected their water facility to any residences in Robinwood, failing to live up the conditions.
- A waste of time and money as it appears that new Lake Oswego Council sees this project as too expensive and unnecessary.
- It appears the new Lake Oswego Council wants out of the partnership with Tigard.

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

2. Substantial Negatives for the City of West Linn in the proposed Inter-tie "benefit"

- The proposed LOT inter-tie agreement is a rewrite of the existing 2003 emergency water inter-tie agreement with no new substantial benefits.
- Terminates in 29 years with emergency water only being supplied if available. Since water will only be supplied if available, there is no guaranteed access to emergency water.
- Does not solve long term water treatment and storage problems for West Linn.
- Distracts from meaningful solutions of water problems.
- No guarantee of any renewal.
- West Linn's residents and businesses get no meaningful benefits.
- West Linn's residents and businesses get all of the problems.
- Undermines harmonious, homogenous and neighborly atmosphere of our entire community by creating conflicts.
- Liability to community in thirty or forty years when new standards are employed.
- Takes away time from volunteers and staff that could be contributing to positive benefits.
- Hwy 43 though disrupted is not being improved to a level that complies with city standards for other developers
- No tax revenue from LOT
- Lake Oswego and Tigard receive all of the benefits.
- Loss of Tax revenue for West Linn due to tax exempt status while LO expands tax base.
- Construction activity above ground for pipeline staging area interferes with use of city parks.
- Existing six inch water main on Mapleton blocks the path of the proposed four foot pipe, requiring replacement with a new eight inch pipe, with West Linn paying 50% of the cost to install the new eight inch pipe.
- Millions of dollars made by somebody on the backs of residents of West Linn.
- Causes considerable loss of staff time dealing with applications and process.

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

3. Significant Environmental Concerns

- Lake Oswego cannot guarantee pipe to be seismic proof today or in the future. Yet earthquakes will be encountered per Lake Oswego's admission.
- Mary S Young Park negatively impacted with noise and accessibility issues.
- Negative impact on Clackamas River (currently being fought by Water Watch).
- Negatively impacts recreational users of the Clackamas River.
- Potential safety issues due to areas of unstable geological site.
- Potential contamination of water system from the splicing of the asbestos pipes.
- Asbestos pipes to be spliced in the open causing potential environmental hazards to our children who play in the area.
- Construction management lacks protection of interior surface waters during winter months.
- Potential alteration of underground aquifers throughout the area that could change springs and ponds and cause property and environmental damage.
- Design and/or environmental/safety plans incomplete to ensure the safety of residents
- Auguring the pilings, trenching, the installing of four foot in diameter water pipes and a reservoir could have a negative impact on underground springs and our underground water shed.
- Many mature trees are being sacrificed and replaced with saplings.
- Degradation of air quality.

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

4. Severe Traffic and Commuter Problems

- Creates havoc for minimum of three years with constant noise, congestion and disruption.
- Massive traffic congestion due to a minimum of 60,000 slow moving mud hauling trucks on Highway 43 not counting additional vehicular traffic from the project.
- Exacerbates Highway 43 clogging during peak periods of day and now at night.
- Unbearable congestion at the intersections of Highway 43 and Cedar Oaks.
- Unbearable congestion at the intersection of Highway 43 and Hidden Springs.
- Causes drivers to find alternative routes.
- Creates four miles of Highway 43 road construction.
- Road construction causes further traffic congestion irrespective of when work done.
- Ancillary debris and equipment everywhere for several years.
- Lack of accessibility to homes during construction.
- Large trucks rumbling down narrow residential streets all day/every day.
- Traffic flow and safety in school zones seriously compromised.
- Nixon will be used heavily, but this road is not being resurfaced although it will be needed.

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

5. Severe Economic and Personal Harm to West Linn Businesses

- West Linn's businesses receive no benefits while incurring all of the problems.
- The traffic congestion from 60,000 of slow moving construction trucks to and from the site will create bottleneck traffic causing alternative routes to be used.
- As a result businesses will suffer losses for several years that will cause serious financial losses.
- Jobs will be lost.
- Business values will be lowered.
- Existing commercial and residential property values will fall.
- Bankruptcy likely for some West Linn businesses and individuals.
- Destroys quality of life for all West Linn citizens who live and/or work in those areas.

6. Negatives for Residents

- West Linn's residents get no meaningful benefits and all of the problems.
- Emotional/financial pain to 86 West Linn residents due to lawsuits filed against them individually and personally.
- West Linn residential neighborhoods not appropriate for industrial plants.
- Yet, remains in West Linn residential neighborhood with or without I/G/A.
- Lowers existing home values.
- Millions of dollars made by somebody on the backs of residents of West Linn.
- In 1967 property owners in West Linn opposed installation of the water treatment facility.
- The amount of insurance that the Lake Oswego Tigard Partnership is providing is insufficient and the insurance is secondary, meaning that a home owner's insurance policy would be primary and kick in first if there was a claim due to the Lake Oswego Tigard Project.
- Lake Oswego has control over what is paid and what is not paid by the insurance fund that they control, so parties making claims cannot be assured of an objective analysis of what should be paid. The fund expires in a few years as the money is used for maintenance.

Exhibit 4
 City of Lake Oswego WMCP Progress Report
 Annual Consumption by Customer Category (million gallons)

Year	Single Family	Multi Family	Commercial/ Industrial	Municipal	Schools	Irrigation	Wholesale Water	Authorized Unbilled Use	Total Consumption (Including wholesale)
2006	1174.46	278.13	176.33	14.40	41.26	92.36	381.00		2157.94
2007	1103.83	285.60	167.07	12.71	38.05	91.77	275.97		1975.00
2008	1066.02	291.44	163.01	10.90	35.20	77.06	92.16	1.69 ¹	1737.48
2009	1044.12	290.15	145.89	17.59	31.43	81.20	168.11	3.55 ¹	1782.04
2010	902.35	244.10	132.92	15.15	27.97	56.15	97.54	7.60 ²	1483.78
2011	861.13	231.42	122.46	13.47	31.16	50.35	73.02	8.20 ²	1391.21

¹ Water quality monitoring station use

² Estimated authorized unbilled use data was collected in 2010 and 2011 as a result of the water audit report.



CITY OF LAKE OSWEGO

PUBLIC WORKS DEPARTMENT

380 A Avenue
PO Box 369
Lake Oswego, OR 97034

503-635-0270
www.ci.oswego.or.us

August 27, 2012

Lisa Jaramillo
Water Management and Conservation Analyst
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Dear Ms Jaramillo:

According to the final order approving the City of Lake Oswego Water Management and Conservation Plan (WMCP) dated April 11, 2008, the City is to provide a progress report by August 30, 2012. This letter and the exhibits attached provide the requested progress report.

We are pleased to report that the City has made significant progress in its efforts to meet, and in many cases exceed the benchmarks set forth in the 2007 WMCP. In 2008, the City hired a full time Water Conservation Specialist to spearhead a rigorous conservation program and perform customer water audits. In addition, the City instituted a tiered water rate to encourage conservation. The City also hired CH2M Hill and GSI Water Solutions to perform a comprehensive City water loss audit for 2010, which ultimately led to a variety of improvements in the metering, billing and tracking of water consumption. The City is committed to sustaining and improving upon these efforts to reduce waste and manage demand and is in the process of hiring a Financial Analyst to work towards this goal.

We look forward to your review and feedback. Please feel free to contact me if you have questions on this progress report.

Sincerely,

A handwritten signature in black ink that reads "Guy R. Graham".

Guy R. Graham, P.E.
Public Works Director/City Engineer

Exhibit 1

City of Lake Oswego WMCP Progress Report

Progress Report for Benchmarks Listed in the 2007 WMCP (Appendix E: Matrix 1 and 2)

Item	Status
1. Water Audit	<p>Results of the annual water audit can be found in exhibits 3 and 4. The City records water production on a monthly basis; however, retail customer meters are read bimonthly, so monthly audit data is not available. The City is in the process of upgrading the utility billing system to improve and streamline retrieval of water consumption data. In addition, the City initiated a comprehensive water audit that based on 2010 annual data. The Water Audit was published in October 2011. The Water Audit examined the various sources of non revenue authorized and unauthorized consumption and water leakage. The water audit provided 56 recommendations and recommended the hiring of a (Utility) Financial Analyst to analyze billing data on an ongoing basis. The City is in the process of hiring the recommended Financial Analyst as a way to solidify consumption data, improve billing processes, and conduct utility billing analyses. At this point, the City has not developed or implemented Administrative Policies and Procedures to document consumption of unmetered water but plans to develop these once the Utility Billing System upgrade is complete and the Financial Analyst position is filled. Instead of developing a permit system for the use of water by contractors for construction projects, the City now requires that all contractors check out a calibrated meter that is installed by a City staff member in order to use water from hydrants.</p>
2. Fully Metered System	<p>The City continues to require meters for all development in the City. The October 2011 Water Audit Report identified several authorized uses that were unmetered. The City has created and implemented a program to install meters at those identified locations. Examples of improvements include metering water usage on the City's equipment and vehicles and making it mandatory for contractors to rent City-owned calibrated meters in order to use hydrants for construction projects.</p>
3. Meter Testing & Replacement	<p>From 2009 through 2011, the City averaged a replacement of 749 meters (3/4" to 1.5") per year which equates to a full meter replacement cycle of less than 20-years. The City continues a testing and replacement program for 2 inch meters that enables the City to capture accurate customer use. All wholesale meters for City water customers were replaced in 2011 and 2012 as part of a recommendation of the October 2011 Water Audit Report. The City has not established a design standard to ensure all meters 2" and above are installed with test ports and by-passes to facilitate testing and repair; however, the City has made progress in replacing the 4" wholesale meters with new meters that have test ports. Lastly, the City has evaluated the costs and benefits of changing meter reading billing cycles from the bi-monthly cycle to a monthly cycle and has determined that there is not enough staff resources to accommodate this change at this time.</p>

Exhibit 1

City of Lake Oswego WMCP Progress Report

Progress Report for Benchmarks Listed in the 2007 WMCP (Appendix E: Matrix 1 and 2)

4.	Water Rates	<p>In July 2009, the City implemented a tiered rate structure that provides a cost-incentive to conserve water by high volume users. Current rates for a single family residential customer is a fixed charge of \$20.03 per month plus a volume charge that is dependent on the amount of usage with the higher users paying more. The volume charge is \$2.11 per 100 cubic feet (ccf) for block 1 (0-8 ccf of use monthly), \$3.02 per ccf for block 2 (9-16 ccf of use monthly), or \$5.67 per month for block 3 (over 17 ccf of use monthly).</p>
5.	Leak Detection Program	<p>The October 2011 Water Audit Report estimates that water leakage in 2010 equated to a water loss of 12%. As a result, the City has enhanced its leak detection program for the distribution system. In 2011, the City surveyed approximately 18% of the distribution system for leaks. The City anticipates having the entire system surveyed in 4 to 5 years and is planning to repeat the leak detection program every 5 years into the future. The City has not yet approved funds for an update to the Engineering Construction Design Manual to ensure that standards meet industry best practices; however Project Engineers take the initiative to identify and use best practices for each of their projects. The Engineering Division anticipates requesting funding for the manual update in FY 2013-14.</p>
6.	Public Education	<p>The City encourages water conservation through its "Conservation Quarterly" publications that are distributed community wide. The publication contains irrigation tips, planting guides, featured water articles, and "How to" articles. The City is also well represented in national and regional water conservation groups through active staff participation. The City has installed 5 weather stations that provide real-time climate information on the City's website for public consumption. The City is in the process of installing 1 more weather station that is anticipated to be operational in November. The City has also implemented a "Beat the Peak" campaign with barometer signs in thoroughfares and press releases to encourage citizens to take extra conservation steps during the peak demand days and sets goals to keep consumption below the systems reliable capacity of 12 MGD. The City is very active in the Regional Water Providers Consortium (RWPC) and the City's Conservation Specialist teaches conservation classes and participates in other outreach events with this group. A water use/water conservation demonstration project was included in the proposed FY 2010-11 Budget, but was deemed to not be cost effective through the budget process.</p>
7.	Leak Repairs & Main Line Replacement	<p>The City investigates all reported leaks in the system, and quickly repairs any leaks that are found. The City has improved the terms of the contract with the meter reading company, which has lead to the contractor notifying the City immediately when a probable leak is detected and has also lead to higher level of service with less misreads. In addition, the City is using the Leak Detection Program to identify and fix hidden system leaks. In 2008, 9,000 feet of main was replaced and in 2011 the City replaced 12,000 feet of main in an effort to prevent leaks and main breaks in its most vulnerable areas. The October 2011 Water Audit Report also included leak detection recommendations through meter reading and accounting practices that are being implemented.</p>

Exhibit 1

City of Lake Oswego WMCP Progress Report

Progress Report for Benchmarks Listed in the 2007 WMCP (Appendix E: Matrix 1 and 2)

8.	Technical and Financial Assistance	From 2008 through 2011, the City has performed 38 interior-based residential audits, 146 exterior-based residential audits, and 10 large commercial property audits. Of the exterior-based residential audits, there has been a 23% reduction in summertime water use by participants.
9.	Retrofit/ Replacement of Inefficient Fixtures	Since January 2008, the City has offered residents and businesses a variety of free water efficient fixtures: low flow shower heads, faucet aerators, hose timers, soil moisture probes, rain gages, shower timers, toilet leak detection tablets and water efficient rinse heads for restaurants. The City also offers discounted rain sensors, washing machine rebates, and toilet replacement rebates. The City is currently pilot testing a weather based irrigation device as a future rebate option. The City budgets \$46,000 annually for this program and tracks the water savings for all customers that have utilized the retrofit and rebate programs. The City has publicized potential Oregon State tax credits for water saving fixtures by actively providing application forms.
10.	Conservation Based Rate Structure	In July 2009, the City changed from a uniform rate structure to a tiered rate structure that provides a cost-incentive to conserve water by high volume users.
11.	Potable Water Offsets	Currently, there are no feasible projects for potable water offsets through reuse.
12.	Other Conservation Measures	In 2008, the City hired a full-time Water Conservation Specialist to implement a rigorous conservation program and perform customer water audits. The City has connected all park irrigation systems to the City's new weather stations so that irrigation controllers make climate-based adjustments using evapo-transpiration (ET) calculations. The City also conducts annual assessments of its irrigation systems to ensure distribution uniformity. In addition, the City is in the process of installing new MP Rotators in all spray head zones within the Parks system, and has piloted an innovative subsurface 'KISSS' irrigation system in a green street program which are expected to lead to substantial water savings.

Exhibit 3
 City of Lake Oswego WMCP Progress Report
 Annual Water Audit

System Input = Demand		Revenue Water			Non-Revenue Water		
		Authorized Consumption			Water Loss/ Unaccounted for Water		
Year	Production (MG)	Retail Metered Consumption (MG)	Wholesale Metered Consumption (MG)	Hydrant Meters (MG)	Authorized Non-Revenue Flows (MG) ¹	(MG)	Percent
2006	2703.71	1776.94	381.00	0.54		545.23	20.2
2007	2365.03	1699.03	275.97	0.52		389.51	16.5
2008	2066.55	1643.63	92.16	0.41	1.69	328.66	15.9
2009	2116.26	1610.38	168.11	0.29	3.55	333.93	15.8
2010	1817.99	1378.64	97.54	0.66	7.6	333.55	18.3
2011	1710.25	1309.99	73.02	2.41	8.2	316.63	18.5

¹ Includes Chlorine monitoring station placed online in 2008.

¹ Additional non-revenue flows were recorded in 2010 and 2011 as result of a comprehensive water audit; therefore these years represent a more comprehensive data pool including intertie flushing, chlorine monitoring, water line flushing, hand waterings, vector truck filling, and hydrant flushing.

Exhibit 4

City of Lake Oswego WMCP Progress Report

Annual Consumption by Customer Category (million gallons)

Year	Single Family	Multi Family	Commercial/ Industrial	Municipal	Schools	Irrigation	Wholesale Water	Authorized Unbilled Use	Total Consumption (including wholesale)
2006	1174.46	278.13	176.33	14.40	41.26	92.36	381.00		2157.94
2007	1103.83	285.60	167.07	12.71	38.05	91.77	275.97		1975.00
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2009	1044.12	290.15	145.89	17.59	31.43	81.20	168.11	3.55 ¹	1782.04
2010	902.35	244.10	132.92	15.15	27.97	56.15	97.54	7.60 ²	1483.78
2011	861.13	231.42	122.46	13.47	31.16	50.35	73.02	8.20 ²	1391.21

¹ Water quality monitoring station use

² Estimated authorized unbilled use data was collected in 2010 and 2011 as a result of the water audit report.

