

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

COTTRELL COMMUNITY PLANNING)
ORGANIZATION, PAT MEYER,)
MIKE COWAN, PAT HOLT, RON)
ROBERTS, KRISTY MCKENZIE, MIKE)
KOST, RYAN MARJAMA, MACY)
AND TANNER DAVIS, AND LAUREN)
AND IAN COURTER,)

LUBA No. 2023-086

Petitioners,)

and)

PLEASANT HOME COMMUNITY)
ASSOCIATION AND ANGELA PARKER,)
dba HAWK HAVEN EQUINE,)
MULTNOMAH COUNTY RURAL FIRE)
PROTECTION DISTRICT NO. 10,)
OREGON ASSOCIATION OF)
NURSERIES, MULTNOMAH COUNTY)
FARM BUREAU, GRESHAM-BARLOW)
SCHOOL DISTRICT 10J, and 1000)
FRIENDS OF OREGON,)

Intervenor-Petitioners,)

v.)

MULTNOMAH COUNTY,)

Respondent,)

and)

PORTLAND WATER BUREAU,)

Intervenor-Respondent.)

**PETITION FOR REVIEW OF PLEASANT HOME COMMUNITY
ASSOCIATION AND ANGELA PARKER, dba HAWK HAVEN EQUINE**

(Continued on reverse side)

JULY 2024

Exhibit M.7

Jeffrey L. Kleinman, OSB #743726
1207 SW Sixth Avenue
Portland, OR 97204
Phone: (503) 248-0808
Email: KleinmanJL@aol.com
*Attorney for Intervenor-Petitioners
Pleasant Home Community
Association and Angela Parker,
dba Hawk Haven Equine*

James D. Howsley, OSB #012969
Ezra L. Hammer, OSB #203791
Steven L. Shropshire, OSB #944375
Jordan Ramis PC
1211 SW Fifth Avenue, Floor 27
Portland, OR 97204
Phone: (360) 567-3913
Email: jamie.howsley@jordanramis.com
*Attorneys for Intervenor-Petitioner
Oregon Association of Nurseries
and Multnomah County Farm Bureau*

Andrew Mulkey, OSB #171237
1000 Friends of Oregon
340 SE Sixth Avenue
Portland, OR 97214
Phone: (971) 420-0916
Email: andrew@friends.org
*Attorney for Intervenor-
Petitioner 1000 Friends of Oregon*

Zoe Lynn Powers, OSB #144510
Renee M. France, OSB #004472
Radler White Parks & Alexander LLP
111 SW Columbia Street, Suite 700
Portland, OR 97201
Phone: (971) 634-0215
Email: zpowers@radlerwhite.com
*Attorneys for Intervenor-Respondent
Portland Water District*

Carrie A. Richter, OSB #003703
William Kabeiseman, OSB #944920
Bateman Seidel Miner Blomgren
Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, OR 97205
Phone: (503) 972-9920
Email: crichter@batemanseidel.com
*Attorneys for Petitioners and
Multnomah County Rural Fire
Protection District No. 10*

Elliot R. Field, OSB #175993
Garrett Hemann Robertson PC
PO Box 749
Salem, OR 97308
Phone: (503) 581-1501
Email: efield@ghrlawyers.com
*Attorneys for Intervenor-
Petitioner Gresham-Barlow
School District 10J*

David N. Blankfeld, OSB #980373
Jenny M. Madkour, OSB #982980
Multnomah County Attorney's Office
501 SE Hawthorne Blvd, Suite 500
Portland, OR 97214
Phone: (503) 988-3138
Email: david.n.blankfeld@multco.us
Attorneys for Respondent

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1 **I. STANDING**

2 Intervenor-petitioners Pleasant Home Community Association
3 (“PHCA”) and Angela Parker, dba Hawk Haven Equine (“Hawk Haven”),
4 collectively “intervenors,” appeared in the within proceeding before respondent
5 Multnomah County (“respondent” or the “county”). PHCA is a recognized
6 neighborhood association in the county. Many members of PHCA will be
7 adversely affected should the project proceed.

8 Ms. Parker owns farm property and operates a commercial horse training
9 and boarding operation near the subject site. Intervenors submitted multiple
10 letters and written testimony in opposition to the application. PHCA testified
11 through counsel at the public hearing held by respondent's hearings officer on
12 June 30, 2023. Copies of two of intervenors’ written submittals appear at
13 R.1474-76 and 2841-48.

14 **II. STATEMENT OF THE CASE**

15 **A. Nature of the Land Use Decision.**

16 The appealed land use decision involves respondent’s approval in Case
17 File T3-2022-16220 of:
18 "An Application for Community Service Conditional Use Permit for
19 Utility Facility (Filtration Facility), Community Service Conditional
20 Use Permit for Utility Facility (Pipelines), Community Service
21 Conditional Use Permit for Radio Transmission Tower (Communication

1 Tower), Review Use for Utility Facility (Pipeline-EFU), Design Review
2 (Filtration Facility, Pipelines, Communication Tower, Intertie Site),
3 Significant Environmental Concern for Wildlife Habitat (Lusted Rd
4 Pipeline, Raw Water Pipeline), Geologic Hazard (Raw Water Pipeline)
5 and Lot of Record Verifications."

6 The decision was issued by respondent's hearings officer on November
7 29, 2023, and approves consolidated applications to build an 135-million-
8 gallon- per-day drinking water filtration facility and associated pipelines on
9 land zoned Multiple Use Agriculture (MUA-20), Rural Residential (RR) and
10 Exclusive Farm Use (EFU).

11 A copy of the above decision is submitted at JtApp-10-97. Intervenors
12 seek an order of the LUBA reversing this decision or remanding it to
13 respondent.

14 **B. Summary of Argument.**

15 Respondent misinterpreted and misconstrued the applicable law, and
16 failed to make adequate findings supported by substantial evidence in
17 approving the within application in spite of PWB's failure to demonstrate
18 compliance with Multnomah County Code 39.7515(A), requiring that this
19 Community Service conditional use be "consistent with the character of the
20 area."

1 The hearings officer prejudged the matter, misinterpreted and
2 misconstrued the applicable law, offered himself as a fact witness as to
3 important "facts," and for these and other reasons made inadequate findings
4 unsupported by substantial evidence.

5 The hearings officer failed make a necessary interpretation of the code,
6 or make findings supported by substantial evidence, resolving the size and
7 location of the "area" in question.

8 The hearings officer made directly conflicting findings regarding the
9 character of the area. The decision thus lacks sufficient findings supported by
10 substantial evidence.

11 In deciding that the applicant had met its burden of proving compliance
12 with the MCC 39.7515(A) Compatibility Standard, the hearings officer
13 misinterpreted and misconstrued the applicable law, and failed to make
14 adequate findings supported by substantial evidence.

15 **C. Summary of Material Facts.**

16 PWB filed a conditional use application to build a 135-million-
17 gallon-per-day drinking water treatment facility and communications tower on
18 a 94-acre site zoned for Multiple Use Agriculture (MUA-20) in Multnomah
19 County. Maps at JtApp-8-9, JtApp-13-14. What PWB representatives

1 characterized as a "mega-project" and County staffers called "a complex
2 development," would serve "nearly one million people," the largest
3 infrastructure project PWB has ever proposed. JtApp-35, R.1265, 3385, 3500.
4 Vehicular access for all construction trucks, worker vehicles and operations
5 and maintenance access will be on SE Carpenter Lane, a narrow dead-end
6 country road, to the east of SE Cottrell Road. Maps at JtApp-8-9. A secondary
7 emergency-only access will be provided by improving a private farm access
8 road connecting to Bluff Road to the south, in Clackamas County. Conveying
9 135 million gallons of water daily will require installing an expansive array of
10 massive raw and finished water pipelines as well as a finished water intertie
11 within road right-of-ways and on private farm properties zoned MUA-20 and
12 Exclusive Farm Use (EFU). JtApp-8-9.