Good Evening. My name is Rich Farrington, and I live at 3847 Mapleton Drive.

After receiving the notice, my wife and I attempted a rational analysis of the treatment plant expansion proposal. Since this was before the organized opposition, our effort was independent of that influence. I read the property valuation report, reviewed the design and studied the Conditional Use chapter. Fortunately, I also ran into a neighborhood friend at the grocery store who has lived immediately adjacent to the plant for 20 years. Despite my questioning, this person was very positive about the treatment plant as a neighbor. We accepted that direct experience in lieu of our own uninformed speculation.

We also expanded our analysis beyond applying the Conditional Use approval criteria to the proposed expansion. We compared the plant expansion to the likely development on the same property if the expansion was denied. 140,000 sf of contiguous undeveloped land would be a prime target for a housing developer. With the maximum allowed density, that property might accommodate 13 new homes. We evaluated major long and short-term impacts of both development scenarios.

Construction would be the major short-term impact. We felt that the large number of truck trips associated with the expansion was an acceptable short-term trade off to allow an underground storage reservoir for the long-term. With the excavation work in the right-of-way, the plant expansion would be far more intense, but for a shorter duration within the neighborhood. 13 new homes would concentrate a longer construction period within the neighborhood for its full duration.

Long-term impacts were a higher priority. Traffic is long-term. 13 new homes would add 20-25 cars to MD while the plant expansion would add none. In addition 13 new homes could be legally built in a line 20' from the ROW and 15' apart. Despite flag lot partitions, MD has never seen maximum R10 density. We would have a large chunk of new subdivision density and anonymity within our historically diverse neighborhood. By contrast, the nearest above-grade buildings in the plant expansion are set back 180-200' from the MD ROW. We felt that a landscaped open space a couple hundred feet deep by several hundred feet long is sufficient evidence that the proposed use can be physically accommodated on the proposed site while having enough space to mitigate adverse effects. Adding also the pedestrian connection, landscaped pocket on Kenthorpe, ROW improvements, and increased emergency intertie capacity and reliability, we felt the project addressed community need.

While supportive of the plant expansion, I suggest a couple of important changes to the design. First, there should be a few breaks in the continuous split-rail fence and landscape buffer along MD in order to clearly communicate to the neighborhood that we *are* welcome to use this open space. Second, I would suggest making the landscape buffer along MD less deep while moving medium to tall landscaping

against the proposed new buildings in order to soften, screen and mitigate their visual impact on the neighborhood. As viewed from Mapleton Drive, screen the buildings with the landscaping, not the open space. This change will, in effect, shift the open space closer to the street and create a more open visual connection with the neighborhood while improving surveillance and safety.

In conclusion, it is our opinion that absent the emotionally-charged filter, the water plant expansion offers an attractive landscaped park and open space in the middle of our neighborhood with minimal long-term visual, traffic, and noise impacts.

Thank you.

I am Mark Ellsworth of 2060 Canemah Street, West Linn OR

Counselors Jones, Tan, Carson and Mayor Kovash, good evening.

On November 2, 2012 your West Linn planning commission resoundingly and with significant precedent voted 7-0 and Denied LOT's applications & proposal.

LOT Plant and Pipeline do not comply with West Linn City Code CDC 60.070. A

There is only one criterion needed to support a denial. The Planning Commission listed not 1 but 4 Findings of Denial citing the CDC and Master Plan's code. The Planning Commission's unanimous 7-0 vote to Deny LOT's applications were the important first steps to the ultimate and full denial of this project and application. Counselors..I urge every one of you, in this second step, to also resoundingly, just as the planning commission did, to unanimously Deny LOT's applications.

We, the city of West Linn, can solve our own water problems. We do not need helping hand from LOT in order to do this. I can guarantee you, with the correct leadership in place, the citizens of West Linn will be more than willing to do so in a bond election.

Thank you.

Mark Ellsworth

TO: West Linn Mayor Kovash & West Linn City Council

Date: January 14, 2013

RE: Lake Oswego-Tigard Water Partnership Appeal of WLPC decision on CUP 12-02/12-04

Thank you for the opportunity to express my opinion on these conditional use permit applications. I am unconditionally opposed to these projects.

When I spoke to the West Linn Planning Commission last October, my testimony focused, as so many others have, on CDC §60.070.A.3. I pointed out that the word community necessarily refers to the community of West Linn. Not Tigard, not Lake Oswego. West Linn.

I also pointed out that word "overall" requires the applicant to demonstrate that their project provides benefits to the City of West Linn that outweigh the costs to the City of West Linn. Just as not all benefits come in the form of cash, not all costs are paid in cash.

The Planning Commission listened. They listed numerous reasons that the proposals do not meet the requirements necessary for them to approve a conditional use permit. Their logic and reasoning was sound. Every one of the seven Commissioners came to the conclusion that the permits should be denied.

Now LOTWP have appealed their application to you. They have not made any new arguments to rebut the planning commission's decision. Instead, they continue to rely on the same old arguments that just don't add up.

Except that now we hear that they have attempted to sweeten the pot by offering to pay West Linn \$5 million in one lump sum payment. Many have characterized this as a blatant attempt to bribe you to approve their application. Recently, the City of West Linn posted the proposed terms of an agreement regarding this payment on its website. This is disturbing.

First and foremost, this meeting is an appeal of a decision made by the Planning Commission and is being heard by you, the West Linn City Council. It is absolutely inappropriate for the City Council to discuss such a payment as it relates to the application that you are here to decide. One could make the argument that this discussion represents a conflict of interest for each and every one of you that were involved in the discussion of the proposed terms. I question whether it is even legal to add a proposed payment of this size to an existing application, under appeal, without changing the character of the application.

According to the posted term sheet, the payment is purported to be for the use of the public right-of-way by LOTWP for its pipelines. Lake Oswego has had pipelines in these same public rights-of-way since 1968. Have they ever paid anything for that use? So why are they offering to pay now? It's obvious to all that this payment is designed to tip the scales on the cost-benefit analysis back in their favor. They believe that this is just enough to get them over the hump.

So I turned back to §60.070.A.3 of the CDC which requires that the "granting of the proposal will provide for a facility that is consistent with the overall needs of the community." As I said, my previous testimony focused on the words "community" and "overall". But now I emphasize the word "facility." A cash payment is quite obviously not part of a facility. As such, this payment cannot be used to make up the deficit so that the facility meets this requirement. To do so would ignore the purpose of the law. Zoning requirements exist to "maintain the existing character and quality of West Linn." You cannot allow Lake Oswego to effectively buy a zoning variance.

This proposed payment smacks of impropriety and desperation. It also represents the edge of a very slippery slope. If it is allowed to stand, it will set a dangerous precedent, signaling to all comers that West Linn's land use process is up for sale.

Finally, this offer plays right into their hands by inhibiting your ability to impose a long-term franchise fee based on the revenue of the project. They tried to buy our CC&Rs on the cheap, and they are trying buy your votes on the cheap, too. It is particularly troubling that the Lake Oswego City Council has not disclosed its terms. What if those terms are unacceptable? We won't know until they are disclosed. As this agreement has not been signed by all parties, you simply cannot consider it to be a "benefit" to the community of West Linn for purposes of these applications.

If you disagree with all of my contentions and you find nothing inappropriate about the proposed payment, then there is a further issue to consider. This payment supposedly relates to the pipeline facility. It does not relate to the treatment plant itself. There are two CUP applications before you, not one. The proposed plant will not operate within a public right-of-way. So this payment has no effect on the cost-benefit analysis that must be done with respect to CUP 12-02.

You have heard testimony from experts supporting this project because "we all need clean drinking water". No one here denies this. You have heard that the existing plant was built 45 years ago and is crumbling. No one here denies this either.

That fact that the existing plant is crumbling and needs to be replaced, and let's call this what it is – a replacement, not an expansion – presents the perfect opportunity to take a hard look at where this plant is. Is there a better, safer, more appropriate site for this facility? I believe there is. But LOTWP stubbornly refuses to look at alternatives. For them, this is the perfect site. It does not take property off of their tax rolls, it does not endanger their citizens, and it does not hurt their quality of life. Instead, it imposes all of those negatives onto our neighborhood.

You have heard testimony in support of this project based on the fact that it will create jobs. The fact is that those jobs will be created wherever this plant is built. IT DOESN'T HAVE TO BE HERE!

I'm no engineer, but it seems feasible to me to build a new plant in foothills, while operating the existing plant. Water could be taken out of the Willamette virtually at the site of the plant. This would save millions of dollars on the raw water pipe proposed here. Lake Oswego's water rights could be transferred downstream. It may be true that only their perfected rights of 16mgd could be transferred downstream instead of all 38mgd, as they have argued. But Tigard has rights to 20mgd on the Willamette that could be used to make up the difference. Finished water that currently runs from the existing plant to the intertie and then to Lake Oswego provides water to Marylhurst and other Lake Oswego neighborhoods on the way north. I see no reason why finished water from foothills could not be pumped south to serve those same neighborhoods and the intertie, through the existing pipeline. This would avoid the cost of the 48" finished water pipe from the existing plant all the way up Highway 43 into Lake Oswego. Furthermore, this would avoid the operational challenges associated with keeping water flowing from the existing plant while replacing the component systems. They simply have to build the new plant and then flip the switch. Finally, Lake Oswego could then sell the existing plant site to a residential developer and return the area to its intended use. They have never once satisfactorily explained why they haven't studied this alternative.

The West Linn Planning Commission saw through the smoke and mirrors that the applicant put up to try to make their project comply with the law. Every single commissioner voted against this project. And rightly so. This project does not belong in our City. It utterly fails to meet our legal requirements. Don't let Lake Oswego and Tigard bully you, like they have tried to bully us. Don't let them buy you, as they have tried to buy us. Show your support for the good work done by your Planning Commission. Deny these applications.

Respectfully Submitted:

Sam Stephens

Name

3990 Mapleton Dr., West Linn, OR 97068

Address

Wicky Smith

January 15, 2013

RE: AP-12-02 and AP 12-03

Good Evening West Linn City Council

I have had the privilege to be involved in the design and construction of Light Rail Projects in Portland for over 30 years. As you may know, these projects are NOT always popular.

While it is NOT easy taking a shellacking, it is the public's right. It is disappointing that LOT's primary tactic is to come out swinging at the public instead of looking at real changes to the project that got unanimously denied.

Some of the best solutions come from following up on the tough public questions. Who KNOWS their community better, than the people who live and work there?

Robinwood neighbors have repeatedly implored LOT to consider one such solution for 2 years.

Our alternative benefits to all three jurisdictions.

Our alternative satisfies all the same issues in West Linn's Water Master Plan, preserving the all important inter-tie and "improved" back up supply. In fact we contend the backup supply is actually MORE reliable because it moves the collection and distribution points closer together and draws from a much larger source. Even better this alternative allows WEST LINN to start improving BOLTON NOW, NOT waiting three years until LOT's project is complete. THIS has huge financial BENEFITS to WEST LINN.

I draw your attention to CDC Chapter 106 Enforcement, specifically: It explains these codes are adopted for the protection of the public health, safety, and general welfare

106.010 PROVISIONS OF THIS CODE DECLARED TO BE MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this code shall be held to be minimum requirements, **adopted for the protection of the public health, safety, and general welfare**. Wherever the requirements of this code are at variance with other provisions of this code, or with the requirements of any other adopted City rules, regulations, or ordinances, the most restrictive or that imposing the higher standards shall govern. (Ord. 1370, 1995)

This project in THIS LOCATION does NONE of these things. In fact it brings numerous public health and safety risks into our community, including the increased security threats and vulnerabilities resulting from a 38 MGD Regional Water Facility.

OAR 333-061-0064 REQUIRES an Emergency Response Plan. Specifically, "**All public water systems shall complete a security vulnerability assessment and develop a prioritized plan for risk reduction.**"

The Public Health Security and Bioterrorism Preparedness and Response Act requires community water systems serving more than 3,300 persons to conduct vulnerability assessments and develop emergency response plans. EPA and its research partners have developed tools and methodologies to help:
<http://www.epa.gov/nhsrc/aboutwater.html>

Lake Oswego ONLY submitted the findings and recommendations of an irrelevant Vulnerability Assessment to EPA in 2004. Since this document or an updated assessment that considers the Regional Facility has not been provided to WEST LINN. Comprehensive Plan Goal 11. Policy 11 cannot be met.

Goal 11 – Public Services and Facilities. Policy 11 – Ensure costs for NEW infrastructure and the cost to MAINTAIN existing infrastructure are borne by the user. In this case the applicant.

This Plant will require yearly unrecoverable costs for West Linn to provide emergency responses to 911 calls, safety and security drills, earthquake drills, etc.

Would you want your child sleeping right next door to a facility that requires a 9-foot high security wall? How is this Compatible?

While LOT claims the Robinwood plan identifies the expansion plans, they fail to note that when the plan was being written by the neighborhood, a partnership with Tigard was not known and so the magnitude of the expansion could not have been anticipated.

- August 2008, Lake Oswego and Tigard formally endorsed a partnership agreement.
- **May 12, 2008 ROBINWOOD NEIGHBORHOOD PLAN - Adopted** by the West Linn City

We don't disagree that Engineers can design amazing solutions to mitigate risks. **But the first obligation is to avoid RISKS.**

LOT has failed to justify why these enormous risks SHOULD be BUILT in our community, and become West Linn's long-term burden.

Please deny these appeals. (AP-12-02 and AP 12-03)

Alternative Site (and Source) Suggestion

The applicant's lawyer began the presentation stating Alternative Site or Source Analysis' are NOT germane. We respectfully disagree.

Before any public entity imposes hardships of any kind they have an implied obligation to evaluate alternatives. In addition the basic tenet of a Conditional Use is that it MAY be allowed – not WILL be allowed, which presumes alternatives have been considered.

CDC 11.060 CONDITIONAL USES

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

You have heard the public suggest several alternatives. We RESUBMIT another very viable alternative that preserves WEST LINN's inter tie. We STRONGLY urge the Planning Commission to require the applicant to evaluate alternatives BEFORE you consider these applications.

Alternative Site (and Source) Suggestion Specifically:

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- The Alternative site premise is based on the understanding that both the existing intake and plant are being completely overhauled and/ or rebuilt.
- If the intake was built on the Willamette and plant were designed on a new site instead of working within the limitations of an existing plant and site, it most likely could be accomplished more efficiently from a size, dollars, and schedule standpoint.
- Within Lake Oswego there are several possible locations, including the Foothills district, still allowing for streetcar and other planned improvements. The Foothills area is only mentioned because of its existing industrial zoning and proximity to the Willamette where a new intake could be located.
- An intake and plant located in Lake Oswego would eliminate more than 4 miles of 48-inch pipe saving several millions of dollars.
- Eliminating over 4 miles of large pipe construction would avoid SEVERAL environmentally sensitive areas including parks, streams and protected waterways along their route from the Clackamas River, through Gladstone, UNDER the Willamette River, thru West Linn and into Lake Oswego.
- Much of the existing transmission line in Hwy 43 from Lake Oswego to the WEST LINN inter-tie could be maintained to provide the same back-up services it does today.
- Lake Oswego's current plan completely upgrades their old water treatment plant with state of the art water treatment. It follows that you should be able to provide this same state of the art treatment to the Willamette river water, learning from Wilsonville's brand new facility also located on the Willamette River and from the Coca Cola plant in Wilsonville that we understand produces DASANI bottled water.
- By building on a new site, this allows the added cost benefit of keeping the existing plant and transmission line online until the new facility is tested and ready to be turned on.

Comparison:

Lake Oswego's treatment plant "upgrade" is estimated to cost \$80 Million dollars and take over 3 years to build within a residentially zoned R-10 neighborhood. In stark comparison, the new Willamette River Water Treatment Plant in Wilsonville cost \$43.8 million and was constructed in less than two years.

The Wilsonville plant abuts a neighborhood and yet they allocated 20 acres to buffer the treatment plant. Lake Oswego's planned expansion is in the middle of a residential area and is less than 10 acres and the buffers are not adequate.

Protect Your Water For Life



Vulnerability Assessment Factsheet

What is the Purpose of Vulnerability Assessments?

Vulnerability assessments help water systems evaluate susceptibility to potential threats and identify corrective actions that can reduce or mitigate the risk of serious consequences from adversarial actions (e.g., vandalism, insider sabotage, terrorist attack, etc.). Such an assessment for a water system takes into account the vulnerability of the water supply (both ground and surface water), transmission, treatment, and distribution systems. It also considers risks posed to the surrounding community related to attacks on the water system. An effective vulnerability assessment serves as a guide to the water utility by providing a prioritized plan for security upgrades, modifications of operational procedures, and/or policy changes to mitigate the risks and vulnerabilities to the utility's critical assets. The vulnerability assessment provides a framework for developing risk reduction options and associated costs. Water systems should review their vulnerability assessments periodically to account for changing threats or additions to the system to ensure that security objectives are being met. Preferably, a vulnerability assessment is "performance-based," meaning that it evaluates the risk to the water system based on the effectiveness (performance) of existing and planned measures to counteract adversarial actions.

What are the Basic Elements of Vulnerability Assessments?

The following are **common elements of vulnerability assessments**. These elements are conceptual in nature and not intended to serve as a detailed methodology:

1. Characterization of the water system, including its mission and objectives;
2. Identification and prioritization of adverse consequences to avoid;
3. Determination of critical assets that might be subject to malevolent acts that could result in undesired consequences;
4. Assessment of the likelihood (qualitative probability) of such malevolent acts from adversaries;
5. Evaluation of existing countermeasures; and
6. Analysis of current risk and development of a prioritized plan for risk reduction.

The vulnerability assessment process will range in complexity based on the design and operation of the water system itself. The nature and extent of the vulnerability assessment will differ among systems based on a number of factors, including system size, potential population affected, source water, treatment complexity, system infrastructure and other factors. Security and safety evaluations also vary based on knowledge and types of threats, available security technologies, and applicable local, state and federal regulations.

What are Some Points to Consider in a Vulnerability Assessments?

Some points to consider related to the six basic elements are included in the following tables. The manner in which the vulnerability assessment is performed is determined by each individual water utility. It will be helpful to remember throughout the assessment process that the ultimate goal is twofold: to safeguard public health and safety, and to reduce the potential for disruption of a reliable supply of pressurized water.

Basic Element	Points to Consider
<p>1. Characterization of the water system, including its mission and objectives.</p> <p>(Answers to system-specific questions may be helpful in characterizing the water system.)</p>	<ul style="list-style-type: none"> • What are the important missions of the system to be assessed? Define the highest priority services provided by the utility. Identify the utility's customers: <ul style="list-style-type: none"> •• General public •• Government •• Military •• Industrial •• Critical care •• Retail operations •• Firefighting • What are the most important facilities, processes, and assets of the system for achieving the mission objectives and avoiding undesired consequences? Describe the: <ul style="list-style-type: none"> •• Utility facilities •• Operating procedures •• Management practices that are necessary to achieve the mission objectives •• How the utility operates (e.g., water source including ground and surface water) •• Treatment processes •• Storage methods and capacity •• Chemical use and storage •• Distribution system <p>In assessing those assets that are critical, consider critical customers, dependence on other infrastructures (e.g., electricity, transportation, other water utilities), contractual obligations, single points of failure (e.g., critical aqueducts, transmission systems, aquifers etc.), chemical hazards and other aspects of the utility's operations, or availability of other utility capabilities that may increase or decrease the criticality of specific facilities, processes and assets.</p>

Basic Element	Points to Consider
<p>2. Identification and prioritization of adverse consequences to avoid.</p>	<ul style="list-style-type: none"> • Take into account the impacts that could substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water or otherwise present significant public health concerns to the surrounding community. Water systems should use the vulnerability assessment process to determine how to reduce risks associated with the consequences of significant concern. • Ranges of consequences or impacts for each of these events should be identified and defined. Factors to be considered in assessing the consequences may include: <ul style="list-style-type: none"> •• Magnitude of service disruption •• Economic impact (such as replacement and installation costs for damaged critical assets or loss of revenue due to service outage) •• Number of illnesses or deaths resulting from an event •• Impact on public confidence in the water supply •• Chronic problems arising from specific events •• Other indicators of the impact of each event as determined by the water utility. <p>Risk reduction recommendations at the conclusion of the vulnerability assessment should strive to prevent or reduce each of these consequences.</p>

Basic Element	Points to Consider
<p>3. Determination of critical assets that might be subject to malevolent acts that could result in undesired consequences.</p>	<ul style="list-style-type: none"> • What are the malevolent acts that could reasonably cause undesired consequences? Consider the operation of critical facilities, assets and/or processes and assess what an adversary could do to disrupt these operations. Such acts may include physical damage to or destruction of critical assets, contamination of water, intentional release of stored chemicals, interruption of electricity or other infrastructure interdependencies. • The "Public Health Security and Bioterrorism Preparedness and Response Act of 2002" (PL 107-188) states that a community water system which serves a population of greater than 3,300 people must review the vulnerability of its system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water. The vulnerability assessment shall include, but not be limited to, a review of: <ul style="list-style-type: none"> •• Pipes and constructed conveyances •• Physical barriers •• Water collection, pretreatment and treatment facilities •• Storage and distribution facilities •• Electronic, computer or other automated systems which are utilized by the public water system (e.g., Supervisory Control and Data Acquisition (SCADA)) •• The use, storage, or handling of various chemicals •• The operation and maintenance of such systems

Basic Element	Points to Consider
<p>4. Assessment of the likelihood (qualitative probability) of such malevolent acts from adversaries (e.g., terrorists, vandals).</p>	<ul style="list-style-type: none"> • Determine the possible modes of attack that might result in consequences of significant concern based on the critical assets of the water system. The objective of this step of the assessment is to move beyond what is merely possible and determine the likelihood of a particular attack scenario. This is a very difficult task as there is often insufficient information to determine the likelihood of a particular event with any degree of certainty. • The threats (the kind of adversary and the mode of attack) selected for consideration during a vulnerability assessment will dictate, to a great extent, the risk reduction measures that should be designed to counter the threat(s). Some vulnerability assessment methodologies refer to this as a “Design Basis Threat” (DBT) where the threat serves as the basis for the design of countermeasures, as well as the benchmark against which vulnerabilities are assessed. It should be noted that there is no single DBT or threat profile for all water systems in the United States. Differences in geographic location, size of the utility, previous attacks in the local area and many other factors will influence the threat(s) that water systems should consider in their assessments. Water systems should consult with the local FBI and/or other law enforcement agencies, public officials, and others to determine the threats upon which their risk reduction measures should be based. Water systems should also refer to EPA’s “Baseline Threat Information for Vulnerability Assessments of Community Water Systems” to help assess the most likely threats to their system. This document is available to community water systems serving populations greater than 3,300 people. If your system has not yet received instructions on how to receive a copy of this document, then contact your Regional EPA Office immediately. You will be sent instructions on how to securely access the document via the Water Information Sharing and Analysis Center (ISAC) website or obtain a hardcopy that can be mailed directly to you. Water systems may also want to review their incident reports to better understand past breaches of security.

Basic Element	Points to Consider
<p>5. Evaluation of existing countermeasures.</p> <p>(Depending on countermeasures already in place, some critical assets may already be sufficiently protected. This step will aid in identification of the areas of greatest concern, and help to focus priorities for risk reduction.)</p>	<ul style="list-style-type: none"> • <i>What capabilities does the system currently employ for detection, delay and response?</i> <ul style="list-style-type: none"> •• Identify and evaluate current detection capabilities such as intrusion detection systems, water quality monitoring, operational alarms, guard post orders, and employee security awareness programs. •• Identify current delay mechanisms such as locks and key control, fencing, structure integrity of critical assets and vehicle access checkpoints. •• Identify existing policies and procedures for evaluation and response to intrusion and system malfunction alarms, adverse water quality indicators, and cyber system intrusions. <p>It is important to determine the performance characteristics. Poorly operated and maintained security technologies provide little or no protection.</p> • <i>What cyber protection system features does the utility have in place? Assess what protective measures are in-place for the SCADA and business-related computer information systems such as:</i> <ul style="list-style-type: none"> •• Firewalls •• Modem access •• Internet and other external connections, including wireless data and voice communications •• Security policies and protocols <p>It is important to identify whether vendors have access rights and/or “backdoors” to conduct system diagnostics remotely.</p> • <i>What security policies and procedures exist, and what is the compliance record for them?</i> Identify existing policies and procedures concerning: <ul style="list-style-type: none"> •• Personnel security •• Physical security •• Key and access badge control •• Control of system configuration and operational data •• Chemical and other vendor deliveries •• Security training and exercise records

Basic Element	Points to Consider
<p>6. Analysis of current risk and development of a prioritized plan for risk reduction.</p>	<ul style="list-style-type: none"> • Information gathered on threat, critical assets, water utility operations, consequences, and existing countermeasures should be analyzed to determine the current level of risk. The utility should then determine whether current risks are acceptable or risk reduction measures should be pursued. • Recommended actions should measurably reduce risks by reducing vulnerabilities and/or consequences through improved deterrence, delay, detection, and/or response capabilities or by improving operational policies or procedures. Selection of specific risk reduction actions should be completed prior to considering the cost of the recommended action(s). Utilities should carefully consider both short- and long-term solutions. An analysis of the cost of short- and long-term risk reduction actions may impact which actions the utility chooses to achieve its security goals. • Utilities may also want to consider security improvements in light of other planned or needed improvements. Security and general infrastructure may provide significant multiple benefits. For example, improved treatment processes or system redundancies can both reduce vulnerabilities and enhance day-to-day operation. • Generally, strategies for reducing vulnerabilities fall into three broad categories: <ul style="list-style-type: none"> •• Sound business practices – affect policies, procedures, and training to improve the overall security-related culture at the drinking water facility. For example, it is important to ensure rapid communication capabilities exist between public health authorities and local law enforcement and emergency responders. •• System upgrades – include changes in operations, equipment, processes, or infrastructure itself that make the system fundamentally safer. •• Security upgrades – improve capabilities for detection, delay, or response.

Office of Water (4601M)

EPA 816-F-02-025

www.epa.gov/ogwdw/security/index.html

November 2002

Alternative Site (and Source) Suggestion

The applicant's lawyer began the presentation stating Alternative Site or Source Analysis' are NOT germane. **We respectfully disagree.**

Before any public entity imposes hardships of any kind they have an implied obligation to evaluate alternatives. In addition the basic tenet of a Conditional Use is that it MAY be allowed – not WILL be allowed, which presumes alternatives have been considered.

CDC 11.060 CONDITIONAL USES

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

You have heard the public suggest several alternatives. We RESUBMIT another very viable alternative that preserves WEST LINNs inter tie. We STRONGLY urge the Planning Commission to require the applicant to evaluate alternatives BEFORE you consider these applications.

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1269 1/2

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

3. Significant Environmental Concerns

- Lake Oswego cannot guarantee pipe to be seismic proof today or in the future. Yet earthquakes will be encountered per Lake Oswego's admission.
- Mary S Young Park negatively impacted with noise and accessibility issues.
- Negative impact on Clackamas River (currently being fought by Water Watch).
- Negatively impacts recreational users of the Clackamas River.
- Potential safety issues due to areas of unstable geological site.
- Potential contamination of water system from the splicing of the asbestos pipes.
- Asbestos pipes to be spliced in the open causing potential environmental hazards to our children who play in the area.
- Construction management lacks protection of interior surface waters during winter months.
- Potential alteration of underground aquifers throughout the area that could change springs and ponds and cause property and environmental damage.
- Design and/or environmental/safety plans incomplete to ensure the safety of residents
- Auguring the pilings, trenching, the installing of four foot in diameter water pipes and a reservoir could have a negative impact on underground springs and our underground water shed.
- Many mature trees are being sacrificed and replaced with saplings.
- Degradation of air quality.

Don & Cindy Kauffman
3993 Mapleton Rd
West Linn, OR

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

4. Severe Traffic and Commuter Problems

- Creates havoc for minimum of three years with constant noise, congestion and disruption.
- Massive traffic congestion due to a minimum of 60,000 slow moving mud hauling trucks on Highway 43 not counting additional vehicular traffic from the project.
- Exacerbates Highway 43 clogging during peak periods of day and now at night.
- Unbearable congestion at the intersections of Highway 43 and Cedar Oaks.
- Unbearable congestion at the intersection of Highway 43 and Hidden Springs.
- Causes drivers to find alternative routes.
- Creates four miles of Highway 43 road construction.
- Road construction causes further traffic congestion irrespective of when work done.
- Ancillary debris and equipment everywhere for several years.
- Lack of accessibility to homes during construction.
- Large trucks rumbling down narrow residential streets all day/every day.
- Traffic flow and safety in school zones seriously compromised.
- Nixon will be used heavily, but this road is not being resurfaced although it will be needed.

To: West Linn City Council, January 14, 2013
RE: CUP-12-02 and CUP-12-04

Much effort has been spent by the Lake Oswego Tigard Water Partnership to prove that their essentially new water treatment facility must be built now, must be built in West Linn and cannot possibly be sited anywhere else in the entire Portland area, especially not in Lake Oswego or Tigard.

You have heard the applicant explain how much money it will save West Linn on our infrastructure when in reality only half a mile of Mapleton water pipe will be replaced, and West Linn will have to pay for half of that.

But then there's the intertie, which West Linn benefits from so much that we must swallow an entire \$250 million water facility just to keep it. And, by the way, in order to connect the intertie to the new transmission facilities, West Linn will have to SPEND more than \$8 million dollars in upgrades. So much for the LOT projects saving West Linn money.

So, what about that wonderful intertie? West Linn has used it to buy water from Lake Oswego seven times in the last ten years. Lake Oswego has used it to buy water from West Linn seven times in the last ten years. So how is it that Lake Oswego's new water plant has to be in West Linn? With this type of thinking couldn't an equally valid case be made for West Linn's next water plant to be built in Lake Oswego?

Why stop at examining the benefits of sharing water during an emergency?

How many times have Lake Oswego's police assisted West Linn in some kind of emergency? How many times did fire vehicles from another city help West Linn? Maybe West Linn should be the site for their next new police or fire department facility.

Let's start buying up West Linn homes and condemning CCR's now so these cities can get a nice spot for their next fire and EMT facilities in another one of our neighborhoods. Does this seem extreme or ridiculous?

Let's just focus on water for a minute. Interconnectivity is a good thing enabling cities to help each other out in emergency situations. Suppose the new intertie benefits West Linn in the future by sending water through Lake Oswego from Tigard which got the water from Portland. Should West Linn be ready to site the next Portland water plant here because we benefitted from their water a few times in a certain number of years?

If this sounds absurd, realize that it is exactly what LOT is expecting.

The Comprehensive Plan and the CDC have tried to protect West Linn neighborhoods from inappropriate development. Other land has been set aside for retail, office and multi-family development.

Why are all these carefully constructed documents being ignored just because Lake Oswego and Tigard don't want to waste their own land on a non-taxable, industrial-type structure?

CDC 60.070 A 3 requires that a conditional use proposal be consistent with the overall needs of the community. The community which is supposed to benefit is West Linn. It is reasonable to conclude that a project built for the everyday normal use of another city and NOT for the everyday use of West Linn should not be awarded a conditional use permit.

The West Linn City council must defend the integrity of West Linn's neighborhoods and our future. Please vote to uphold the Planning Commission's unanimous denial of LOT's two applications.

Thank you,

Dawn Gunther
18665 Nixon Ave.
West Linn
503-697-0595

Lake Oswego
The Tigard Water Partnership Agreement, through astronomical water rate increases to Lake Oswego water ratepayers, has already imposed such an incredible financial hardship on many long term residents (over 50% of the Lake Oswego population are seniors on fixed and reduced incomes) that many are deciding to sell their homes and move out. Several residents, including myself, have to pay their water bills in installments because they are so high. Recent bimonthly residential water bills have been in the \$450-600 range, some as high as a whopping \$800-900! In talks with the City's Water Dept. staff who respond to customer complaints, they indicate that as much as 90 percent of residential retail customers are outraged with their huge water bills.

This is all driven by revenue requirements by the Partnership's current and future debt encumbrances and has nothing to do with today's actual costs of supplying water

Opposed by many residents and not approved by voters, the rushed through deal signed in August of 2008, was initially sold to LO ratepayers as a way to address a purported "serious water shortage" and, later highly publicized, "water quality" problem.

In truth, without this project Lake Oswego annually has millions of gallons of water per day surplus. To mislead and mischaracterize Lake Oswego as having an annual water shortage is grossly wrong and is almost tantamount to fraud.

During a panel discussion with LOT Water Project representatives, Oregon Water Watch, and Robinwood neighborhood members at a Lake Oswego Neighborhood Action Coalition (LONAC) meeting on November 6, 2010 charts were shown where only 6 days in 2006 had water usage over 13 mgd, in 2008, only 4 days over by that amount, and we now know that in 2011 peak use days were in the 12 mgd range. But even this episodic elevated demand is still far below the 16 mgd that our system can produce. Currently, L.O.'s winter demand for water is 3-4 mgd. Our annual average use is between 4-6 mgd. So where this huge water shortage and what is wrong with our water quality? In checking with the State of Oregon our water quality reports to the State have been consistently excellent—in the very high 90 percent compliance range.