13 The surrounding area also consists of active farm and residential uses.
14 Rural residents characterized the area as "serene," "bucolic" and a place where
15 children can safely ride their bikes or walk to the bus stop and families can
16 walk within the vehicle travel lane sharing it with farm traffic. R.3202, 3239,
17 and elsewhere. Popular residential activities include birdwatching, star gazing
18 and tracking wildlife, given proximity to the Sandy River, a National Wild and

1 Scenic River, and to the headwaters of the Johnson Creek.¹ R.3307.

2 Construction of the water filtration facility will require soil excavation to
3 accommodate 34 separate tanks and basins that will displace approximately
4 373,454 cubic yards of soil - equivalent to 113 Olympic sized swimming pools
5 and the delivery of concrete to create the tanks. R.5310. Additional
6 excavation will be required to reduce the overall elevation of the plant site and
7 for the 11 buildings, and 261,981 cubic yards of material will have to be
8 excavated for the pipelines.

9 Dump trucks, cement trucks, construction material delivery, worker
10 commuter vehicles and all necessary supporting vehicles are estimated to add
11 an additional 550 to nearly 900 additional am/pm peak hour vehicle trips per
12 day to substandard Carpenter Road and the surrounding rural road network.

13 R.4208. Using PWB counts, the residents and farmers along Carpenter Road
14 currently experience 14 a.m.-peak-hour-trips and 11 p.m.-peak-hour-trips.

15 R.4206. This will impose a 32-to-40 fold increase in the amount of traffic
16 directed into this area. Road upgrades coupled with installation of pipelines
17 and intertie will cause road closures, detours and construction back-ups.

18 R.5309, 5311, 5315. Construction was projected to begin in the third quarter

¹(not Portland's Johnson Creek)

1 of 2023 and finish in 2028. JtApp-37. Throughout the proceeding, though,
2 PWB indicated construction could take up to seven years. R.8027.

3 In its application, PWB took the position that the impacts caused by
4 construction could not be considered as part of the conditional use review.
5 Shortly before the public hearing on June 30, 2023, PWB reversed course to
6 some extent, submitting a traffic impact analysis identifying impacts from
7 construction-related traffic. R.4201.

8 After the record closed, the PWB submitted a 305-page final written
9 argument setting forth entirely new interpretations of various criteria, the first
10 and only analysis of the evidence and conditions of approval that purport to
11 fundamentally change how construction will occur and the facility will operate.
12 JtApp-98. In approving this application, the hearings officer relied on several
13 pages of that argument at a time to serve as his own findings as to each of the
14 applicable criteria.

15 This appeal followed. Intervenors timely filed their motion to intervene
16 with LUBA on December 29, 2023, and their amended motion to intervene on
17 January 8, 2024.

18

1 **III. LUBA JURISDICTION.**

2 The challenged decision is subject to LUBA jurisdiction in that it is a
3 land use decision of a local government under ORS 197.015(10)(a)(A)(I), (ii)
4 and (iii), and petitioners have exhausted all remedies available by right before
5 petitioning LUBA for review. Respondent processed the application herein
6 under the provisions of ORS 197.797 relating to quasi-judicial land use
7 hearings resulting in land use decisions. ORS 197.195(2). Said land use
8 decision (a) is subject to the provisions of ORS 197.850 relating to judicial
9 review by the Court of Appeals; (b) is not included among those matters over
10 which the Land Conservation and Development Commission has review
11 authority under ORS 197.005-197.455; and (c) is not included among those
12 land use decisions of a state agency over which the Court of Appeals has
13 jurisdiction for initial review under any provision of Oregon Revised Statutes.

14 **IV. ASSIGNMENT OF ERROR**

15 **Respondent misinterpreted and misconstrued the applicable law,**
16 **and failed to make adequate findings supported by substantial evidence in**
17 **approving the within application in spite of PWB's failure to demonstrate**
18 **compliance with Multnomah County Code 39.7515(A), requiring that this**
19 **Community Service conditional use be "consistent with the character of**
20 **the area."**

1 **(1) Preservation of Error.**

2 Opponents preserved error as necessary with respect to this assignment
3 of error and each subassignment.

4 Opponents disputed the “area’ in which impacts upon character of the
5 area were considered, *e.g.*, by Charles Ciecko’s testimony that the area’s
6 “boundaries were clearly ‘gerrymandered’.” R.3822. They could not preserve
7 error as to subsequent findings interpreting “area.”

8 They established the character of the area as "serene," "bucolic," and a
9 place where children can safely ride their bikes or walk to the bus stop and
10 families can walk within the vehicle travel lane sharing it with farm traffic.
11 R.3202, 3239, and elsewhere. Activities include birdwatching, stargazing and
12 viewing wildlife, given proximity to the Sandy River. R.307. Opponents also
13 established the farm character of the area. Mr. Ciecko stated, “ agricultural
14 activities and high quality farm land, both large and small, are the foundation
15 of our robust rural economy.” R.3822. Opponents submitted photos and
16 videos establishing the character of the area, and showing how this proposal
17 would be inconsistent with it. The videos include those indexed in the record
18 as Video 21 (Carpenter Lane), 24 (Character of the Area), and 32 (Citizens for
19 Peaceful Rural Living). Photos include Wensenk photo of rider on Carpenter

1 Lane. R.2799.

2 Construction impacts were addressed by parties and staff. Opponents
3 argued *inter alia* that construction impacts must be considered part of the use
4 because "development" as used in MCC 39.2000 includes "any act requiring a
5 permit***including associated ground disturbing activity" and the term "use"
6 and "development" are "synonymous." R.3385-86. Opponents challenged
7 PWB's reliance on certain LUBA cases that considered construction in the
8 context of Goal 4. *Id.*

9 Opponents also preserved error regarding inconsistency with the
10 character of the area both during construction and thereafter. "Construction
11 and operation of this plant will put our citizens in danger on our own roads."
12 (Bartha, R.3286). "The truck count on the quiet lane in front of our house will
13 exceed 300 trips per day." (Leathers, R.3347) "Surrounding farm uses and
14 their buildings do not require large amounts of earthmoving for berms and
15 treatment ponds [or]***require pipelines to be buried across neighboring
16 properties and in roadways. (Mulkey, R.3339) "Carpenter Lane is a place
17 where the neighbors feel safe to walk***there are people who ride their horses
18 on it.*** I*** likely will spend the last days of my life experiencing double
19 dump trucks moving earth to and from the site,***vibration from pile driving,
20 construction trucks going up and down our narrow road." (Edmondson,

1 R.3307) "There will be industrial noise 24 /7 from the operations***."
2 (Carlson, R.3267) The decisionmaker's findings and interpretations relating to
3 inconsistency with the character of the area became known only after the
4 record had closed.

5 Opponents preserved error with respect to the legislative history of the
6 farm impacts test contained in MCC 39.7515(C). (Kleinman, R. 3567-73)
7 They preserved error at to the contents fo the "vision statement" of the
8 comprehensive plan. (Richter, R.3387)

9 Intervenor Parker preserved error as to conditions of approval requiring
10 street widening causing even more inconsistency with character. R.1474-75.

11 Opponents preserved error as to the sufficiency of the proposed conditions of
12 approval as to traffic. (Kleinman, R.2845-48)

13 Opponents had not seen the adopted findings and final conditions of
14 approval before the record closed. They were unable to preserve error as to the
15 decisionmaker prejudging the matter or relying upon facts within his own
16 experience. The same is true of his interpretation of code provisions, and
17 arguments appearing initially in PWB's final written argument and
18 incorporated into the decision.

1 (2) Standard of Review.

2 The board reviews a hearings officer's interpretation of state law (and
3 local law that implements state law) to determine whether the Interpretation is
4 correct, affording no deference to the interpretation. *Kenagy v. Benton County*,
5 115 Or App 131, 838 P2d 1076, *rev den*, 315 Or 271 (1992). In construing the
6 law, LUBA considers the text, context and legislative history of the law at
7 issue in order to determine the intent of the enacting legislature. *PGE v. Bureau*
8 *of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993); *State v.*
9 *Games*, 346 Or 160, 171-172, 206 P3d 1042 (2009).

10 LUBA must reverse or remand “if the decision is not in compliance with
11 applicable provisions of the comprehensive plan or land use regulations.” ORS
12 197.835(8). LUBA must reverse a local government interpretation of a local
13 regulation that is contrary to the state goal, statute or rule that the regulation
14 implements, notwithstanding the acknowledged status of that regulation. ORS
15 197.829(1)(d); *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA
16 582, 599 (2006).