The lash-up with Tigard, Lake Oswegans were told, would save residents around \$20 million-- \$54 million versus \$78 million—which was the amount for Lake Oswego to go it alone to upgrade its water supply system facilities which are free and clear of debt and owned solely by Lake Oswego residents. Under the Partnership, however, Lake Oswego's share is now in the \$140 million to \$150 million range for a total Project cost approaching \$300 million, maybe more—who knows. But, what we do know is that Lake Oswego's cost is almost 3-fold more than the original \$54 million cost by saving \$20 million through partnering with Tigard. This all for an unneeded Rolls-Royce style overbuilt system replacement.

Higher Project costs resulting in higher retail prices have greatly diminished demand for water—over 36% demand reduction due to conservation (the Carollo report assumed only 5% conservation) has resulted with huge revenue reductions from its retail customers and a much greater dependence on the need for the build-out of many thousand new residential hookups in the Stafford Triangle according to numerous service area build out citations in the Carollo Report.

The Stafford build out is essential to the Project. Of the request for 38 mgd water rights to the Clackamas, 6 mgd is for Stafford. The revenue requirement calculation to cover bond payments depends on the build out. Additionally, population growth estimates for Lake Oswego have also been grossly overstated. Over the last decade population growth has been less than one half of one percent—not 1.5 percent assumed under the Agreement. This overstatement of growth obviously assumes more water revenues and is false based upon the factual reality of the lack of numbers of people moving into Lake Oswego. If, anything, population has been declining due to a lack of affordability to live in Lake Oswego.

There are huge unresolved overhanging clouds of uncertainty: a law suit challenging increased water rights, outstanding permit applications yet to be approved, and Lake Oswego voter approval (required by the City Charter) of the Stafford Triangle annexation into the City. For these reasons and others, Lake Oswego has been reluctant to even approach bond issuing agencies out of fear of being turned down.

In conclusion, the non-voter approved Lake Oswego Tigard Water Agreement requires a thorough review by the Lake Oswego City Council. Many of the original assumptions from the Carollo Report are erroneous, overstated population forecasts, outdated revenue requirement projections, and significant legal challenges need to be addressed in a forensic-style audit by an independent expert. All requests for continued financing of the Agreement should be delayed until the results of the Audit are publicly known and options considered.

Thank you for your consideration of my remarks.

Ed Sumner
1/15/2013
1085 Edgcliffe Terr.
L.O. 97034

January 14, 2013

Mayor Kovash and
West Linn City Council
West Linn, Oregon

RE: Appeal CUP 12-02 and CUP 12-04

Mr. Mayor and Council,

A facility that is consistent with the overall needs of the community (60.070(A)(2)): this is one of the requirements for a conditional use permit. For this particular project, the West Linn Planning Commission defined community as follows (Signed Final Decision Notice, p. 2) [attached]:

"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 in consistent with the intent to meet the overall needs of West Linn residents."

Also, in the Adopted Minutes from the 11/1/12 Planning Commission hearing, p. 15 of 19 [attached], Commissioner Steel addressed community:

*"After reading the intent of this requirement (referring to 60.070(A)(2)), there was an assumption that the facility was actually for the community the facility was in. Whether it was a pump station or a treatment plant of some kind it was pumping or treating a product that was **primarily** for that community." (emphasis added).*

The appealant, however, has raised concern about defining community in this manner. In the memorandum from Eric Day to Zach Pelz, dated 1/7/13 (referred to as Exhibit H) [attached] p.1, he interprets the Planning Commission's meaning of community as "to serve **only** the residents and land use needs of the citizens of West Linn." (emphasis added). Mr. Day listed several examples of past conditional use applications that would have failed this 'Community definition' test, such as Fire Station 58 (Failing Street) as it provides services beyond West Linn city limits, Fire Station 59 (Willamette Falls Dr.) as it provides services beyond West Linn city limits, and the Public Safety Facility (police station), as the police station will serve an area larger than the West Linn city limits. Each of these facilities, however, is built in West Linn and is **primarily** for the community of West Linn, consistent with the Planning Commission's and specifically Commissioner Steel's definition.

1/14/13

Page 2

Henderson, Jenne

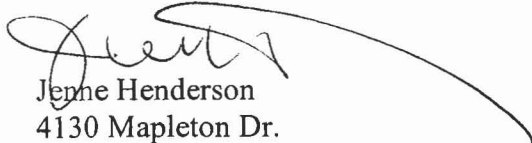
Also, in Zach Pelz's memo to Chris Jordan, dated 1/3/13 (pgs. 4-6), he noted examples of conditional uses that provide services beyond West Linn's corporate boundaries, such as Tualatin Valley Fire and Rescue (TVF&R), West Linn-Wilsonville School District, and South Fork Water Board. But, TVF&R *serves* WL on a daily basis. The WL-Wilsonville School District *serves* WL on a daily basis. The SFWB, in Oregon City, *serves* Oregon City on a daily basis.

This is an important point as Staff have raised concern that the Planning Commission is setting a precedent by defining community to meet *only* West Linn's needs. When the Planning Commission said, "*the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn*", they meant that the Comprehensive Plan and CDC are limited to the City of West Linn (thus, not the concept of a regional community), not the services of a facility being limited to the City of West Linn.

In regards to the current project, the *primary* purpose of the treatment plan is to provide water on a daily basis to Lake Oswego and Tigard. West Linn will *not receive* daily water from this plant; unless there is an emergency, WL would not see a drop of water.

The Planning Commission members are selected by the City Council; you individuals or your peers *chose* these members based on their knowledge, training and experience. I hope you can continue to put your trust in them and uphold the Planning Commission's denial of these two proposals.

Thank you for your consideration,



Jenne Henderson
4130 Mapleton Dr.
West Linn, OR 97068

Chair Babbitt closed the public hearing and opened deliberations.

Commissioner Martin moved to continue the hearing to midnight. Commissioner Steel seconded the motion and it passed 4:3. Commissioners Frank, Axelrod and Vice Chair Holmes voted against.

Commissioner Steel discussed the conditional use criterion CDC 60.070.A.3 that the facility was to be consistent with the overall needs of the community. She indicated she felt, after reading the intent of this requirement, that there was an assumption that the facility was actually for the community the facility was in. Whether it was a pump station or a treatment plant of some kind it was pumping or treating a product that was primarily for that community. It was more than an emergency supply – it was that community's supply. 'Consistent with the overall needs of the community' said to her it was of the scale for the community, which would not be regional, but of a size for that community. The way Webster's Dictionary defined 'community' indicated it was a hamlet, village, town, city, or neighborhood. That was not regional, but more local. That was the heart of the matter. She did not think any conditions of approval could remedy that one first hurdle for her. She explained her feeling on this was that both applications should be denied because both failed to meet that criterion.

Commissioner Martin suggested there were three areas the applicant might want to look at that were along the lines of good neighbor and good faith. They had to do with property values; Highway 43; and the CC&Rs. He discussed property values. A perfect application would leave all the citizens of West Linn no worse off and probably better off than they were before. He suggested the applicant appraise a control group of 10 or 15 houses away from the project area and appraise ten houses in the project area. Over the time the fund was in place, whenever a project area house changed hands, they could use the fund to make the owner whole based on the appraisals. If the applicant was right and the property values remained unchanged it would only cost them the cost of the appraisals. That would be a very neighborly thing to do. He discussed Highway 43. It would be a good gesture to bring Highway 43 up to the level of the Highway 43 Concept Plan. He would be tempted to let that one be sorted out in court over the nexus. He thought there was a strong nexus. But regardless, the people of West Linn were going to be subjected to three years of disruption and that was their heart line right through the middle of the City. Doing something like that would enhance both cities because of the transition of Highway 43 into Lake Oswego. He would like the applicant to consider that. He discussed the CC&Rs. He wanted Lake Oswego to make people whole by reimbursing legal expenses that had been created as the applicant sought to have the CC&Rs lifted. Those people would still be under stress, but at least it would reduce their financial hardship. There were a lot of senior citizens to whom any legal action was a burden.

Commissioner Martin observed the code required the application to satisfy community need. He looked at need in two ways. Need and the cost of the process of getting there and what was the benefit had to be looked at together. The second was it was the citizens of West Linn who got to assign the value to the need, not the applicant, the staff or even the Commissioners. The people had offered overwhelming testimony about what their values were. Many neighborhood associations had evaluated the need, voted on it, and they all told the Commission that they were in opposition. In this case the end was a potentially more reliable water supply. The means was a very disruptive impact on the City. The impacts were potentially safety, noise and other impacts people had talked about.

Commissioner Martin considered the issue of the Stafford triangle. The community's needs, desires and values were expressed in Comprehensive Plan Goal 9 which specifically called for opposing the Stafford triangle. The permit document indicated the proposed plan enabled the Stafford triangle. This problem could not be corrected by conditions. He would vote to deny.



MEMORANDUM

TO: Zach Pelz, Associate Planner

FROM: Eric Day, Senior Planner, Lake Oswego Tigard Water Partnership,

SUBJECT: Appeal CUP 12-02/DR12-04 and CUP-12-04/DR 12-14: Community Need Comparison

DATE: January 7, 2013

The West Linn Planning Commission (Commission) found that the proposed water treatment plant (WTP) and raw water/finished water pipelines (WP/FWP) projects failed 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.” The Commission determined that this CDC approval criterion was ambiguous and required re-interpretation. The applicant believes that this interpretation led this Commission to set a new standard that is inconsistent with past interpretations of the West Linn Development Code and the inconsistency is not explained.

For more than forty years the Oregon land use system has rested upon the foundational principle that a local government and those who choose to develop property within that jurisdiction have a right to certainty. Under the Oregon land use system, everyone has a right to know exactly what rules are in play and, once adopted, those rules are not to be changed during the development review process. A city or county creates certainty through the adoption of a comprehensive plan, development regulations, engineering standards, and supporting plans, such as a Water System Master Plan. The Commission’s decision to allow the sentiment of the citizens engaged in the quasi-judicial land use hearing to override recommendations made in adopted West Linn documents turns the principle of certainty on its head.

The Commission’s new interpretation of “overall community need” rests on four unique concepts:

- A. The term “community” refers to only the City of West Linn and for a facility to serve the needs of the community it must be designed and sized to serve only the residents and land use needs of the citizens of West Linn.
- B. The benefit the community derives from the facility cannot be temporary (i.e., even a benefit that lasts for 30 years was defined as temporary by the Commission).
- C. The need/benefit calculus can only be determined by weighing the significance of the need being fulfilled against the potential impacts the proposal might have upon the community. In this case the Commission weighed the benefit of providing access to a nearly 30-year emergency water supply against the short term construction impacts and minimal potential risks to property within the Robinwood Neighborhood and along Highway 43. Additionally, the Planning Commission incorrectly weighed the benefits and impacts.
- D. Finally, the Commission decided that “community need” was to be determined by considering the opinions of those persons who testify at a land use hearing instead of recommendations contained in adopted West Linn planning documents, such as the 2008 West Linn Water System Master Plan or the Robinwood Neighborhood Plan and the city’s professional planning staff report.

Hello,

My name is Julie McAdams

My home is at 4322 Mapleton Drive, West Linn, OR 97068

I purchased the house 12 years ago and have used it as my home, business and retreat.

I have raised 5 children within this dwelling and have taught simple lessons about work ethic and nature to them from the beautiful surrounding natuescape.

My goal is to preserve the historic West Linn "Cape Cod" style home, to be a place for friends and family to flourish in the next few decades.

The dream of homeownership that started with much hard work put into remodeling, developing, and landscaping a place of beauty, is soon to become a nightmare if the water treatment plant development is approved.

You see, my home sits in front of the mid-section of development on Mapleton Drive.

Right now I look out my front window and view nature with fully grown deciduous and fir trees, along with much wildlife. There are wildflowers, berries that we pick each year and preserve, as well as abundant sights and sounds that we love.

With development, my street will become a mud hole and this sits only 28 feet from my front room, dinning room and kitchen. This is less distance than an MBA half court basketball shot. You can just imagine how invasive this will be from day one of construction if the plant renovation and upgrade is approved. My home will become a Flintstone's quarry pit. The dirt will come in on the ground. It will come in as dust in the air. It will also introduce all pollutants in with it as asbestos lined pipes are exhumed from the street. Remember it is only 28 ft that separates me from the onslaught.

I have not been as involved with the legal battle as my diehard neighbors have been and I do commend them for their undying effort. I found my self back in school obtaining a nursing degree in the last 4 years. With this new career and commitment, I find that I must work nights to make my mark in the Medical field. This makes my schedule flip flopped from the rest of the world. I work nights, 3-5 days a week. The schedule usually presents itself to be 12 hours from 7pm to 7am. This makes me nocturnal by night and needing to sleep during the days. I would be able to get one day of peaceful sleep during the construction of the water treatment plant – this being Sundays.

My 10 year old and I looked at the chemical list together last night as we were preparing what we would like to present today. There are thousands of pounds and thousands of gallons of chemicals stored on the site for use with treatment of the water. This does not sound like a suitable place to be processing with toxic chemicals at any given time. New studies that have come out within the last week say that we have a 40% chance of a major earthquake within the next 50 years in the Northwest region of the United States. These chemicals would pose a much greater threat to human life than simply dealing with an earthquake. These chemicals are stored within a football throw of my front door.

I want to say that I am not the only household that resides within view point of the plant.. There are a dozen or so homes that have made this West Linn neighborhood their home and have invested everything into the street. It has paid us well with a quiet country setting, nature that returns year after year, and friendships that will last a lifetime. We have elderly folks that are at a point in their lives that we need to reach out and help them along their journey, there are residence that are sickly and are not able to walk through ghastly construction zones to access their homes. There are grandparents with your grandchildren that want to take a stroll to the river or park. There are young couples that are starting out their lives here and lastly there are families and empty nesters that deserve a chance at a healthy and safe residential neighborhood.

We do not dispute whether you should build your water plant, we simply do not find it suitable to terrorize a residential neighborhood for your gain. Zoning laws are designed to protect us from this rape. Vote no again on the approval to advance the water treatment plant by Lake Oswego/ Tigard partnership, and send the message that each individual in our city matters.

January 15, 2013

RE: CUP-12-02 & CUP 12-04

My name is Randall Fastabend. I live at 18787 Trillium Drive.

Item 1

It seems clear that there is room for interpretation of the CDC. The LOT partnership with out city staff have determined that an industrial size facility is compatible with and a benefit to our community. Our planning commission unanimously disagreed. Much of this argument hinges on the master plan wording to pursue connection to the Lake Oswego Tigard system.

Staff quotes from the Approach C (pg 6-9) . What staff omitted from their quote is that: "An element of these discussion (LOT) includes the construction of a transmission system inter-tie that connect the City of Portland supply to Tigard through the Washington County Supply in such a way that water, which originates at the City of Portland's Powell Butte Reservoir, could flow by gravity to Lake Oswegos Waluga Service Zone."

The intent here appears to be to tap into a **different water source**, not an alternative route to the Clackamas River! Staff's interpretation of this wording, that it directs West Linn to support expansion of the Clackamas River Source, **is contrary to the stated goal of connecting to the Portland Water System.**

Item 2

I would like to remind the Council that a franchise fee is net neutral and not a benefit. It is meant to pay for the property, rights and risks that we assume. For the risks involved with this expansion, and the size of this water transportation project, a one-time fee of \$5 million is far too cheap.

Item 3

The West Linn City Charter states "All powers of the City are vested in the Council " You are our authority on the matter tonight. Do not be bullied into agreeing with this application. Your duty lies with the citizens of West Linn and not with the citizens of Tigard or Lake Oswego. If you say no to this application, Tigard will not go thirsty. Tigard has multiple options for good clean water. The present smaller Lake Oswego water treatment plant will still operate and with the recent conservation measures employed by LO, it will suffice for quite some time.

Item 4

As for the Emergency Water Inter-tie: Currently there is no expiration date. If you vote yes on the application then immediately there is a termination date.

Please deny the application or send it back to the planning process. This will tell the citizens of West Linn that they come first. That their safety and well-being is far more important than Tigard's attempt to avoid paying Portland for water.

Please use the authority vested in you by the citizens of West Linn to act in the best interests of West Linn.

Thank you,


Randall

Water Storage Requirement Summary

Based on the analysis presented above, two (2) alternative approaches have been developed to address current and future storage volume needs in the City's water system. These two (2) alternative approaches were presented to, and reviewed by City staff, the UAB and the City Council. **The City Council directed that the development of recommended system improvements be based on Approach B. 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. The recommended improvements and associated project costs are documented in Section 8 which presents the recommended Capital Improvements Plan (CIP) and Capital Maintenance Plan (CMP).**

Choose from this list only, do not stop and think :

Solution Approach A: Construction of a New 8.4 mg Bolton Reservoir

But only on the current site that is too small and may be unstable.

Solution Approach B: Build back-up supply from SFWB

New redundant pipe across from South Fork across Willamette River

Solution Approach C: Improve the Emergency Supply Capacity and Reliability of the Lake Oswego Emergency Supply Connection

Rely on storage in LO with no emergency power generation to get to West Linn.

2008 Water System Master Plan Table 8-6 on page 105 of the pdf enlarged:

			2011			2013
		<i>Sub-Total</i>	\$ 1,187,200	\$ -	\$ -	\$ -
Supply	Emergency Supply	Tigard/Lake Oswego Intertie	\$ 700,000			\$ 1,500,000
		<i>Sub-Total</i>	\$ 700,000	\$ -	\$ -	\$ 1,500,000

What does this little hidden treasure CIP chart mean?

S

**Table 8-6
Capital Improvement and Capital Maintenance Program Summary**

Category	Project Description	Project Location	CIP and CMP Schedule and Project Cost Summary (Fiscal Year)										Estimated Project Cost	
			2010	2011	2012	2013	2014	2015	2016	2017	Medium-Term (2018-2030)	Long-Term (2030+)		
Capital Maintenance Projects														
Distribution System	AC Pipe Replacement	AC Pipe Replacement	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 4,140,000	\$ 6,900,000	
		Galvanized Pipe Replacement	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 150,000	\$ 750,000	
		Pressure Reducing Valve Vault Improvements	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000						\$ 100,000	
	Reservoir Improvements	Reservoir Re-coating	Seismic Assessment and Improvements			\$ 90,000		\$ 100,000	\$ 100,000	\$ 100,000				\$ 390,000
			View Drive and Rosemont								\$ 210,000			\$ 360,000
	General System Improvements	Willamette Pump Station MCC Assessment and Upgrades	Bland	\$ 150,000										\$ 150,000
			Upgrades		\$ 100,000									\$ 100,000
Demolish Abandoned View Drive Site Facilities			\$ 20,000			\$ 75,000							\$ 75,000	
	SCADA System Upgrades		\$ 150,000									\$ 150,000		
Capital Maintenance Plan (CMP) Total			\$ 616,000	\$ 690,000	\$ 665,000	\$ 440,000	\$ 560,000	\$ 520,000	\$ 520,000	\$ 420,000	\$ 4,500,000	\$ 8,445,000		
Capital Improvement Projects														
Storage and Pumping Facilities	Bolton Pressure Zone	Bolton Reservoir Replacement (4.0 MG)	\$ 500,000	\$ 4,000,000	\$ 3,500,000								\$ 8,000,000	
	Bland Pressure Zone	Bland Reservoir No. 2 (0.3 mg)					\$ 125,000	\$ 400,000					\$ 525,000	
	Rosemont Pressure Zone	Bland Interie Supply to Rosemont							\$ 1,250,000				\$ 1,250,000	
	Emergency Interie	Emergency Interie PS Expansion		\$ 75,000									\$ 75,000	
<i>Sub-Total</i>			<i>\$ 500,000</i>	<i>\$ 4,075,000</i>	<i>\$ 3,500,000</i>	<i>\$ -</i>	<i>\$ 125,000</i>	<i>\$ 400,000</i>	<i>\$ 1,250,000</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ 9,850,000</i>	
Distribution System Piping	Willamette Pressure Zone	CIP - 1	\$ 1,187,200				\$ 311,910						\$ 1,187,200	
		CIP - 2					\$ 311,910						\$ 311,910	
		CIP - 3						\$ 505,605					\$ 505,605	
		CIP - 4									\$ 351,125		\$ 351,125	
		CIP - 5										\$ 355,625	\$ 355,625	
		CIP - 6										\$ 84,750	\$ 84,750	
		CIP - 7									\$ 244,750		\$ 244,750	
		CIP - 8									\$ 170,625		\$ 170,625	
		CIP - 9										\$ 92,875	\$ 92,875	
		CIP - 10									\$ 122,500		\$ 122,500	
		CIP - 11									\$ 176,500		\$ 176,500	
		CIP - 12									\$ 146,915		\$ 146,915	
		CIP - 13									\$ 518,375		\$ 518,375	
		CIP - 14									\$ 320,625		\$ 320,625	
		CIP - 15										\$ 90,000	\$ 90,000	
		CIP - 16										\$ 172,150	\$ 172,150	
		CIP - 17										\$ 63,375	\$ 63,375	
		CIP - 18										\$ 224,750	\$ 224,750	
		CIP - 19										\$ 196,540	\$ 196,540	
		CIP - 20										\$ 66,500	\$ 66,500	
	CIP - 21										\$ 250,170	\$ 250,170		
	CIP - 22										\$ 138,330	\$ 138,330		
	CIP - 23										\$ 89,500	\$ 89,500		
	CIP - 24										\$ 68,875	\$ 68,875		
	CIP - 25										\$ 40,000	\$ 40,000		
	CIP - 26										\$ 151,000	\$ 151,000		
	CIP - 27										\$ 68,250	\$ 68,250		
	CIP - 28						\$ 194,250				\$ 68,375	\$ 68,375		
	CIP - 29									\$ 289,000		\$ 289,000		
	CIP - 30										\$ 31,000	\$ 31,000		
	CIP - 31										\$ 26,625	\$ 26,625		
	CIP - 32										\$ 53,125	\$ 53,125		
	CIP - 33										\$ 46,125	\$ 46,125		
	CIP - 34										\$ 95,625	\$ 95,625		
	CIP - 35										\$ 48,125	\$ 48,125		
	CIP - 36										\$ 30,750	\$ 30,750		
	CIP - 37										\$ 294,750	\$ 294,750		
	CIP - 38										\$ 153,500	\$ 153,500		
	CIP - 39										\$ 88,875	\$ 88,875		
	CIP - 40										\$ 94,875	\$ 94,875		
	CIP - 41										\$ 36,625	\$ 36,625		
	CIP - 42										\$ 306,405	\$ 306,405		
	CIP - 43										\$ 39,875	\$ 39,875		
	CIP - 44										\$ 107,625	\$ 107,625		
	CIP - 45										\$ 306,360	\$ 306,360		
	CIP - 46										\$ 162,500	\$ 162,500		
	CIP - 47										\$ 75,250	\$ 75,250		
	CIP - 48										\$ 340,955	\$ 340,955		
	CIP - 49									\$ 939,600		\$ 939,600		
	CIP - 50										\$ 99,375	\$ 99,375		
	CIP - 51										\$ 26,350	\$ 26,350		
	CIP - 52										\$ 50,750	\$ 50,750		
	CIP - 53										\$ 85,000	\$ 85,000		
	CIP - 54									\$ 779,035		\$ 779,035		
	CIP - 55										\$ 123,500	\$ 123,500		
	CIP - 56										\$ 378,500	\$ 378,500		
	CIP - 57										\$ 107,500	\$ 107,500		
	CIP - 58										\$ 28,125	\$ 28,125		
	CIP - 59										\$ 51,375	\$ 51,375		
	CIP - 60										\$ 73,000	\$ 73,000		
Pressure Reducing Facilities	Senio Drive PRV Station					\$ 120,000						\$ 120,000		
<i>Sub-Total</i>			<i>\$ 1,187,200</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ 626,160</i>	<i>\$ 505,605</i>	<i>\$ 779,035</i>	<i>\$ 939,600</i>	<i>\$ 6,262,570</i>	<i>\$ 1,911,605</i>	<i>\$ 13,211,775</i>	
Supply	Emergency Supply	Tigard/Lake Oswego Interie	\$ 700,000			\$ 1,500,000							\$ 2,200,000	
<i>Sub-Total</i>			<i>\$ 700,000</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ 1,500,000</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ 2,200,000</i>	
Other	Planning Studies	Water System Master Plan Update									\$ 150,000		\$ 150,000	
<i>Sub-Total</i>			<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ 150,000</i>	<i>\$ -</i>	<i>\$ 150,000</i>	
Capital Improvements Plan (CIP) Total			\$ 2,187,200	\$ 4,075,000	\$ 3,500,000	\$ 1,500,000	\$ 751,160	\$ 905,605	\$ 2,019,035	\$ 939,600	\$ 6,412,570	\$ 1,911,605	\$ 24,411,775	
CMP & CIP TOTAL			\$ 2,997,200	\$ 4,765,000	\$ 4,105,000	\$ 1,940,000	\$ 1,291,160	\$ 1,425,605	\$ 2,549,035	\$ 1,359,600	\$ 10,912,570	\$ 1,911,605	\$ 33,256,775	

\$ 15,098,360
\$ Year Total
\$ 3,019,672
Annual Ave.

\$ 20,432,600
\$ Year Total
\$ 2,554,075
Annual Ave.

\$ 31,345,170
\$ Year Total
\$ 1,567,259
Annual Ave.

**An Analysis of Supply Reliability Options
for
City of West Linn, Oregon**

Facts about West Linn's Water Supply Facilities:

- West Linn's 24-inch diameter transmission main suspended from the Abernethy Bridge and the 1913 vintage Bolton Reservoir are vulnerable to seismic events.
- West Linn's Charter restricts its ability to generate sufficient rate revenues to address these vulnerabilities in a timely and comprehensive manner.
- If West Linn's 24-inch pipeline or the Bolton Reservoir were inoperable, West Linn would run out of water in about one day.

Sources: 2008 West Linn Water Master Plan; October 2010 Utility Advisory Board (UAB) meeting handouts.

Options to address critical water supply reliability deficiencies:

Option #	Description	Cost (\$ millions)	Risks/Issues	Relative ease of implementation (High, medium, low)	Relative Rank
1	Expand LO/WL Intertie and contract with TVWD, Tualatin, and Tigard for connection to and supply from the WCSJ, and build 4 MG Bolton Reservoir.	\$11-\$12	Not a viable option. Tigard assumes WL supply risk. Additional piping beyond that assumed by WMP. Blending unfiltered, chloraminated Portland water with filtered, ozonated water. Requires ICA with several entities. Vulnerability of exist. 24-inch diameter pipeline remains.	Medium	2
2	Contract for 6 million gallons per day (mgd) of surplus capacity from expanded LO/Tigard WTP to WL ² . Replace exist. Bolton Reservoir with new 4 MG reservoir and add third pump at Intertie PS.	\$9.0	Least expensive option. Vulnerability of exist. WL 24-inch diameter pipeline is mitigated with alternate LO/Tigard supply. Immediate supply deficiency of 4 MG is replaced by up to 6 mgd of supply available through LO/Tigard. 6 mgd during peak season will diminish over time, but is likely available 7-8 months/year during non-peak season. Options exist to mitigate this risk. Does not completely avoid need for future capital expenditures by WL.	Medium	1

¹ Ranking based on a combination of cost, ease of implementation and ability of option to reduce supply reliability risks. A rank of 1 indicates the most attractive option.

² Assumes contract terms do not require buy-in to surplus capacity at expanded LO/Tigard WTP (valued @ ~ \$1M to \$2M). Other contract terms may apply.

Options assume replacement of exist. 2 MG Bolton Reservoir with new 4 MG reservoir. Estimated cost @ \$8.7M (per City of West Linn in 2011 dollars).

3.8	Ensure that commercial development along Willamette Drive does not negatively impact nearby single-family residential neighborhoods.	Enforce noise standards designed to shield residential neighborhoods from Willamette Drive area noise impacts.	City Planners	<ul style="list-style-type: none"> Development Review Process
		Provide physical buffering between single family neighborhoods and mixed use and commercial areas along the Robinwood Main Street.	City Planners	<ul style="list-style-type: none"> Development Review Process
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.	Require the Lake Oswego Treatment Facility to provide appropriate landscape screening and context-sensitive architecture as part of any facility expansion plan.	City Planners, City Engineers	<ul style="list-style-type: none"> Development Review Process
		Take advantage of the need to replace Lake Oswego water pipelines along Robinwood streets to provide street improvements and needed pedestrian routes.	City Planners, City Engineers	<ul style="list-style-type: none"> Development Review Process
		Ensure that construction activities associated with any facility expansion and ongoing service and maintenance activities minimize impacts upon neighboring residential streets and homes.	City Building Official, City Engineers	<ul style="list-style-type: none"> Development Review Process
		Mitigate negative impacts of treatment facility expansion on the surrounding neighborhood with positive contributions to transportation connectivity between Kenthorpe and Mapleton Drives.	City Planners, City Engineers	<ul style="list-style-type: none"> Development Review Process
3.10	Make better use of the existing Robinwood Fire Station Site for neighborhood purposes.	Consider use of the Robinwood Fire Station site for a new city police station.	City Manager, Police Department	<ul style="list-style-type: none"> Public Facilities Plan
		Consider use of the Robinwood Fire Station site as a neighborhood community center.	City Manager	<ul style="list-style-type: none"> Public Facilities Plan
		Provide proper building and landscape maintenance of the fire station property.	City Manager, City Parks Department	<ul style="list-style-type: none"> City Budgeting Process

IMPLEMENTATION SCHEDULE

The Robinwood Neighborhood Plan contains an ambitious set of goals, policies, and potential action measures. The following table is intended as a general guide to indicate city priority in accomplishing these policies. This table is intended only for general guidance, and can be changed by the City of West Linn due to changing circumstances, new priorities, or new opportunities without the need to amend this table.

The priorities are divided into three categories: short-range (within the next two years), medium-range (between two and five years), and long-range (more than five years). Some measures, even if given a short-range priority, may in fact be on-going and thus continue into the indefinite future.

Neighborhood Plan Policies		Action Measures	Priority
1.1	Provide a continuous bike lane along Willamette Drive.	Provide 6 to 12 foot wide concrete sidewalks on both sides of Willamette Drive, with landscaped areas between the sidewalk and street where right of way width permits it.	Medium-range
1.2	Reconcile the competing interests of cross-traffic onto and over Willamette Drive with the needs of through traffic.	Restrict access to Highway 43 from Robinwood Way, by limiting it to right turns in and out. Determine whether a signal light at the intersection of Highway 43 and Walling Way/Walling Circle is still necessary and appropriate. Realign the intersection of Cedaroak Drive and the entrance to the Robinwood Shopping Center to create a four-way intersection. Provide safe pedestrian crossings at all streets intersecting with Willamette Drive and at high traffic areas. Coordinate road projects between utility and construction companies so that the full area is completed at one time. Synchronize traffic signals along Willamette Drive to ensure smooth traffic flow.	Medium-range
1.3	Beautify the length of Willamette Drive with a comprehensive and consistent streetscape.	Place a West Linn gateway sign along Willamette Drive at the northern entrance to the City. Plant consistent types of street trees and associated landscaping along the sides of Willamette Drive and in the median where turn lanes are not needed. Place consistent and attractive lighting fixtures along the length of Willamette Drive Place all existing and proposed utilities underground along Willamette Drive. Where possible provide drainage swales in landscaped medians in lieu of covered storm drainage along Willamette Drive.	Medium-range
1.4	Provide a continuous bike lane along Willamette Drive.	Provide a paved bike lane at least five feet wide along both sides of Willamette Drive. Provide striping for bicycle lanes when designing intersections and turning lanes along Willamette Drive. Consider use of a multi-use path for both pedestrians and bicyclists where right of way is limited along Willamette Drive.	Medium-range
1.5	Keep Willamette Drive narrow enough to keep the neighborhood united while accommodating state highway traffic.	Provide two travel lanes and a center median for turns, crossings, and landscaped areas along the entire length of Willamette Drive.	Medium-range