17 Adequate findings must (1) identify the relevant approval standards, (2)
18 set out the facts which are believed and relied upon, and (3) explain how those
19 facts lead to the decision on compliance with the approval standards.

1 *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 20-21, 569 P2d
2 1063 (1977).

3 The board's standard of review in a substantial evidence challenge is to
4 consider all of the evidence in the record and determine whether the evidence
5 would permit a reasonable person to find that an approval criterion is met.

6 *Devin Oil v. Morrow County*, 236 Or App 164 (2010).

7 **(3) Argument.**

8 **A. First Subassignment of Error. The hearings officer prejudged**
9 **the matter, misinterpreted and misconstrued the applicable law, offered**
10 **himself as a fact witness as to important "facts," and for these and other**
11 **reasons made inadequate findings unsupported by substantial evidence.**

12 This subassignment relates in part to the fundamental nature of the
13 appealed decision, and is common to all subassignments of error. The decision
14 rendered by the hearings officer ("H.O.") is highly unusual in several respects.
15 The H.O. made his decision in the opening paragraph, without first discussing
16 the evidence and the arguments of the parties:

17 This is an extremely complicated and difficult decision. The City
18 of Portland (City) was forced to construct this facility. It is not in my
19 purview to judge whether this is the correct type of facility or whether
20 the facility could be built elsewhere. The local elected leaders decide
21 that. I believe that this facility is necessary for public health. Throughout
22 history, the creation of safe drinking water has been one of the greatest
23 human public health achievements. This facility continues that legacy. I
24 agree with the City and our State and Federal Governments, that if this
25 facility is not built people can die. I also believe this facility is necessary

1 to continue to provide safe water for up to a million Oregonians when a
2 natural disaster affects the Bull Run Watershed. It is only a matter of
3 time before a fire, landslide, earthquake or flood impacts that watershed
4 and puts one quarter of Oregonians drinking water at risk. Weighing up
5 against that, there is the impact to the neighbors and local farmers from
6 the construction of the facility. The construction will be lengthy and
7 difficult for the surrounding community. I completely understand why
8 they oppose the project but I am also aware of the importance of this
9 facility to the million Oregonians who are not now directly involved.
10 Although I recognize the importance of the project, I neutrally applied
11 the criteria to the facts of this case to reach my conclusion.

12 JtApp-14. (Emphasis added because, as we shall see, the H.O. doth protest too
13 much.)

14 The relevant approval criteria addressed in this brief are primarily those
15 set out in MCC 39.7515, governing Community Service uses in the Multiple
16 Use Agriculture (MUA-20) zoning district, and in particular MCC 39.7515(A)
17 requiring consistency with the character of the area. (The site of the proposed
18 filtration plant and much of the surrounding, affected farmland is in the MUA-
19 20 zone. A significant portion of the of the proposed pipeline alignments lie
20 within the EFU zone.)

21 MCC 39.7515 provides in material part:

22 **39.7515 APPROVAL CRITERIA**

23 In approving a Community Service use, the approval authority shall find
24 that the proposal meets the following approval criteria, except for
25 transmission towers, which shall meet the approval criteria of MCC
26 39.7550 through 39.7575, wireless communications facilities, subject to

1 the provisions of MCC 39.7705, and except for regional sanitary
2 landfills, which shall comply with MCC 39.7600 through 39.7625.

3 (A) Is consistent with the character of the area;***

4 As explained below and in the other briefs filed this date, in choosing
5 this site, PWB opened a Pandora's box of criteria it would not have faced in a
6 more urban setting. None of the county's approval criteria relate to the
7 ostensibly essential nature of the facility, or the site selection process that led
8 the city to choose this site in the midst of highly productive farmland in a
9 bucolic, wildlife-rich area, over other alternatives including one on PWB's
10 property on Powell Butte, within the city itself (R.843, 851-53, 3185, 3716,
11 3376). Had these been considerations, opponents were prepared to address
12 them.

13 Nowhere do the approval criteria include the supposed necessity of the
14 facility, government requirements, and supposed health hazards or system
15 failures. In relying upon his belief as to these matters, the H.O. misinterpreted
16 and misconstrued the applicable law, and made inadequate findings
17 unsupported by substantial evidence.

18 One of the key issues in this case is whether the approval criteria for
19 Community Service (CS) uses include so-called temporary impacts arising
20 during the extended construction period of 5-7 years. This issue is discussed at

1 some length in Cottrell's petition for review, *e.g.* at 21-22. As the staff report
2 cited by the H.O. states, the "PWB application discusses the impacts the Water
3 Filtration Facility, Pipelines, Communication Tower and other physical
4 improvements will have once they are completed," but not the impacts
5 occurring earlier. JtApp-34.

6 In *West Hills & Island Neighbors, Inc v. Multnomah County*, the board
7 rejected the county's interpretation that consistency with the community service
8 standards for a landfill can be evaluated based upon the bare land after the
9 landfill is covered and landscaped. The board held that "[t]he use must always
10 be 'consistent with the character of the area.'" ___ Or LUBA ___ (LUBA No.
11 83-018, June 29, 1983), slip op 15-16 n 6, *aff'd* 68 Or App 782, *rev den* 298 Or
12 150 (1984).

13 Staff found that the code definition of "development" in MCC 39.2000
14 contemplates construction impacts as well. *Id.* The H.O. reached the opposite
15 interpretation, accepting PWB's argument regarding an amendment to that
16 definition. JtApp-35-36. However, the initial words of the definition are
17 unchanged:

18 **Development**-Any act requiring a permit stipulated by Multnomah
19 County Ordinances as a prerequisite to the use or improvement of any
20 land, including, but not limited to, a building, land use, occupancy, sewer
21 connection or other similar permit, and any associated ground disturbing

1 activity.

2 The current definition adds:

3 As the context allows or requires, the term “development” may be
4 synonymous with the term “use” and the terms “use or development” and
5 “use and development.”

6 The findings do not explain why the context allows or requires defining
7 development to exclude the long, intrusive, multi-permit-requiring construction
8 period here. The H.O. chose to rely upon his own experience at Washington
9 County counsel:

10 In all my many years of work in land use, I cannot remember coming
11 across an application where the construction impacts were considered. It
12 is only the impacts of the actual permitted use that are considered. In the
13 olden days of residential development (before clear and objective
14 criteria), there were zoning codes requiring that new subdivisions be
15 harmonious or fit in with the character of the area.***All of the
16 neighbors of all of the subdivisions ever built across our state suffered
17 these temporary impacts. All of the farmers across the roads from these
18 residential subdivisions also suffered these temporary impacts.

19 [E]very major transportation project creates impacts on all
20 adjoining and nearby properties. These are the same lengthy and difficult
21 impacts involved with this case.***

22 JtApp-35.

23 With due respect, the H.O. was not a “fact witness.” His recollection of
24 construction activity in Washington County is irrelevant here. The
25 decisionmaker’s personal knowledge, even if “common knowledge,” is
26 evidence outside the record and cannot support resulting findings. *Hood River*

1 *Valley PRD v. Hood River County*, 67 Or LUBA 314, 330 (2013). The
2 referenced developments were not subject to the same standards as apply here.
3 While most development activity will have some impact upon public roads and
4 their users, subdivision construction is neither as continuously impactful nor
5 nearly as prolonged as the proposed activity. In any event, the appealed
6 decision is permeated with the H.O.'s personal knowledge and beliefs.

7 Thus, the H.O.'s deeming construction impacts irrelevant to his
8 evaluation of the proposal under MCC 39.7515 based upon his interpretation of
9 "development," misconstrues the applicable law and depends upon an incorrect
10 interpretation of the code. It also contains inadequate findings unsupported by
11 substantial evidence.

12 The H.O. also engages in irrelevant speculation with respect to the
13 county's use of the stringent ORS 215.296(1) farm impacts test in MCC
14 39.7515(C):

15 I find it puzzling that the County would apply this high standard to
16 exception or non-resource lands. Typically, these lands are made
17 exceptions to the Goal 3 so they do not have to apply this standard and
18 non-farm uses can be approved for non-farm land. It is also odd that the
19 test for pipelines in the MUA is potentially more stringent than pipelines
20 in the EFU. If this case is remanded for this reason, perhaps the
21 Applicant can seek a County legislative proposal.

22 JtApp-37.

1 Such stewing aside, the code says what it says. Other parties address this
2 provision in detail. If a local legislative “fix” is needed, the applicant is free to
3 seek it. Whether it is appropriate for the decisionmaker to suggest one is a
4 separate issue.²

5 For the above reasons, the H.O. prejudged this matter, misinterpreted and
6 misconstrued the applicable law, and made inadequate findings unsupported by
7 substantial evidence.

8 **B. Second Subassignment of Error. The hearings officer failed**
9 **make a necessary interpretation of the code, or make findings supported**
10 **by substantial evidence, resolving the size and location of the “area” in**
11 **question.**

12 The H.O. failed to fully address and resolve the conflicting positions of
13 the parties relating to the size and boundaries of the “Area” (MCC 39.7515(A)
14 and (D) or “Surrounding Lands” (MCC 39.7515(C)). For the purposes of this
15 brief, such delineation is essential to determining the specific area, the
16 character of which must be ascertained. .

²The H.O. also demeans the county’s regulatory scheme:

It seems nonsensical to adopt this heightened protection for non-farm, non-resource land where the legislature has limited the protection for the actual farmland.***

JtApp-46.

1 PWB's consultant provided mapping and some justification for a
2 constricted scope of "surrounding lands." R.7148-52, 7764-66. Opponents
3 submitted evidence proving the relevance of a far larger extent of the area and
4 surrounding lands suffering farm impacts under MCC 39.7515(C). *See e.g.*
5 aerial photograph/map prepared by Jim Johnson, ODA Land Use and Water
6 Planning Coordinator, R.2941 and blow-up at JtApp-9.

7 The Gresham-Barlow School District raised issues, discussed in its brief,
8 regarding impacts upon public services and hazardous conditions at Sam
9 Barlow High School, three miles west of the site. MCC 39.7515(D) and (F);
10 R.473, 1405.

11 The H.O. did not expressly interpret the code language regarding the
12 scope of the "area" or "surrounding lands," nor did he attempt explaining the
13 distinction, if any, between the two. Such interpretation is essential to
14 addressing the county's approval standards relating to the character of the area,
15 the area within which only existing or programmed public services will be
16 required, and the lands to which the farm impacts test is applied.

17 As LUBA stated in *Knight v. City of Eugene*, 41 Or LUBA 279, 284-85
18 (2002),

1 [O]ur cases have consistently held that approval standards that require an
2 analysis of the impacts of a proposed use on nearby areas, or the uses in
3 those areas, necessarily require that the findings identify the relevant
4 area.***

5 Similarly, the determination of the boundaries of the “surrounding lands”
6 for the purpose of applying the farm impacts test, must be based upon the
7 evidence and not artificially crafted lines. *Stop the Dump Coalition v. Yamhill*
8 *County*, 72 Or LUBA 341, 361-62 (2015).

9 The H.O. incorporates PWB’s argument regarding the “study area”
10 without explication. JtApp-41, 191-99. However, PWB does not address most
11 of the impacts discussed in intervenors’ fourth subassignment, below, nor
12 recognize an area extending to the high school and its environs. In *Thomas v.*
13 *Wasco County*, 35 Or LUBA 173, 184 (1998), the board held:

14 The county is not required to address all conflicting evidence in its
15 findings, but the findings must address and respond to specific issues
16 raised in the local proceedings that are relevant to compliance with
17 approval standards.

18 As LUBA stated in *Gonzalez v. Lane County*, 24 Or LUBA 251, 257-58
19 (1992), citing *The Home Plate, Inc. v. OLCC*, 20 Or App 188, 190, 530 P2d
20 862 (1975):

21 "If there is to be any meaningful judicial scrutiny of the activities
22 of an administrative agency ‘not for the purpose of substituting
23 judicial judgment for administrative judgment but for the purpose
24 of requiring the administrative agency to demonstrate that it has
25 applied the criteria prescribed by statute and by its own

1 regulations and has not acted arbitrarily or on an ad hoc basis' we
2 must require that its order clearly and precisely state what it found
3 to be the facts and fully explain why those facts lead it to the
4 decision it makes.***'

5 Additionally, in *Sunnyside, supra*, the Supreme Court described its
6 requirement for adequate findings of fact by local governments as
7 follows:

8 'No particular form is required, and no magic words need be
9 employed. What is needed for adequate judicial review is a clear
10 statement of what, specifically, the decision-making body
11 believes, after hearing and considering all the evidence, to be the
12 relevant and important facts upon which its decision is
13 based.***''

14 The required findings are absent here. For the above reasons, the
15 appealed decision lacks an essential interpretation and adequate findings
16 supported by substantial evidence.

17 **C. Third Subassignment of Error. The hearings officer made**
18 **directly conflicting findings regarding the character of the area. The**
19 **decision thus lacks adequate findings supported by substantial evidence.**

20 The appealed decision contains fundamentally conflicting findings on
21 the critical question of the existing character of the area. On the one hand, it
22 states: "Many of the videos in the record show a very nice area of farms and
23 farm fields." JtApp-41. To the contrary, it states:

24 The predominant rural land use in the study area is residential (Exhibit
25 A.4, page 20) with it being the most sensitive use to potential
26 impacts.***

1 JtApp-37.

2 As we discuss here and is addressed in other briefs, the predominant uses
3 are both agricultural and rural residential, and the farm uses are ultra-sensitive
4 to impacts from construction and related traffic, in addition to other harms.

5 As the decision lacks findings clearly deciding the actual character of the
6 area, the findings with respect to the county's compliance with MCC
7 39.7515(A) are inadequate and unsupported by substantial evidence.

8 **D. Fourth Subassignment of Error. In deciding that the applicant**
9 **had met its burden of proving compliance with the MCC 39.7515(A)**
10 **Compatibility Standard, the hearings officer misinterpreted and**
11 **misconstrued the applicable law, and failed to make adequate findings**
12 **supported by substantial evidence.**

13 In the H.O.'s full findings regarding the "consistent with the character of
14 the area" standard of MCC 39.7515(A) (the "MCC 39.7515(A) Compatibility
15 Standard,"³), he quarrels more stridently with the express language of the
16 county's criteria. JtApp-37-42.

17 Opponents established that character through extensive video and
18 photographic evidence, as well as written and oral testimony. As opponents
19 explained, the affected area is not only quiet, pastoral, and peaceful for those
20 who reside or attend schools there, but it has a large and critically important

³This is LUBA's reference in *Tarr v. Multnomah County*, 81 Or LUBA 242, 245 (2020).

1 commercial agricultural presence, especially cultivation and transport of
2 nursery stock. This evidence was not weighed or evaluated in the findings.
3 Rather, it was largely ignored.

4 The H.O. commences his cursory discussion of the MCC 39.7515(A)
5 Compatibility Standard, as follows:

6 This is a crucial criterion for this application and one for which there is a
7 great deal of testimony. I firmly believe that is because this standard is so
8 vague and completely open to interpretation. I believe the Board must
9 have intended some flexibility in this interpretation or else they would
10 not have permitted these highly intensive community services uses in
11 these zones. To narrow it down, what is evaluated under these criteria is
12 the final uses and not the construction of these uses. I find that, as
13 conditioned, the final uses, the filtration plant, the pipelines
14 underground, and the intertie site meet these criteria and are consistent
15 with the character of the area. I adopt the staff findings above as my
16 findings.***

17 JtApp-A-37.

18 Intervenors agree with the first sentence above. This is a “crucial
19 criterion.” There was a “great deal of testimony” and other evidence regarding
20 this criterion, to put it mildly. The H.O. presents no basis for the purported
21 “flexibility” he attributes to the Board. *If* that was the Board’s intent, then how
22 much is too much? Is there a useable scale? The H.O. does not say. His
23 interpretation is incorrect and insufficient for LUBA review.