2.6	Require commercial properties along Willamette Drive to meet ongoing standards for maintenance, cleanliness, and aesthetic attractiveness	Review existing municipal code standards for commercial property maintenance, and make revisions to ensure the upkeep of commercial properties as appropriate. Provide adequate city staff resources to ensure compliance with municipal codes for the upkeep of commercial property.	Short range
3.1	Rezone areas inappropriately zoned for multi-family residential uses to more appropriate residential zoning districts.	Work with neighbors and property owners in the College Hills Estates Neighborhood and adjacent areas on an appropriate zoning district that reflects the existing neighborhood's development..	Short-range
3.2	Ameliorate the negative impacts of the use of flag lot designs in the subdividing of existing lots.	Adopt Community Development Code provisions to reduce and discourage the use of flag lots to include only those that are compatible with the existing neighborhood. Adopt Community Development Code provisions requiring land divisions that create "flag lots" to submit concurrent design review applications showing proposed building orientation and building design that provide maximum separation from and privacy for existing adjacent single-family homes. Adopt Community Development Code provisions ensuring that existing homes on lots that are further divided continue to meet or exceed all design standards and regulations for single-family homes.	Short-range
3.3	Provide appropriate pedestrian facilities along residential streets.	Provide sidewalks on streets near Cedaroak Elementary School for student safety Provide sidewalks on streets leading to and from the Robinwood Main Street area On streets with topographic or environmental constraints, accommodate pedestrians with grade separated asphalt paths in lieu of sidewalks on at least one side of the street.	Short-range
3.4	Implement "green street" concepts for residential streets.	Amend the City Community Development Code and Engineering Standards to explicitly allow "green street" designs. Adopt a map of streets within the Robinwood Neighborhood where "green street" designs will be required for all new development and required when streets are improved by the City Require undergrounding of utilities along residential streets as development or street reconstruction occurs.	Short-range
3.5	Protect existing single-family neighborhoods from over-sized infill residences and neighboring commercial development.	Adopt Community Development Code provisions to measure building height based upon the actual height of a building from base to top of roof. Adopt Community Development Code provisions to create a sliding scale for allowed floor area ratio (FAR) for single-family homes that reduces the FAR for larger lots. Adopt Community Development Code provisions to reduce the bulk and mass of single-family homes along their front and side yards. Adopt Community Development Code provisions that encourage single-family homes with lower height by reducing allowed low coverage for taller homes. Study an infill design review process. Do not let new commercial development place unacceptable impacts such as traffic, noise, lighting, and building bulk upon existing residential neighborhoods	Short-range

3.6	Maintain and enhance affordable housing opportunities as part of a diverse Robinwood neighborhood.	Investigate options for providing incentives to construct new affordable housing in mixed use areas of the Robinwood Main Street Area.	Long-range
		Adopt Community Development Code standards that allow larger accessory dwelling units in accessory structures than is currently allowed citywide for the Robinwood neighborhood provided that the accessory structures provide separation from and privacy for neighboring single-family homes	Short-range
3.7	Use pedestrian shortcuts to connect existing streets.	Place pedestrian pathways along existing but unimproved public street right of ways Acquire right of way and construct pedestrian pathways from willing property owners between streets where such a path would provide a significant pedestrian shortcut	Medium-range
3.8	Ensure that commercial development along Willamette Drive does not negatively impact nearby single-family residential neighborhoods.	Enforce noise standards designed to shield residential neighborhoods from Willamette Drive area noise impacts. Provide physical buffering between single family neighborhoods and mixed use and commercial areas along the Robinwood Main Street.	Short-range
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.	Require the Lake Oswego Treatment Facility to provide appropriate landscape screening and context-sensitive architecture as part of any facility expansion plan. Take advantage of the need to replace Lake Oswego water pipelines along Robinwood streets to provide street improvements and needed pedestrian routes. Ensure that construction activities associated with any facility expansion and ongoing service and maintenance activities minimize impacts upon neighboring residential streets and homes. Mitigate negative impacts of treatment facility expansion on the surrounding neighborhood with positive contributions to transportation connectivity between Kenthorpe and Mapleton Drives.	Long-range
3.10	Make better use of the existing Robinwood Fire Station Site for neighborhood purposes.	Consider use of the Robinwood Fire Station site for a new city police station. Consider use of the Robinwood Fire Station site as a neighborhood community center.	Long-range
		Provide proper building and landscape maintenance of the fire station property.	Short-range
4.1	Preserve natural riparian corridors through Robinwood and enhance their value as wildlife habitat.	Implement Metro's standards for protection of stream corridors and adjacent upland habitat. Require natural area setbacks along the Willamette River frontage.	Short-range
4.2	Preserve hillside areas above Willamette Drive as a forested scenic backdrop.	Require preservation of steep slope areas above Willamette Drive	Long-range
4.3	Properly maintain publicly owned natural areas	Provide adequate city funding for maintenance of publicly owned natural areas.	Short range
5.1	Increase access to Robinwood Park and place appropriate recreational facilities within it for City residents.	Extend Lazy River Drive to provide access to Robinwood Park	Medium-range
		Provide appropriate active recreational and community facilities within Robinwood Park	Short range
5.2	Provide better access from Robinwood to Mary S. Young Park and its amenities.	Provide pedestrian walkways to Mary S. Young Park from Willamette Drive and Mapleton Drive.	Medium-range
6.1	Encourage cooperation between Robinwood and other city neighborhood associations.	Coordinate between the Robinwood neighborhood and other city neighborhoods, on areas of common interest that affect the Robinwood neighborhood.	Short-range

MINUSES OF LAKE OSWEGO TIGARD WATER PROJECT:

2. Substantial Negatives for the City of West Linn in the proposed Inter-tie "benefit"

- The proposed LOT inter-tie agreement is a rewrite of the existing 2003 emergency water inter-tie agreement with no new substantial benefits.
- Terminates in 29 years with emergency water only being supplied if available. Since water will only be supplied if available, there is no guaranteed access to emergency water.
- Does not solve long term water treatment and storage problems for West Linn.
- Distracts from meaningful solutions of water problems.
- No guarantee of any renewal.
- West Linn's residents and businesses get no meaningful benefits.
- West Linn's residents and businesses get all of the problems.
- Undermines harmonious, homogenous and neighborly atmosphere of our entire community by creating conflicts.
- Liability to community in thirty or forty years when new standards are employed.
- Takes away time from volunteers and staff that could be contributing to positive benefits.
- Hwy 43 though disrupted is not being improved to a level that complies with city standards for other developers
- No tax revenue from LOT
- Lake Oswego and Tigard receive all of the benefits.
- Loss of Tax revenue for West Linn due to tax exempt status while LO expands tax base.
- Construction activity above ground for pipeline staging area interferes with use of city parks.
- Existing six inch water main on Mapleton blocks the path of the proposed four foot pipe, requiring replacement with a new eight inch pipe, with West Linn paying 50% of the cost to install the new eight inch pipe.
- Millions of dollars made by somebody on the backs of residents of West Linn.
- Causes considerable loss of staff time dealing with applications and process.

More items to conciser:

1. The past granted Conditional Uses were for minor changes with little impact on the surrounding neighborhood or West Linn as a whole.
2. This is a new plant and it can be built any where. LO will continue to supply water to the Marylhurst area of their city.
3. The pipe from their city limits through West Linn to Mapleton will still be in place, thus allowing for the existing inter-tie to remain connected.
4. This would satisfy our water master plan with out having to completely disrupting those on Mapleton, Kenthorp and the entire length of 43 from Interstate 205 to Laurel in LO.
5. There will be trucks running up and down 43 for up to 22 hours a day 6 days a week plus dumping of gravel and loading removed material at all hours day and night with little or no noise abatement.
6. There are 25 homes that either backup or face 43 and another 30 to 40 one block or less from the highway.
7. During one of the Planning Commission hearings Robert Martin broached the subject of the pipe line on 43 being a transportation issue. He asked the cities attorney if this was so. The city's attorney responded that it was. This required the developer to bring 43 up to the standards of our Transportation System Plan and the Hwy 43 Conceptual Design.

Date: January 11, 2013

Subject: West Linn Business Impact Report – Highway 43

RE: Water Treatment Plant (CUP-12-02) and Water Transmission Line (CUP-12-04)

Prepared by: Michael Wilkerson, Ph.D.

Executive Summary

The Lake Oswego Tigard Water Partnership has made assertions that businesses located along the project are not opposed to CUP-12-02 and CUP-12-04. It is important to clarify, a lack of opposition should not be interpreted as tacit support for a project. Nationwide franchises/businesses do not generally take positions on public policy—Wells Fargo, McDonalds, Burgerville and US Bank have all stated, “as a company, we do not take positions on public policy matters.” Walmart noted that impacts will be felt and construction has the potential to make access difficult for customers.

Published literature on the subject of construction impacts to business identifies two categories of businesses—destination and impulse. Destination businesses have stable customer bases, such as doctors or insurance brokers; they do not offer services that are easily substituted by consumers. Impulse businesses, such as markets or restaurants, rely on consumers driving by places of business to generate customers. The literature finds that impulse businesses are more drastically impacted by construction inconveniences. For example, a patient is not likely to change doctors due to road construction, but a consumer can easily substitute the patronage of a restaurant to an adjacent location to avoid construction. Of the approximately 53 businesses located within the West Linn city limits along the Highway 43 proposed construction route, 22 (43%) of them will be open during the water transmission pipeline construction hours. All of the 22 businesses can be classified as impulse businesses and are therefore most susceptible to business impacts during construction.

The literature on measuring the economic impact to businesses due to road construction has primarily been conducted by state DOTs or other government agencies. The methodologies employed have been to survey business owners, measure traffic counts, and to study tax records before and after construction. These studies have consistently found that despite all mitigation efforts, there are net losses to businesses located adjacent to road construction areas. Further, the findings show that certain businesses—impulse businesses—are more likely to experience a reduction in customers as well as revenues.

The Oregon DOT did a study of a road construction site in Sweet Home, Oregon in 2001. The mitigation procedures were very similar to those proposed for the water transmission line, with all of the construction being conducted at night. Despite these mitigation efforts, all of the business in the area experienced a net loss in customers; impulse businesses were hardest hit with a fast food restaurant experiencing a decrease of 63.9% in customers and a retail store experiencing a 59.3% decrease. Business owners were surveyed after construction—58% stated they thought they had experienced business losses. Motorists in the area were also surveyed—59% stating they experienced difficulty getting into and out of businesses in the construction zone. The impact to businesses in a community with the profile of Sweet Home would be reduced compared to a larger more urban area, such as West Linn, due to the lack of substitutes.

Studies conducted in other areas found similar results; including the use of tax records to measure revenue prior to and during construction periods. A 1996 study in Caldwell, TX found that over 50% of businesses showed a reduction in revenue. Results of business owners surveyed showed that 37% reported sales declines of over 25%. A 1993 Houston, TX study using tax records found general merchandise stores—impulse businesses—experienced a 28% reduction in gross revenue during construction, while food stores experienced a 37% decrease.

The relevant literature does not identify traffic delays or congestion as the sole cause, or even a requirement for business damage caused by construction. Studies found that reduced revenues were also caused by other conditions; consumer behavior can be influenced by a variety of other factors such as restriction of accesses to businesses, the perception of traffic congestion, or aggravation that descends on an economic area due to the unsettling aspect of the construction site. Traffic mitigation efforts can only reduce the damage to businesses, but the published literature which accounts for these efforts, has found that they are not able to eliminate decreased business revenues during and often times after the end of construction. Finally, it should be noted, the combined effects of these two projects are magnified given that construction will be potentially occurring up to 14 hours a day, the referenced literature focuses on examples where a typical 8 hour work period is employed.

Overview

The scope of this report will focus on identifying the potential adverse business impacts associated with the road construction projects for businesses located along Hwy 43 in West Linn, OR. The proposed projects of the Water Treatment Plant (CUP-12-02) and Water Transmission Line (CUP-12-04) lack an Environment Impact Study, identifying any potential impact to businesses as a result of the construction work. This report will focus on quantifying the direct economic impact of the proposed projects.

The West Linn Community Development Code Subsection 60.070 that establishes the Approval Standards and Conditions for conditional use applications Subsection CDC 60.070 (3) (A) states “the granting of the proposal will provide for a facility that is consistent with the overall needs of the community.” In addition, the City of West Linn Comprehensive Plan describes a Conditional Use as follows:

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.

Despite the requirements that a facility meets “the overall needs of the community” and be “of overall benefit to the community”, there has not been any economic impact study conducted that measures the direct or indirect benefits or costs to the West Linn community associated with these proposed projects. Without sufficient data available to predict or measure the business and economic impact of these two projects, the next best alternative is to look at previously conducted research on projects of similar size and scope to the currently proposed projects.

What follows will be a summary and analysis of the potentially impacted businesses located along Hwy 43 within the West Linn city limits. The next section will briefly review the traffic count calculations, followed by a literature review of studies measuring the business impact of construction projects.

Impacted Businesses

The Table 1 below indicates all of the businesses situated on Hwy 43 located within the West Linn city limits as identified in Appendix D of the *West Linn Land Use Application Traffic Memorandum* submitted by the Lake Oswego Tigard Water Partnership and prepared by DKS Associates¹. Two additional categories were attached to the list of businesses, first a categorization of the business hours of operation that conflict with the proposed construction schedule (8pm or later) for the water transmission line. Of the 53 businesses located in the construction corridor, 22 (42%) of the total have hours of operation that directly conflict with the proposed construction schedule for the water transmission line.

The second column added was a categorization based on the type of business—destination or impulse. Destination businesses are businesses that have stable customer bases, such as doctors or insurance brokers². Destination businesses can be defined as businesses that do not have an alternative that can be easily substituted by their customer base—that is to say, customers are not likely to change their doctor because of construction delays or inconvenience. Impulse businesses are more dependent on customers driving by, therefore alternative locations can easily be substituted. Examples of common impulse businesses are markets, restaurants and retail stores; often times the same store brand is located nearby, whereby customers can easily change their habits to avoid any inconvenience. Only 18 of the businesses (34%) are destination businesses, therefore the majority (66%) are more susceptible to customer substitution effects. In addition, all of the 22 businesses that are open during the proposed construction hours for the water transmission line are considered impulse businesses, and are therefore more likely to be impacted by road construction at ingress/egress points on Hwy 43.

¹ [http://westlinnoregon.gov/sites/default/files/projects/12 - traffic.pdf](http://westlinnoregon.gov/sites/default/files/projects/12_-_traffic.pdf)

² <http://construction.transportation.org/Documents/FLBusinessAccommodationReport.pdf> for more information on destination businesses.

Table 1

#	Business Name	Hours	Open 8pm or Later	Destination Business
1	Burgerville	6am to 11pm	Yes	No
2	Family Dentistry	7am to 5pm	No	Yes
3	Guitar Lessons	by appt.	No	Yes
4	Big Brother Big Sister	Open until 7	No	Yes
5	Woodbury and Malone	Open until 5	No	Yes
6	Philadelphia's Steaks	10am to 10pm	Yes	No
7	American Family Insurance	830am to 530pm	No	Yes
8	Edward Jones	8am to 430pm	No	Yes
9	The Dog Club	Open until 7	No	No
10	Cedar Oak Professional Building	630am to 630pm	No	Yes
11	Sourdough Willy's	7am to 2pm	No	No
12	Thai Orchard	1130am to 930pm	Yes	No
13	Bugatti	5pm to 10pm	Yes	No
14	Body Heart Soul Massage	9am to 830pm	Yes	No
15	Accurate Hearing	9am to 530pm	No	Yes
16	Medical Supply	-	No	Yes
17	72 Degrees	9am to 6pm	No	Yes
18	McDonalds	6am to 11pm	Yes	No
19	Starbucks	5am to 7pm	No	No
20	Creative Nail Care	10 am to 7pm	No	No
21	State Farm	9am to 6pm	No	Yes
22	Modern Eyes	9am to 6pm	No	No
23	Oh Teriyaki	11am to 8pm	Yes	No
24	Bank of the West	9am to 6pm	No	Yes
25	Dialysis	6am to 3pm	No	Yes
26	LaBell Nails	930am to 7pm	No	No
27	Senor Taco	10am to 9pm	Yes	No
28	7 Eleven	24 hours	Yes	No
29	Cleaners	7am to 630pm	No	No
30	Ying Bun Restaurant	11am to 930pm	Yes	No
31	Walmart	24 hours	Yes	No
32	Healthy Pet	10am to 7pm	No	No
33	H & R Block	10am to 6pm	No	Yes
34	Baskin Robins	11am to 10pm	Yes	No
35	Hairport	830am to 730pm	No	No
36	Cleaners	7am to 7pm	No	No
37	Boutique	10am to 5pm	No	No
38	Round Table Pizza	11am to 10pm	Yes	No
39	Johnstone Financial Advisors	Open until 430	No	Yes
40	Wells Fargo	9am to 6pm	No	Yes
41	Premiere Martial Arts	9am to 915pm	Yes	No
42	Chevron	5am to 10pm	Yes	No
43	Linn City Pub	10am to 11pm	Yes	No
44	Cleaners	7am to 630pm	No	No
45	Suns Up	9am to 9pm	Yes	No

46	UPS Store	630am to 830pm	Yes	No
47	United Studios of Self Defense	11am to 9pm	Yes	No
48	Dentist	Open until 430	No	Yes
49	Vet	8am to 6pm	No	Yes
50	Subway	7am to 10pm	Yes	No
51	Liquor	10am to 8pm	Yes	No
52	Oil Can Henry's	8am to 7pm	No	No
53	Kaady Car Wash	7am to 830pm	Yes	No
TOTAL			22	18
			42%	34%

In a memorandum summarizing the assertions and responses prepared by the Eric Day of LOTWP, Section 3 of the partnership response states “four large 24/7 businesses along Hwy. 43 have submitted written testimony stating that they are not opposed to the project” (Page 74)³. It is important to clarify, a lack of opposition should not be interpreted as tacit support for a project. In fact, the exhibits demonstrate the key difference in letters attached from potentially affected businesses. Wells Fargo (page 84), McDonalds (page 86), and US Bank (page 89) all clearly state in their letters, “as a company, we do not take positions on public policy matters.” Burgerville (page 85) states, “our position is to neither oppose nor support any CUP, or this project as a whole.” Walmart (page 88) in their letter asserts, “Unfortunately, our store is one of a few that operates 24 hours a day. So, the impacts will be felt.... any construction that takes place in front of our store has the potential to make access difficult for our customers.”