24 It is also inconsistent with the history of the county’s regulations. The
25 county adopted the current language of MCC 39.7515(A), requiring that any

1 CS Conditional Use proposed for certain zoning districts be found “consistent
2 with the character of the area,” by Ordinance 148 (1977). This comprises 71
3 pages. To limit waste, we attach the cover page, relevant selection, and
4 date/signature page in a supplemental appendix (SuppApp).

5 The key language appears at SuppApp-2-3. It applies to CS uses in both
6 the EFU and the MUA-20 districts. §7.027, SuppApp-2. The H.O.’s musings
7 about the MUA-20 district aside, county commissioners chose not to treat it
8 differently from the EFU district. They had authority to make that choice, and
9 they made it. The present Compatibility Standard made its first appearance at
10 §7.027.1(a). SuppApp-3. Other current elements of MCC 39.7515, regarding
11 natural resources, public services, hazardous conditions, and compliance with
12 plan policies, also appear verbatim in §7.027.1. *Id.*

13 As to the H.O.’s incorporation of the relevant portion of the staff report,
14 note that staff stated:

15 The Hearings Officer will need to hear from the community regarding
16 the Character of the Area before deciding if the proposed Water
17 Filtration Facility Design and mitigation measures to blend the facility
18 into the area achieves the goals of this approval criteria.

19 JtApp-39 (Emphasis added.)

20 Here, staff acknowledged that the relevant evidence was forthcoming.

21 Nonetheless, the H.O. scarcely addressed that evidence in any way and made

1 almost no express findings with respect to it.⁴ He heareth much, but saith very
2 little.

3 The H.O. next states his belief that the reason there was a “great deal of
4 testimony” “is because this standard is so vague and completely open to
5 interpretation.” JtApp-41. He presents no basis for that belief, which implies
6 that the participating public lacks comprehension. Moreover, as explained
7 further below, his construction of this straightforward standard, while serving
8 PWB’s purposes, misinterprets and misconstrues the applicable law.

9 The criterion is set out in plain English and says what it says.
10 Community members (and their CPOs) know the character of the area at a
11 bone-deep level. They grasp it day-and-night, 365 days a year. Regardless, the
12 H.O. barely addressed their testimony or the evidence they submitted.

13 The H.O. found:

14 To further narrow this criterion, the test of comparing
15 “consistency” with the character of the area is not with how it would
16 compare if the property is left as bare land but comparing it to the
17 proposed use with the surrounding uses. The area already has pipelines
18 and water facilities. The area also has large scale nurseries that create
19 more impact on the surrounding area than will the proposed facility or
20 the underground pipelines. I recognize these are outright allowed farm

⁴As noted above, the H.O. *does* recognize: “Many of the videos in the record show a very nice area of farms and farm fields.” JtApp-41. That is about all he says about the extensive video evidence in the record, and his characterization contradicts his findings.

1 uses and they get separate treatment in other parts of the code but here,
2 this criterion is merely comparing uses. Many of the videos in the record
3 show a very nice area of farms and farm fields. If such proposed
4 community service uses were just compared to farm land, they would
5 never be permitted which would be contrary to the code which allows
6 them.

7 JtApp-42.

8
9 We reiterate: respondent's code is clear. The H.O.'s holding that he
10 should "further narrow this criterion" is incorrect; the only reason for it is to
11 enable approval of the application, no matter what. The notion that "large scale
12 nurseries***create more impact on the surrounding area than will the proposed
13 facility or the underground pipelines" is unsupported by substantial evidence.

14 This is most notably true taking into account the 5-7 year construction
15 period which the H.O. discounts entirely. The evidence discloses that the
16 character of the area will be profoundly altered during that time, and
17 *permanently* thereafter when quiet country lanes, including the dead end of
18 Carpenter, have been widened and otherwise "improved" to accommodate
19 PWB's endless procession of trucks and heavy equipment. Opponents did not
20 argue below that CS uses are to be "just compared to farm land." That is a red
21 herring.

22 MCC 39.7520 covers a broad range of CS conditional uses in the MUA-
23 20 zone and other zoning districts. Nineteen uses may be permitted in all

1 “planning areas;” eleven more may be permitted in certain planning areas.
2 SuppApp-6-8. On their face, some of these uses are relatively unobtrusive and
3 unlikely to be inconsistent with the character of most areas in which they are
4 proposed to be sited. Others such as transit stations, mining and processing of
5 geothermal resources, refuse dumps and sanitary landfills, and regional sanitary
6 facilities, may be much more impactful and likely to be disruptive—inconsistent
7 with the character of most areas. This explains why the county imposed the
8 rigorous tests of MCC 39.7515. MCC 39.7520 must be read in concert with it.

9 Taken together, these provisions show that the board provided for a
10 broad panoply of Community Service uses, but set an unusually high bar for
11 approval. The decision interprets the county’s regulatory scheme as intended
12 to broadly permit injection of high-impact uses into the MUA-20 zoning
13 district. This misinterprets and misconstrues the applicable law, and the H.O.’s
14 interpretation is incorrect.

15 In finding that the code does not mean what it plainly says, the H.O.
16 posits that “[i]f such proposed community service uses were just compared to
17 farm land, they would never be permitted which would be contrary to the code
18 which allows them.” That is without basis. If such uses can be constructed
19 within a typical or normal timeframe, with a limited number of heavy truck and
20 equipment trips, without leaving behind “improved” streets which will result in

1 faster vehicles perpetually interfering with the safe pedestrian, bicycle, and
2 equestrian use defining the character of the area, compliance with MCC
3 39.7515(A) may correctly be found. "Mega-projects" are a different story.

4 Where should the finder of fact draw the line? There is no hard-and-fast
5 rule; none is needed. The code requires determination on a case-by-case basis.

6 In this case, a minimum of five years of construction impacts and continuing
7 impacts thereafter, epitomize inconsistency with "the character of the area."

8 There is far less hocus-pocus to the definition of "character" than the
9 H.O. believes. As relevant, Webster's defines character:

10 **2 c** : main or essential nature esp. as strongly marked and serving
11 to distinguish : individual composite of salient traits, consequential
12 characteristics, features giving distinctive tone (each town came to have
13 a [character] of its own—Sherwood Anderson)***

14 *Webster's Third New International Dictionary* (2002), 376.

15 This definition is readily understood. It is not rocket science, nor is it
16 poetry or art. The relevant definition of "consistent" is similarly clear:

17 **2 a** : marked by harmony, regularity, or steady continuity throughout :
18 showing no significant change, unevenness, or contradiction * * *.

19 *Id.*, 484.

20 Accordingly, the H.O.'s interpretation of the MCC 39.7515(A)
21 Compatibility Standard as "so vague and completely open to interpretation" is

1 incorrect. JtApp-41. Further, his finding that such vagueness stimulates a
2 “great deal of testimony”—which he then failed to directly address or weigh—is
3 unsupported by substantial evidence. *Id.*

4 The H.O. incorporated PWB’s final argument regarding the character of
5 the area into his decision. JtApp-42, incorporating pages 53-99 of the
6 argument, JtApp-156-199. The incorporated argument discusses only post-
7 construction impacts, *i.e.*, conditions which are expected to exist after five or
8 more years of excavation, construction traffic, etc. To the extent the H.O.
9 incorporates PWB’s discussion of video evidence in its final written argument,
10 that discussion, except for one arguable instance relating to one structure
11 (JtApp-303 n 115) does not address character of the area.

12 Thus, the incorporated materials, too, misinterpret and misconstrue the
13 applicable law, and form inadequate findings unsupported by substantial
14 evidence.

15 Adequate findings in identify the relevant criteria, identify the evidence
16 relied upon, and explain why the evidence leads to the conclusion that the
17 criteria are or are not met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556
18 (1992). With respect to this approval standard, the findings must adequately
19 explain what the character of the area is. *Multnomah County v. City of*

1 *Fairview*, 17 Or LUBA 305, 314 (1988). The H.O. has simply failed to do so
2 here.

3 In establishing inconsistency with the character of the area under MCC
4 39.7515(A), opponents did not rely on a single element or factor but took a
5 “multi-factor approach that considered, among other things, traffic and noise
6 generation.” *Tarr v. Multnomah County, supra*, 81 Or LUBA at 262. They did
7 not confine their analysis to a single use (such as residential use as in *Tarr*) and
8 related impacts, but to the variety of farm and residential uses in the area, as
9 well as its overall pastoral qualities. They showed that the overall character of
10 the area would be effectively obliterated⁵ for at least five years, and
11 continuously impaired, including by PWB’s conditioned “improvements,”
12 thereafter. They fully addressed the *totality* of the area’s character, and its loss
13 should PWB be able to proceed. On the other hand, the challenged findings
14 occasionally touch on limited bits and pieces, never addressing the requisite
15 totality. Rather than define the totality of character, the findings, including
16 incorporated final argument from PWB, evaluate only discrete impact elements,
17 not their collective impacts.

⁵(Not hyperbole in this case.)

1 Dust and noise impacts are discussed by PWB at JtApp-175-77. These
2 are addressed only as to the post-completion impacts. The noise of continuous
3 truck traffic and operation of excavating and other equipment over a five+-year
4 period are ignored. Of course, dust generated by construction and by truck
5 traffic will affect the value of the nursery stock and other crops upon which it
6 alights.

7 **County Provisions Regarding Character of the Area**

8 The character of the area is established in part by the county's 2016
9 Comprehensive Plan Vision Statement for the West of the Sandy River Area,
10 crafted by residents and farmers 20 years ago:

11 We value all of the features that make this a rural place, including
12 quiet open spaces, vistas of productive farm and forest lands and of Mt.
13 Hood, country road, healthy air, soils and streams and a night sky where
14 we can clearly see the stars.

15 We envision that the Orient and Pleasant Home rural centers will
16 continue to prosper within defined areas in order to provide for the needs
17 of residents and visitors. We want our roads to continue to serve as the
18 transportation network for the area, while remaining usable for people
19 enjoying the country and accessing the Sandy River, with opportunities
20 for exercise by walking, running, bicycling and horseback riding.

21 MCCP 1-26.

22 This statement represents a formal, adopted and acknowledged
23 declaration of the character of this area.

1 The county's Farm Land Goal provides:

2 **Goal:** To conserve agricultural land in exclusive farm use and mixed use
3 agricultural zones and maximize its retention for productive, sustainable
4 farm use.

5 MCCP 3-9.

6 With respect to the listed "Policies and Strategies Applicable
7 County-wide, General Policies for Agricultural Zones," the Plan states:

8 These policies pertain to land either in the County's EFU zone or in the
9 MUA-20 zone.

10 *Id.*

11 Among those policies is Policy 3.4:

12 **3.4** Ensure that transportation policies and policies related to the
13 regulation of activities and events in agricultural zones minimize
14 the difficulties conflicting uses impose on farming practices.

15 *Id.*

16 **Opponents' Evidence of the Character of the Area**

17 As intervenors have explained, the decision lacks adequate findings
18 providing a consistent or even ascertainable determination of the character of
19 the area. Detailed evidence of that character and the application's
20 inconsistency with it was provided in written, oral, photographic, and video
21 form, by a great number of witnesses. The written evidence appears primarily
22 at R.1399-4123. (Yes, there is a lot.) Some of this evidence includes photos,

1 including R.2903-08 (night sky), 2914-20 (ambient light, and aerial photos),
2 and 3249-54 (wildlife).

3 If a photograph is worth 1000 words, a video may be worth considerably
4 more. (The ratio has not been officially determined.) Several short videos are
5 essential to understanding the character of the area and PWB's threat to it.

6 These are indexed as "Media Recordings Submitted with the Record on Flash
7 Drive," at pages 60-61 of the record's table of contents. At risk of appearing to
8 patronize, intervenors emphasize the importance of viewing these. In
9 particular, intervenors request the board to view these:

10 Video 21: Cottrell Rd. and Carpenter Lane.

11 Video 24: Video of Carpenter Lane at PWB site.

12 Video 32: Citizens for Peaceful Rural Living video, with Carpenter Lane
13 residents establishing the character of the area, especially east of Cottrell.
14 (Construction traffic volume is greatly understated because at the time, PWB
15 expected approval of additional primary construction access via Bluff Rd. in
16 Clackamas County.)

17 Videos 41 and 42: Carpenter Lane widening videos.

18 Video 34: Evening walk on Carpenter Lane.

19 Video 7: Farm tractor and dump truck on Cottrell.

20 Video 19: Driving route from Carpenter Lane west to Cottrell and north
21 on Cottrell.

22 Video 46: 36014 SE Lusted Rd. elk.

1 Video 1: Cottrell and Dodge Park: trees PWB will cut.

2 A representative sample of opponents' written evidence is set out below.

3 Tami Wensenk wrote:

4 [T]he construction plans for road improvements to Carpenter Lane
5 and the construction of the facility itself will***destroy the character of
6 our area. We, the residents, are the only qualified citizens to define the
7 character of the area in which we live and make our homes. The
8 dead-end portion of SE Carpenter Lane has a unique and distinctly
9 quaint atmosphere. It's rich in history and many families have been here
10 for multiple generations. This road has never been painted or striped, it
11 has only ever been chip-sealed for repairs and never fully re-paved. The
12 potholes haven't been fixed in years—we call them our 'speed bumps'
13 now and they keep what little traffic there is to slow, safe speeds.
14 Carpenter Lane is full of children and pets playing in the road, and this is
15 a safe activity because there is so little traffic, especially on our dead-end
16 portion. This portion serves just 8 residences, two of which are owned by
17 Portland Water Bureau and vacant and we believe are set to be destroyed
18 as part of this project.***Somewhere in their submissions, PWB or their
19 consultant have attributed 9 vehicle trips per household to residents on
20 Carpenter Lane. This is***laughable. Many of us have lived here our
21 whole lives, and others for decades, and we've never seen 72 vehicles go
22 by in a single day—probably not even in an entire week! We have
23 submitted numerous videos of Carpenter Lane, and they should be
24 reviewed as evidence that the character of Carpenter Lane is one with
25 very few vehicles driving on the road. Instead, there's kids playing and
26 riding their bikes, couples walking their dogs, joggers, cyclists and horse
27 riders (see photos on record and attached here). A seven-year
28 construction plan including road improvements and site construction that
29 sends HUNDREDS of construction vehicles and heavy trucks down our
30 quiet, dead-end street in no way fits with the character of the area***.
31 The construction period must be considered as an overall impact because
32 it will change our way of life for at least 7 years, and permanently
33 change the character of this area. The road improvements alone prove
34 that—extending the road to the edges of the right of way will destroy front
35 yards, driveways and even a building.***

1 R.2797. Ms. Wensenk's letter is signed by five families residing at the
2 "dead-end of Carpenter. R.2799. Ms. Wensenk also provided a photo of the
3 existing stretch of Carpenter Lane approved (and required) for use by 100% of
4 construction traffic, *id.*:



5 Charles Ciecko provided considerable testimony regarding the character
6 of the area. He explained his depth of knowledge:

7 I have lived in rural east Multnomah County for 48 years. My 34
8 year career was in parks and natural resource management***includes:
9 Regional Park Supervisor at Oxbow Regional Park; Director,
10 Multnomah County Park Services Division; Director, Metro Regional
11 Parks and Greenspaces Department; Director, North Clackamas Park and

1 Recreation District. I'm currently serving my third term as a member of
2 the Board of Directors for Rural Fire Protection District 10***.

3 Having raised a family here along with my work and volunteer
4 experience provides a unique perspective regarding***PWB's proposal
5 to construct and operate an industrial scale water filtration plant and
6 associated raw and finished water pipelines in this rural community.

7 R.3820. He added:

8 In reviewing***PWB's***Narrative regarding "character of the
9 area", the first thing that strikes me (or anyone that is actually familiar
10 with the area) is the area selected***to study. The boundaries were
11 clearly "gerrymandered" with the sole intent of capturing several large
12 warehouses associated with agricultural activities. Agriculture is a
13 primary use***allowed outright in all zones in rural east county. In fact,
14 agricultural activities and high quality farm land, both large and small,
15 are the foundation of our robust rural economy. The applicant claims that
16 because their proposed massive filtration plant might be designed to
17 somewhat resemble an agricultural warehouse, it is consistent with the
18 character of the area. It is not. Neither is the permanent loss of 100 acres
19 of prime farmland [to the facility].