Revised Traffic Count Calculations

The memorandum prepared by the Lake Oswego Tigard Water Partnership for the West Linn Planning Commission is spurious and misleading in their presentation of the proposed impact of the construction on baseline traffic counts. On page 7 of their memorandum, they present tables 3 and 4 in an effort to show the

³ http://westlinn.granicus.com/MetaViewer.php?view_id=2&event_id=131&meta_id=12385

increase in ADT one-way trips due to construction⁴. In doing so, they reference the additional traffic to be attributed to construction vehicles during their hours of work, but then compare the construction period to the entire day count for the baseline. In doing so, they are reducing the impact of the construction vehicles. Page 4 of their memo indicates that construction on the WTP will be conducted between 7 a.m. and 4 p.m, while the water transmission pipeline construction is proposed to occur between the hours of 8 p.m. and 5 a.m. It would then follow that the traffic count for the same period of construction should be used as the baseline, not the traffic count for the entire day. Comparing baseline traffic from the work hours will allow for an accurate calculation of the impact from the additional construction vehicles.

Location	Base Traffic Count	Construction Duration	Total Base Traffic Volume	Total Pipeline Construction Traffic	% Increase due to Construction
Mapleton Drive	28	270	7,560	13,180	174%
Highway 43	1294	270	349,380	24,274	7%

In order to calculate the appropriate baselines for comparison, the hour-by-hour count for Hwy 43 was summed from Appendix A in the traffic memo prepared June 18, 2012 by DKS Associates⁵. For the water transmission pipeline, the total traffic count between the hours of 8 p.m. and 5 a.m. was summed for Hwy 43 and equaled 1294, which represents 8% of the 16621 total for a 24 hour period. There is no hour-by-hour breakdown for Mapleton Drive cited in the report, only the 24 hour count of 350. Ideally an hour-by-hour count should be used to calculate an accurate figure for the period in question. Without the actual count available, the next best option is to assume that the same percentage of traffic occurs as on Hwy 43. Therefore, applying 8% of the total daily count of 350 for Mapleton Drive yields a count of 28 for the period between 8 p.m. and 5 a.m. The calculations were adjusted to reflect the new baseline numbers and can be seen in Table 2. As a result

⁴ http://westlinn.granicus.com/MetaViewer.php?view_id=2&event_id=131&meta_id=12340

⁵ <http://westlinn.oregon.gov/sites/default/files/projects/12 - traffic.pdf>

of calculating the traffic during the same hours as construction, rather than the entire 24-hour period, the percentage changed from a .05% to a 7% increase on Hwy 43, and from 13.9% to a 174% increase on Mapleton Drive.

Location	Base Traffic Count	Construction Duration	Total Base Traffic Volume	Total Pipeline Construction Traffic	% Increase due to Construction
Mapleton Drive	203	672	136,416	9408	7%
Kenthorpe Way	116	672	77,950	9408	12%
Highway 43	9683	672	6,506,976	18,816	0.3%

Using the same methodology for the WTP, the hour-by-hour count was used between the hours of 7 a.m. and 4 p.m. Based on the figures in Appendix A, the resultant count was 9683 for Hwy 43—which equals 58% of the 16621 total for 24 hours. As previously noted, there are no hour-by-hour traffic counts for Mapleton drive or Kenthorpe Way. If we assume the same percentage on these two streets as Hwy 43, the adjusted baseline counts should be 203 for Mapleton Drive and 116 for Kenthorpe Way (58% of the 24 hour total). Table 3 shows the updated calculations based on the appropriate baseline traffic counts. The percentage increase changed from 4% to 7% for Mapleton Drive, from 7% to 12% for Kenthorpe Way, and from .2% to .3% for Hwy 43.

Using the appropriate baseline counts had a much more significant effect on the figures for the water transmission pipeline compared to the WTP. It should be noted, an average percentage increase in traffic does not equate to a specific increase to commute times or congestion. Unless the trucks are equally spaced throughout the entire construction work hours, there are going to be periods of higher and lower traffic increases. Increases to the percentage of vehicles on roads are not linearly related to commuting times or congestion. One reason for this is that trucks do not move at the same speed as the typical flow of traffic.

Literature Review

There has not been an extensive amount of research conducted on assessing the economic impact to businesses due to road construction projects. Of the limited extant literature, several studies share similarities in the scope and duration of the proposed projects. The following studies are focused on road construction projects on local highways, not major interstate freeways. The majority of projects focus on lane expansion, rather than updating water transmission lines; however, the impact to businesses are of a similar nature. An important consideration in any study is to understand the geographic and economic environment and resultant bias on the results. Most of the relevant studies were conducted in small towns where there are limited options available for consumer substitution. Any impacts found in these results would minimize the economic impact compared to an urban location where consumers have many other options available without having to travel a long distance.

The methodology employed in all of the studies fall into three main categories, which are either used singularly or in combination, and are as follows:

- (1) Surveys of local business owners: Business owners are voluntarily asked to participate in a survey focusing on perceived impacts on the number of customers and their gross revenue.
- (2) Traffic Counts: Traffic counts were taken before, during, and sometimes post construction to measure any significant changes.
- (3) Official tax records: Researchers obtain tax records and are able to match realized business impacts before and during construction to measure the change in gross revenue.

The Oregon Department of Transportation published a report in 2001 where they studied the business impact of a road construction project in Sweet Home, OR⁶. The project was a pavement preservation project on a 7.5 km stretch of U.S. Route

⁶ http://www.oregon.gov/ODOT/TD/TP_RES/docs/reports/evalmodwztc.pdf

20; there were 60 businesses in the downtown core stretch of construction in the city limits. The scope of the project was described as:

Cold plane pavement removal and placement of new asphalt concrete pavement. Other construction work in the project included installing drainage pipe and appurtenances, signing, guardrail, and traffic signals. Additionally, a major portion of work involved construction of concrete curbs, sidewalks, driveways and traffic islands. The existing roadway through Sweet Home consisted of four lanes (two in each direction) with a center-turn refuge lane in the median “(Page 10)

The mitigation procedure employed was the same as is proposed for the water transmission line—construction was conducted only at night. Although this project is in a smaller and less urban area than West Linn, the project is very similar in size and nature to the proposed construction on Hwy 43. Traffic counts were taken at access points to businesses prior to and during construction in order to determine any possible impact of the construction on the number of customers frequenting the businesses.

Due to technical failure and measurement errors, only 10 sites were able to record traffic counts prior and during the construction periods (note: construction was conducted at night, traffic counts were taken throughout the day to measure total customers). Of the 10 sites, 6 of them experienced traffic count decreases during the construction period. The net decrease was 4.2% for all of the 10 businesses; some businesses were severely affected, incurring decreases of 63.9% for a fast food restaurant and 59.3% for a retail store. Mitigating factors for this data are the scarcity of substitutes for consumers and the seasonality of the data. The baseline (pre-construction) data was taken just prior to the peak season, whereas the construction data was measured in the peak season. Accounting for the seasonality of the data would require an adjustment, which would increase the magnitude of the net decrease in traffic during the construction period.

In addition to traffic counts, surveys of business owners and residents of Sweet Home, OR were conducted to measure their perception of the impact of the

construction. There were 28 business owners who submitted survey responses, 58% of them thought that they lost some business due to the construction. Of the motorists surveyed, 59% stated that they experienced difficulty getting into and out of businesses adjacent to the road construction. In the report, the Oregon Department of Transportation Research Group noted “maintaining customer attraction and access to business during roadway construction projects is a common problem.” (Page 1)

The Sweet Home study did not incorporate sales data into their analysis, an example of a report that surveyed business owners and compared sales data would be the work by Wildenthal and Buffinton in 1996⁷. The project was on a 2.3 mile long highway expansion on a TX-21 stretch located in Caldwell, TX (population 3,000) between 1991 and 1993. In a survey of business managers after the construction period, 24% thought there was no change in the number of customers, 39% thought they lost up to 50% of their customers, while 28% thought they lost more than 50% of their daily customers. Sales data reported by owners was cross-checked with actual data obtained where available; 63% reported a decline in sales, with 37% reporting declines of 25% or more. Of the businesses that submitted actual sales data for review, 50% revealed gross revenue decreases. The net decrease in gross revenue was 5% for all of the businesses that reported sales data, while all businesses in Caldwell during the same period reported a 5% increase. Put differently, the average business in Caldwell increased gross revenue by 10% more than businesses directly impacted by construction. This is significant given the small size of the town and limited options for customer substitution.

Another study to consider is the work by Solminihac and Harrison in 1993⁸. The project was a highway rehabilitation project on U.S. Route 59 in Houston, TX covering 11.6 miles over a 3-year construction period. Businesses were coded into 10 categories, with sales data coming from the research division of the comptroller

⁷ http://www.metrocouncil.org/transportation/ccorridor/EIS/SEA/Wildenthal_Bluffington.pdf

⁸

<http://www.metrocouncil.org/transportation/ccorridor/EIS/SEA/HoustonTXHighwayImpactStudy.pdf>

of public accounts of the State of Texas. They compared the sales data from the study area to the rest of Houston and did not find any impact in the predicted sales data for areas not directly impacted by construction.

The researchers constructed a model based on the 5 years prior to construction and predicted what the gross sales should have been during the construction period. Surveys of business owners revealed that 60% believed that sales were down by 20% or less, while 12% thought sales were down by more than 40%. When looking at sales data during the construction period, it was determined that the retail segment—impulse businesses—were the most affected compared to preconstruction levels. During the construction period general merchandise experienced a 28% decrease in gross revenue, food stores a 37% decrease, automotive outlets a 32% decrease, and home furnishings a 17% decrease. The magnitude of loss is greater than in some other studies due to the fact that there are more options for substitution available in Houston compared to some of the smaller towns of the previous studies.

Another example of a study that primarily utilized business owner surveys was the Florida Department Transportation Research Management Center report authored by Washburn and Ellis⁹. The study focused on 4 road construction projects in the cities of Jacksonville, MacClenny, Tallahassee, and Kissimmee that all lasted approximately 2 years. The report found that in all of the projects, destination businesses were less impacted than impulse businesses. Surveys also asked about the effectiveness of mitigation efforts; it was found that even if a business did not “have all of its access ways closed at the same, it was still adversely affected” (Page 29). In instances where left hand turn lanes were closed, it led to “severe traffic congestion” affecting access to businesses in the work zone (Page 34).

⁹ http://www.dot.state.fl.us/research-center/Completed_Proj/Summary_CN/FDOT_BC354_66_rpt.pdf

Ellis and Agdas published a follow up report to the 2005 study, surveying business owners along two of the construction areas¹⁰. It was reported that two-thirds of business owners thought they were negatively impacted by the construction and that gross revenue decreases ranged from 5% to 25%. In reference to impulse businesses, the authors noted, “difficult access and congestion may encourage customers to avoid the project location. This category of business is particularly sensitive to access and congestion management” (Page 1150).

In addition to published research, there are also numerous anecdotal examples in newspaper articles quoting business owners perception of road construction projects negatively impacting their business. A recent local example published in the *Oregonian* titled “Vic’s Hobby supply in northeast Portland closing after nearly 70 years in business”¹¹ described the impact that road construction of the streetcar line had on his business. The business owner was quoted as saying “Oh, it was just a mess.... I’m guessing it cut revenue by half.”

Conclusion

In the planning commissions final decisions for CUP-12-02 and CUP-12-04, it was found that “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” (Page 3)¹². Additional traffic congestion caused during the WTP construction will impact all of the 50+ businesses located along highway 43. The water transmission line construction will directly impact 22 of those businesses during the proposed works hours. All of the businesses open during the work hours for the water transmission line are more susceptible to construction impact due to

¹⁰ Ellis, R. and Agdas, D., 2010, “Improved Procedures for Business Accommodation on Transportation Construction Projects”. Proceedings of the 2010 Construction Research Congress (CRC) Conference, Banff, Alberta, Canada.

¹¹ http://www.oregonlive.com/portland/index.ssf/2012/12/vics_hobby_supply_in_northeast.html

¹² http://westlinn.granicus.com/MetaViewer.php?view_id=2&event_id=131&meta_id=12334

the impulse nature of their businesses. The average percent increase in traffic due to construction vehicles will be 174% on Mapleton Drive, and 7% on Highway 43 based on appropriate baseline calculations.

Studies cited in the report clearly show that businesses adjacent to construction areas consistently suffer a reduction in customers and loss in revenue. The referenced studies were conducted by state DOTs or other governmental agencies using actual sales tax data, not created for the benefit of private interests. It should be noted that in all of the referenced studies, traffic mitigation procedures were employed, including construction occurring at night. Despite the efforts to mitigate, losses in revenue occurred in the range of 5% to in excess of 50%. The majority of these studies were conducted in small towns where a customer's ability to substitute locations to avoid the construction areas is limited. The impact in an area similar to West Linn could be greater than reported, as there are alternative locations nearby.

The general economic climate at the time of the study is also an important factor to consider. During normal economic conditions, GDP increases at a rate between 3% and 5%. If a company is losing revenue in a situation where all other companies are growing, the damage is more pronounced. The economy is just now starting to show signs of recovery from the worst recession since the Great Depression. Oregon is not expected to recover all of the jobs it has lost during the recession until the end of 2014¹³. Most businesses have experienced reduced revenues over the past several years; they are therefore more susceptible to further income losses than in normal economic conditions. This project will be directly impacting neighborhoods and business for 3 years, so while previous CUPs have not been required to evaluate the cost versus benefits of any project; the size of scope of the potential harm is far greater than previous projects.

The law firm of Garvey, Schubert and Barer created a report on behalf of the LOTWP, which summarizes the partnership's rebuttal to the planning commission

¹³ <http://www.oregon.gov/DAS/OEA/docs/economic/executive.pdf>

decision and other local opposition. Page 5 of the report states "The Partnership will Promote Highway 43 Businesses and Create Jobs" (no emphasis added), and also "Many of the workers working on the project can be counted on to purchase goods and services from local shops, restaurants and service providers during the 28-month construction period"¹⁴. This statement is in direct opposition to the findings of published material on the impact of construction on local businesses. Published research demonstrates that in fact no jobs are created due to construction in adjacent businesses; in fact, the opposite is true whereby the net effect was found to decrease the number of customers and revenue. While it could be true that workers may purchase goods and services from the local businesses, this only mitigates the impact, but does not eliminate the damage to local businesses.

The relevant literature does not identify traffic delays or congestion as the sole cause, or even a requirement for business damage caused by construction. Studies found that reduced revenues were also caused by other conditions; consumer behavior can be influenced by a variety of other factors such as restriction of accesses to businesses, the perception of traffic congestion, or aggravation that descends on an economic area due to the unsettling aspect of the construction site. Traffic mitigation efforts can only reduce the damage to businesses, but the published literature which accounts for these efforts, has found that they are not able to eliminate decreased business revenues during and often times after the end of construction. Finally, it should be noted, the combined effects of these two projects are magnified given that construction will be potentially occurring up to 14 hours a day, the referenced literature focuses on examples where a typical 8 hour work period is employed.

¹⁴ http://westlinn.granicus.com/MetaViewer.php?view_id=2&event_id=131&meta_id=12385

Karie Oakes
1125 Marylhurst DR
West Linn, OR 97068

West Linn City Council
November 19, 2012

Re: Request for the Council to interpret the City Charter Chapter XI as to whether the Lake Oswego Tigard Water Partnership Land-Use Applications 12-02 and or 12-04 triggers a vote of the citizens for unauthorized use of a city park and open space.

Dear Mayor and Councilors:

It appears that the Council is avoiding making an interpretation of Chapter XI of our City Charter as it applies to the Lake Oswego Tigard Water Partnership (LOWTP) Pipeline Project. I request that the Council, at its earliest opportunity, decide if the pipeline project will trigger a vote of the citizens for the unauthorized use of a city park and open space.