20 R.3822.

21 Our community is fortunate to have quiet nights***hearing the
22 calls***of owls, the howl of coyotes or the sound of white water rising
23 from the Sandy River Gorge. The Applicant tells us that all we will hear
24 is sound equivalent to a diesel tractor, the same as regularly used in the
25 commercial nurseries. [T]hey fail to address the sound of "back-up
26 alarms"; the metallic clatter of large valves, chemical feed equipment,
27 the hum of large electrical components and the thousands of chemical
28 deliveries and loads of sludge to be hauled away on a daily basis. Unlike
29 the occasional noise associated with agriculture, Applicant's noise will
30 go on 24/7/365 days a year.

31 Rec 3823.

1 Intervenor Angela Parker, owner of Hawk Haven Equine on Carpenter
2 Lane just west of Cottrell, submitted three letters. R.1474-76, 2849-54, 3265-
3 66. These address both the character of the area and farm impacts. (Farm
4 impacts are primarily addressed by other parties.) Ms. Parker explains that
5 “temporary” impacts of the project on the character of the area will result in a
6 permanent loss of business.

7 I have lived pretty much in the middle of Carpenter Lane for the
8 last forty years. Our street is rural and residential. When I go out to the
9 grocery store I am more likely to pass neighbors on foot than any type of
10 traffic. Carpenter Lane is posted at 25 mph and people here enjoy that
11 leisurely pace.***

12 Today I board and train horses primarily for people who live in town. My
13 clients appreciate the country feel on Carpenter Lane and feel safe taking
14 their horses out on our road for riding. I do not see Carpenter Lane being
15 a particularly safe place for equestrian traffic if the proposed Industrial
16 facility is executed*** and I imagine my clients will feel the same.***

17 R.3265-66.

18 I am writing in response to the consultant's comments, which do not
19 reflect the reality of my farm operation.***

20 The consultant contends that my farm practices will be protected
21 by a restriction on truck traffic on Carpenter Lane between Cottrell and
22 Altman. Unfortunately, based upon the difficulties of moving trucks
23 north (or now, as proposed, south) on Cottrell, my stretch of Carpenter
24 may provide the most logical and simple route for truck drivers. Signage
25 will not prevent drivers from coming and going this way. Even so, ***let
26 us assume 100% compliance, so that no trucks or other construction
27 traffic passes in front of my property. What this overlooks is the actual
28 nature of my operation, and what draws clients to my farm.***

1 • I do not have riding trails on my property and there are no
2 accessible public trails***. Therefore, the quiet country roads around my
3 farm, most especially including Carpenter Lane running eastward
4 between the farm and the Water Bureau site, but also adjoining and
5 nearby rural roads such as Cottrell Road, are an important feature for
6 existing and prospective clients who wish to ride outside of the
7 arena.*** Carpenter Lane east of Cottrell, to the dead end by the PWB
8 access driveway, is the route most favored by my boarders because it is
9 the quietest and most peaceful one. This is the stretch over which all
10 construction traffic would travel.

11 • This is an agricultural area with quiet country roads and lanes
12 (not just Carpenter Lane, and not just in front of my property), with
13 minimal traffic, which my clients find suitable for horseback riding. My
14 clients will not want to ride on these roads with the increased traffic
15 proposed by the Water Bureau***Nothing about this proposal would be
16 consistent with the rural character of this area.

17 • Horses are naturally nervous, skittish animals***easily disturbed
18 by loud sounds, such as noise from the diesel engines and air brakes of
19 trucks, or***honking by drivers unfamiliar with driving in the vicinity of
20 livestock. Vehicles, especially large loud vehicles, driving past horses
21 are a major problem, and are likely to spook a horse who at best will
22 fidget, or at worst will throw their rider***and run away.

23 • Neighbors in the area generally understand the need to drive
24 slowly past horses***whereas visitors***often behave as if they are
25 passing a bicyclist and speed up, passing within a few feet of the animal.
26 This is dangerous and unsafe for the horse and the rider. Widening
27 Carpenter would only cause traffic, including truck traffic, to speed up,
28 creating additional dangers for riders, as well as for pedestrians and
29 bicyclists on Carpenter (many of whom are of school age).

30 • ***My clients come from as far away as Wilsonville and Lake
31 Oswego. A number of my them will simply move their horses elsewhere
32 in search of the peace and quiet and safety they require while riding, and
33 which they expect in an agricultural setting such as ours. Both existing
34 and potential clients will choose to board at a different facility in a

1 country setting. Based upon my experience, once they have made that
2 decision, they will not come back; there are alternatives out there,
3 including some closer to where some of my clients reside. Thus, the
4 damage will extend far beyond the period of construction, however long
5 that may be.

6 R.1474-75. (Emphasis added.)

7 Ms. Parker understands her longstanding business and the factors that
8 affect it. She is an expert on this subject. PWB's consultants' contrary
9 opinions are makeweight which no reasonable person would believe instead.

10 Cindy Bennington provided photographic and textual evidence of the
11 character of the area, explaining that the area road system is part of the
12 designated Mt. Hood Scenic Byway. R.3774-76. She stated:

13 These local roadways are visited by tourists and local recreators
14 in-route along the Byway to Mt. Hood and multiple Sandy River
15 parks.***

16
17 R.3776.

18 Lauren Courter resides on Dodge Park Blvd. next to the site. She
19 explained the pastoral nature and silence of the area, permeated by sounds of
20 the Sandy River and owls after farm traffic ceases between 3 and 4 o'clock.
21 Elk bed down on her property and black bears pluck fruit. Her family feels
22 (and is) safe running on area roads, including Dodge Park Blvd, Lusted,
23 Altman, Cottrell/347th, and Carpenter Lane—which lack sidewalks or curbs.

1 R.3755-56.

2 Ian Courter testified that facility noise, traffic, and dust would continue
3 after completion of construction, adversely affecting the character the Courter
4 property. R.3749-50. See his photo of PWB site, with Mt. Hood to the east.

5 R.3752.

6 Cris Courter stated:

7 And during the construction phase, even the head engineer for the PWB
8 told us in a site meeting 2 years ago that it would be "very difficult" to
9 live in this area because of the noise, vibration, and traffic. His words.

10 R.3753.

11 Carol Bartha is lives nearby on Dodge Park Blvd. She wrote that ODFW
12 has designated the Bartha property as Wildlife Habitat. Pipeline boring
13 alongside the property will be detrimental to wildlife. R.3712. She and her
14 husband, Rick, are retired Gresham-Barlow teachers. R.3286. In a second
15 letter, they wrote:

16 If you have not lived in our community you will not fully
17 understand its' character.***One morning I was driving down Dodge
18 Park Blvd on my way to work. Right before the top of the hill I was
19 forced to stop and wait for a huge herd of elk to cross the road. I counted
20 25.***I discovered that the herd***migrates through the property where
21 the PWB proposes an industrial site, then***crosses both Carpenter
22 Lane and Dodge Park Blvd on their way to the Sandy River.***

23 Our community is a Mecca for walkers, runners and bicyclists.
24 The Sam Barlow***cross country and track teams use our roads for

1 training throughout the year. The Hood to Coast runners run and drive
2 our roads. You often see individuals and families walking, jogging and
3 biking***. The construction and operation of this plant will put our
4 citizens in danger on our own roads.