West Linn citizens consider Mary S. Young a city park. They use it for recreation and special city sponsored events and they pay for its maintenance and improvements with tax dollars. The City of West Linn designated MSY Park as a city park and it holds a twenty year lease with the state of Oregon to use it as a city park.

West Linn citizens established the City Charter Chapter XI with the intent to protect city parks and open spaces from uses that are not directly needed for the maintenance and recreational use of the park and open space.

West Linn citizens deserve to have a say in this. This is a policy decision. It is the Council's responsibility to interpret the Charter, to give opportunity for the public to testify about it and to make the decision in a public meeting. It is only fair to both citizens and LOTWP that you provide clarification of the policy.

I expect to be able to vote on any use of Mary S. Young Park other than that that is needed for maintenance and recreational use of the park. Historically, Councils have given citizens the opportunity to do so. So I ask you to honor the will of the people and honor our City Charter.

Sincerely,

Karie Oakes



Beery Elsner
& Hammond LLP

******Confidential Attorney-Client Privileged Communication******

October 31, 2011

SENT VIA EMAIL AND FIRST CLASS MAIL

Chris Kerr, Senior Planner
City of West Linn
22500 Salamo Rd
West Linn, OR 97068

Re: Application of Chapter XI of the West Linn Charter to the Tigard/Lake Oswego Pipeline

Dear Chris:

You asked for an opinion from this office regarding whether a potential project that would install a pipeline approximately eighty feet underground of an area designated by the City as open space would trigger the voter approval requirement in Chapter XI, Section 46 of the West Linn Charter. In addition, you inquired whether there are any other options the City should consider in relation to this Charter provision and the potential project.

Short Answer

It is our opinion that the text and context of the Charter section, as well as the legislative history of this provision, indicate that the section is intended to require voter approval for any project that proposes a facility that would decrease the amount of or otherwise interferes with the use of land designated by the City as open space. As applied here, we believe a court would likely conclude that voter approval is not required for the proposed project if one hundred percent of the project is underground and does not in any manner reduce the total amount of or otherwise interfere with the use of land designated by the City as open space. However, should the project decrease the amount of land available or otherwise interfere with the use of the land for open space purposes, a court will likely conclude that voter approval is necessary.

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BEH
BEH

To further support the City's position on this issue, the City Council should adopt an ordinance interpreting Chapter XI of the Charter to resolve any ambiguity related to this project and any similar future projects.

Factual Background

We understand the facts to be as follows. The cities of Lake Oswego and Tigard have entered into a water partnership (hereafter, "Partnership") to increase system capacity to deliver drinking water from the Clackamas River to their respective communities. As part of this project, the Partnership will need to install a new pipeline in the incorporated area of West Linn. One potential area of West Linn where the Partnership could install the pipeline is beneath a section of land that the City has designated as open space under Chapter XI of the West Linn Charter. Although no application has been filed, it is presumed based on previous conversations with representatives of the Partnership that the pipeline will be installed approximately eighty feet below ground. It is unclear at this time whether any part of the pipeline, such as monitoring devices, will be located above ground in any area designated as open space.

Discussion

In addition to other applicable laws, Chapter XI of the West Linn Charter governs the use and disposition of City-owned park land and open space. The Chapter was proposed by the West Linn City Council and enacted by City residents in 2001. It requires voter approval for certain uses of City owned parks and open spaces. Specifically, Section 46(a) of the Charter provides:

[t]he City shall not engage in the lease, sale, exchange or nonauthorized use of City owned park or open space without first receiving voter approval for such lease, sale, exchange or nonauthorized use. Such approval shall consist of a majority of votes cast at a regularly scheduled election in favor of a specific proposal for a lease, sale, exchange or nonauthorized use of City owned park or open space.

The question presented by your inquiry is whether installation by the Partnership of a new pipeline approximately eighty feet under land designated by the City as open space triggers the voter approval requirement in Section 46(a). The City is not intending to sell, lease or exchange

any land that the City has designated as open space to the Partnership for the installation of the pipeline. Thus, the voter approval requirement is triggered only if the installation of the pipeline constitutes a nonauthorized use.

Section 46(b)(2) of the Charter defines a “nonauthorized use” as:

[t]he siting or construction of facilities that are not directly required for the maintenance of the open space or use of said open space as open space. Only facilities directly necessary for the use of open space shall be considered authorized. Uses that shall be specifically considered to be nonauthorized in connection with open space are: water reservoirs, water tanks, telecommunication towers, residential housing, City offices or commercial buildings.

A pipeline to deliver drinking water to the residents of Tigard and Lake Oswego is not directly necessary for maintenance or use of open space in West Linn. Thus, voter approval is required if the pipeline constitutes a “facility” as that term is used in Charter Section 46(b)(2).

Neither the Charter nor the West Linn Municipal Code define the term “facility” for the purposes of Charter Section 46.¹ Likewise, the specific examples of facilities set forth in the Charter as nonauthorized uses – water reservoirs, water tanks, telecommunication towers, residential housing, City offices or commercial buildings – do not include underground water pipelines. As such, there is ambiguity as to whether an underground pipeline such as the one that would be installed as part of the potential Partnership project constitutes a facility for the purposes of Section 46(b).

¹ The West Linn Municipal Code uses the term “facility” or “facilities” in several sections. Yet, none of these sections provide a definition for the purposes of Section 46(b) of the Charter. In addition, these sections provide conflicting guidance as to whether a pipeline such as the one in question here would constitute a “facility.” *Cf.* West Linn Municipal Code §4.165 (referring to water “pipes” not facilities) and §5.477 (referring to storm drainage “facilities”).

I. A court will engage in statutory interpretation to determine whether the proposed project requires voter approval.

Because of this ambiguity, there is a risk that the City could face litigation whether the City requires voter approval for the project or not. If such litigation were to occur, a court will resolve this ambiguity by attempting to construe the meaning of the law by discerning the intent of the voters. See *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610, 612 n.4 (1993); *State v. Allison*, 143 Or. App. 241, 244 (1996). To do so, a court will first examine both the text and context of the Charter section. See *id.* at 610. If the intent is clear from an examination of the text and context of the Charter section, the court will make no further inquiry. See *id.* at 611. If the intent is unclear, the court will then look to the legislative history underlying the Charter provision, and finally, if the intent of the voters remains uncertain, the court would resort to general maxims of statutory construction. See *id.* at 611-612; *Allison*, 143 Or. App. at 244-245.

A. *The text and context of the Charter indicate a “facility” includes only structures that interfere with the use or maintenance of land designated as open space.*

As explained above, to determine the meaning of the word “facilities” as that term is used in Section 46(b), a court will first examine the text and context of the Charter. See *id.* at 610. To define a disputed term that is not otherwise defined by the law, a court will seek to give “words of common usage . . . their plain, natural, and ordinary meaning.” See *id.* at 611. Often, a court will consult dictionaries to discern the plain meaning of an undefined word. See *Potter v. Schlessner Co.*, 335 Or. 209, 213 (2003). But common dictionary definitions are not dispositive and are only a starting point in the absence of evidence that the body enacting the law consulted a particular definition in a particular dictionary at the time of enactment. See *State v. Holloway*, 138 Or. App. 260, 265 (1995).

Here, dictionary definitions provide limited guidance as to whether the potential pipeline in question constitutes a “facility” as that term is used in Section 46(b). The Merriam-Webster dictionary defines a “facility” as “something (as a hospital) that is built, installed, or established to serve a particular purpose.” See <http://www.merriam-webster.com/dictionary/facility> (last visited October 24, 2011). Another dictionary defines the term “facility” as “something designed, built, installed, etc., to serve a specific function affording a convenience or service: transportation facilities; educational facilities; a new research facility.” See

<http://dictionary.reference.com/browse/facility> (last visited October 24, 2011). There is no evidence that the voters consulted either of these dictionaries at the time the law was enacted. Likewise, it seems doubtful that the voters intended such a literal and sweeping definition. See *Ecumenical Ministries of Oregon v. Oregon State Lottery Com'n*, 318 Or. 551, 561 (1994) (rejecting the dictionary definition of the term “casino” as broader than intended by the voters). Thus, while a court might use these definitions as a starting point, it will also likely look to the text of the rest of Section 46(b) as well as the other provisions of that section for guidance regarding what the term “facilities” means. See *id.* (stating other provisions of a law enacted at the same time are part of the context).

The actual text of Section 46(b) aids in understanding what the voters likely intended in using the term “facilities.” As mentioned above, Section 46(b)(2) specifically provides, “[u]ses that shall be specifically considered to be nonauthorized in connection with open space are: water reservoirs, water tanks, telecommunication towers, residential housing, City offices, or commercial buildings.” When a list such as this is provided in the text of a law, a court generally will apply a rule of construction commonly known by its Latin name “*noscitur a sociis*” (the meaning of a word may be known from the accompanying words). In applying this rule, a court will seek to determine the scope of the term “facility” by considering the “common characteristics” of the other enumerated words. See *King City Rehab, LLC v. Clackamas County*, 214 Or. App. 333, 341 (2007). In examining the words included in the Charter, it becomes apparent that each of the words is a facility that is above ground and would reduce or otherwise interfere with the use of land designated by the City as open space. None of the listed words constitute a facility that is completely underground or that leaves the open space in its original size and condition and available for its intended use. In interpreting the Charter, a court will likely seek to limit the application of Section 46(b) to facilities with similar characteristics. As such, a court will likely narrow the dictionary definition of the term “facility” to more closely mirror the common characteristics of the listed facilities. See *State v. Baker-Krofft*, 348 Or. 655, 663 (2010) (narrowing the broad dictionary definition of the word “care,” which appeared in a list with the terms “food” and “medical attention,” to apply only to those essential physical services and attention that are necessary to provide for a dependent person's bodily needs).

The context of Section 46(b) also helps to define the term “facility.” An express statement of intent or purpose in a law may serve as a contextual guide for the meaning of a particular term in the law. See *Warburton v. Harney County*, 174 Or. App. 322, 329 (2001) (relying on express

purpose statement to support construction). But courts may not put policy considerations into the meaning of statutes in place of the words that the enacting body has chosen to use. *See Northwest Natural Gas Co. v. Oregon Public Utility Com'n*, 195 Or.App. 547, 556 (2004). Section 46(e) of the Charter, which was enacted at the same time as Section 46(b), provides an express statement of intent. Specifically, Section 46(e) provides:

[t]he intent of this Charter section is that City-owned park and open space shall be preserved for recreational use and environmental preservation and enhancement and not used for other purposes or sold or exchanged without the approval of the registered voters of the City of West Linn.

In other words, the stated policy reason for the enactment of this Charter provision is to preserve land designated by the City as open space unless the voters consent to its use for another purpose. Based upon this policy, it is unlikely that a court will adopt a definition of the term "facility" that would require voter approval for something such as a pipeline that does not take away from the original size of the open space or otherwise interfere with the use of such space as doing so goes beyond the stated purposes behind the law.

For these reasons, based on the text and context of the law a court will likely conclude that the term "facility" does not include a pipeline for the potential project so long as one hundred percent of the pipeline is underground and does not reduce the total amount of land or otherwise interfere with the use of the land for recreational and environmental purposes. Should any part of the project be above ground, which would take away from the original size of the land designated as open space and interfere with the use of the land as open space, a court would likely reach the opposite conclusion and rule that the project requires voter approval.

B. The legislative history of Section 46 of the Charter supports the conclusion that a "facility" includes only structures that are built above ground and interfere with the use or maintenance of land designated as open space.

It is unlikely that a court will look to legislative history to support its conclusion as the text and context of the law clarify the ambiguity created by the application of Charter Section 46 to the potential project. However, the legislative history of this Charter provision supports the analysis above should the court decide to rely on such information.

When laws are enacted by initiative, legislative history includes statements contained in the voters' pamphlet. *See Allison*, 143 Or. App. at 251. It also includes other "contemporaneous sources" such as newspaper stories, magazine articles and other reports from which it is likely that the voters would have derived information about the initiative. *See id.* In this case, two documents that constitute legislative history - the explanatory statement for the measure from the voters' pamphlet and the Council resolution placing the measure on the ballot - contain language that would support the analysis above. Specifically, the explanatory statement provided to the voters stated, "[t]he intent of the proposed Charter amendment is to preserve parks and open space for recreational uses and environmental protection." In addition to reiterating this purpose, the Council resolution provides, "[t]he people of the City should be consulted on matters that would limit the amount of parks and open spaces."

Thus, the legislative history demonstrates that the purpose behind this Charter provision is to maintain land designated by the City as open space and to not take away any portion of that land without voter approval. As explained above, the installation of a pipeline that is one hundred percent below ground would maintain the open space and not reduce the amount of the land designated as open space. Based on this information, a court would likely conclude that permitting the installation of such a pipeline without voter approval would be consistent with the intent of Charter Section 46.

C. General maxims of statutory construction also support the conclusion that a "facility" includes only structures that are built above ground and interfere with the use or maintenance of land designated as open space.

It is even more unlikely that a court would conclude that the meaning of the term "facility" remains uncertain after examining the text, context, and legislative history of Charter Section 46. However, if a court remained uncertain, it would resort to general maxims of statutory construction to aid it in resolving the remaining uncertainty. *See PGE*, 317 Or. at 612. One of the maxims on which the courts often rely is that, in the absence of other clear indications of legislative intent, courts should attempt to reconstruct what the enacting body would have done had it confronted the issue at hand. *See Windsor v. Judd*, 321 Or. 379, 387 (1995). Courts accomplish this by selecting the construction that most completely effectuates the general policies reflected by the available indicia of legislative intent. *See id.* Here, there are two possible interpretations: (1) any facility not directly related to the use of open space, regardless

of its impact on the open space, requires voter approval; or (2) only facilities that are not directly related to the use of the open space and that have an impact on the use or preservation of the open space require voter approval. It is likely that a court will conclude the second interpretation applies as doing so preserves the open space without unduly hampering the City's administrative functions or costing the taxpayers the expense of an election for a project that will have no impact on the preservation of open space.

For these reasons, if litigation were to occur, a court will likely conclude that the potential project does not require voter approval so long as one hundred percent of the pipeline is underground and does not impact the preservation of open space.

II. The City could strengthen its position by enacting an ordinance to interpret Charter Section 46.

The above analysis is based upon the law as it currently exists. The City could strengthen its position in any litigation by enacting an ordinance to interpret Section 46 of the Charter. Such an ordinance could further clarify the scope of the law for the proposed project and similar future projects. In enacting such an ordinance, the Council could maintain its role as the policymaker for the City by interpreting the scope of Section 46 without having to rely upon a court to do so. Although such an ordinance is not free from potential challenge, so long as it does not conflict with the Charter, a court will likely defer to the Council's policy decision. *See Harder v. City of Springfield*, 192 Or. 676, 683 (1951). This office is more than happy to assist the City in drafting such an ordinance if the Council desires.

Thank you for the opportunity to provide the City of West Linn with assistance in this matter. Please do not hesitate to contact us if you have any questions regarding this advice.

Sincerely,



Pamela J. Beery

PJB/CAJ/ch

cc: Chris Jordan, City Manager
Chad Jacobs and Chris Crean, BEH

Good evening, I am Norm King and I live at 19420 Wilderness Drive.

Honorable Mayor, Councilors, City and LOT staff and Citizens of West Linn

My comments will concern the Compatibility issue and compliance with the Comprehensive Plan.

- Last night Scott Gerber read us the definition of Compatible.
“Capable of orderly, efficient integration and operation with other elements in a system with no modification or conversion required”
- Compatibility is very important in West Linn. That is why you will find it throughout the Comprehensive Plan. I was on the Planning Commission that prepared and adopted the current Comp Plan, as was Councilor Carson.
- I had planned to prepare a listing of relevant sections of the Comp Plan and give you an analysis of LOT’s compliance. I can’t do that in 3 minutes. So, I will quote 3 or 4 of them and provide my opinion of compliance.
- **“New construction and remodeling shall be designed to be compatible with the existing neighborhood through appropriate design and scale”.**
- **“Protects residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”**
- **“Commercial development shall be planned at a scale that relates to its location in the district”.**

- **“Requires that any development of existing land or buildings be completed in a manner which conforms to the adopted neighborhood plan”.**
- **“Integrates aesthetically pleasing commercial development with residential uses”**
- **“Require that new development be served by underground facilities”.**
- **“Encourage undergrounding of existing facilities”**

“Require utilities to remove abandoned facilities.

All of these references are Comp Plan policies. Not inspirational statements.

The applicant is required to comply with these. These must be enforced as if it were law or statute as we heard last night from the inventor of the term “hothouse of viral communications”. This is not a matter of if convenient. The application must comply with these standards.