5 R.3286. (Emphasis added.)

6 Brent and Linda Leathers reside at 35050 SE Carpenter Lane, one
7 property away from the site. R.3347. Mr. Leathers stated:

8 **Traffic Impacts to Carpenter Lane:** As I understand it, the truck count
9 on the quiet lane in front of our house will exceed 300 trips per day, for a
10 3- to 5-year period. For an 8-hour day, that is essentially one truck every
11 45 seconds, as the same trucks that leave will return. For a quiet lane that
12 historically averages like 30 trips/day***

13 a. Even post-construction, the traffic trips to the PWB industrial
14 plant will more than triple the current quantity of trips on
15 Carpenter Lane (the PWB traffic study unfortunately would have
16 included their own trips to and from the site, artificially inflating
17 the "background" counts). * * *

18 R.3347

19 For 1000 Friends of Oregon, Andrew Mulkey wrote:

20
21 The proposal's impacts to area farms demonstrates why the
22 proposed use is not "consistent with the character of the area"***First,
23 the proposal is nothing like the surrounding agricultural and residential
24 uses.***One of the main differences between the applicant's proposal
25 and area farm uses is that the facilities on the subject property on
26 Carpenter Lane require a host of off-site construction for pipelines and
27 access roadways. These are not consistent with the character other uses
28 in the area.***

29 Although area farm uses have large structures and greenhouses,
30 the construction required to establish those uses is significantly less than

1 what the applicant proposes.***The surrounding farm uses and their
2 buildings do not require large amounts of earthmoving for berms and
3 treatment ponds. They also do not require pipelines to be buried across
4 neighboring properties and in roadways. The applicant's facility is akin
5 to an industrial use, requiring specialized equipment, off-site facility
6 development and upgrades, and corporate style office buildings that
7 more closely resembles manufacturing facility or chemical plant than the
8 greenhouses and equipment storage buildings that are found on nearby
9 farm operations. Simply put, although nurseries and area farms may
10 construct large greenhouses, those farm operations do not require
11 extensive off-site infrastructure, require construction that "will take
12 significantly more time than the average construction project within the
13 county's jurisdiction," or result in pipelines that block access to area
14 roadways for long periods of time. In comparison, construction for the
15 existing farm uses in the area is minimal and does not interfere with
16 nearby uses. These differences demonstrate that the applicant's proposed
17 use is not consistent with the character of the area***.

18 R.3339-40.

19 Paul Willis resides on five acres among nurseries, on the most affected
20 portion of Carpenter Lane. R.3313. He states:

21 Carpenter Lane is truly a safe***street. There is only intermittent
22 local resident and nursery related traffic.***My son can safely drives our
23 riding lawnmower to our elderly neighbor's home to cut their grass
24 without fear of being hit by a vehicle. * * *

25 R.3314.

26 John Edmondson is chair of intervenor PHCA, residing on the same
27 stretch of Carpenter Lane: :

1 Carpenter Lane is a place where the neighbors feel safe to walk***, there
2 are people who ride their horses on it.***

3 I turned 80 this past Monday and likely will spend the last days of
4 my life experiencing double dump trucks moving earth to and from the
5 site, we will experience vibration from pile driving, construction trucks
6 going up and down our narrow road * * *.

7 R.3307.

8 Regarding permanent noise impacts, Kenneth and Patsy Carlson wrote:

9 There will be industrial noise 24 /7 from the operations of the
10 plant-even though it is within "acceptable decibel" range, it will be
11 different from the natural sounds we are used to hearing. Agricultural
12 uses have identifiable sounds and patterns that aren't very loud and
13 terminate well before dark.

14 R.3267.

15 Jim and Theresa Bunning stated:

16 My wife, Theresa, works nights so she sleeps during the day. She will
17 not be able to sleep during the time needed for her job because one of the
18 job sites is less than 100 yards away from our bedroom window.***
19 Also, I, Jim, suffered a dramatic brain injury a few years ago and cannot
20 deal with the loud noise because it triggers migraines off and brings
21 pressure to my head causing high blood pressure.***

22 R.3262.

23 Jennifer Hart lives on 63 acres within one-half mile of the site. R.3249.

24 She wrote regarding wildlife habitat characteristics of the area, and included
25 photos. R.3250-54.

1 Dr. Robert Galasso of Lusted Rd. wrote:

2 The elk, deer, bear and lion don't just live along the river. They live
3 among those of us who call this area home, moving through fields and
4 backyards along Carpenter Lane, Dodge Park Blvd, and Lusted.***

5 R.3247.

6 Ed Evans of Lusted Rd. described PWB's recent construction of a much
7 smaller facility within the same area, a small foretaste of character changes to
8 come:

9 A short time after our move, the city of Portland built a small
10 water facility on Lusted near Hudson. The dump trucks used for the
11 construction phase routinely shook the windows of our house, and
12 caused damage to the boulders securing the water culvert under Lusted
13 Rd . These incidents were reported, but nothing was done***. A
14 Clackamas County Sheriff's Deputy did respond to our complaint about
15 speeding dump trucks and did observe a truck traveling well over the
16 posted 45mph limit.

17 R.3242.

18 Mike Dawson of Dodge Park Blvd. stated:

19 Although we lack sidewalks, our roads are quiet enough for walkers,
20 runners, and cyclists, as well as providing a safe space for our children to
21 learn how to drive.***The quiet times of the day will be shattered by the
22 whine of pumps and clatter of diesel engines.***

23 R.3236.

24 Jesse Nelson resides on Lusted Rd. and stated:

25 My family owns a farm and we have two locations. We use the
26 roads to transport equipment, people and plants between the two. Almost

1 always there is no traffic. I don't have to worry about my employees
2 getting in an accident because there is very little traffic. We only move
3 tractors when necessary, but sometimes I need 16' wide and I don't have
4 to worry much because if I have to pass a car or two it isn't a big deal.

5 The roads are safe to walk or bike on in the evenings because most
6 of the traffic is local and know how to respect others that use the road.

7 R.3216.

8 Doug and Pat Meyer reside on the most directly affected stretch of
9 Carpenter Lane, on property farmed by the family since the 1920's:

10 A mile away, the neighbors dog barks. A horse clops along the rural
11 roadway. The evening solitude is broken with a backyard party and
12 friendly laughter. Walking to pick up the mail, a pair of young bicyclers
13 are chatting***on a casual summer ride politely acknowledge your
14 presence with a friendly smile. Local runners pass them***. And all of
15 these are still enveloped with the sounds of silence.

16 R.3212.

17
18 Kristy McKenzie is in the third generation of her family to live on
19 Carpenter Lane between Cottrell and the site. R.3189. She stated:

20 Not much has changed on Carpenter Lane since the 1950's***all the
21 original farm houses are still there. People still walk their dogs, kids still
22 ride their bikes, and the road still has no shoulder or paint. Local traffic
23 still watches out for kids, cyclists, dog-walkers, horse riders, and
24 slow-moving farm equipment, because they live here too and do the
25 same things. Farm traffic is respectful and friendly-whether it's a
26 slow-moving tractor and the driver waves you around when it's safe, or a
27 big truck trying to make a tight turn and waving at you with appreciation
28 for your patience, all the local nurseries and farms are just that-local.
29 They have kids on these roads too, or they work at the farms and
30

1 nurseries and know the character of this area so they respect speed limits
2 and are used to people on the street***.

3 R.3191.

4 Almost all of this evidence is utterly ignored in the findings, including
5 those findings incorporated from PWB's final written argument, and is
6 unrefuted. The findings are inadequate not merely because they weigh the
7 evidence to reach a conclusion that no reasonable person would reach. Rather,
8 the body of evidence submitted by opponents *adds to and goes far beyond*
9 PWB's evidence. It provides unchallenged detail, overlooked by the findings,
10 describing all the elements of area character, the prevalent traffic patterns, farm
11 practices, school functioning and other public service constraints, wildlife, and
12 natural resources. Both during and after construction, this project will be
13 jarringly discordant with the character of the area. No reasonable person would
14 find compliance with the MCC 39.7515 Compatibility Standard as the H.O. did
15 in this case.

16 The H.O. found PWB's "analysis of the uses in the area consistent with
17 case law." JtApp-41, incorporating JtApp-170-72. The incorporated case law
18 is *Tarr, supra*. Intervenors hence reiterate their discussion of that case above.

1 The H.O. also found consistency as to noise impacts “as conditioned.”
2 JtApp-41. We address this finding in our discussion of “Conditions of
3 Approval,” below.

4 The H.O. found, “the Application concerning transportation impacts is
5 consistent with the character of the area as the use is consistent with County
6 standards***,” incorporating page 86 of PWB’s argument. JtApp-43, 192. As
7 explained by several witnesses, improving Carpenter Lane and other streets to
8 county standards will fundamentally change the character of the area by
9 promoting and speeding up vehicular traffic, rendering current uses unsafe or
10 impossible. The Compatibility Standard has no connection whatsoever to
11 county road standards. LOS compliance is irrelevant. The H.O.’s
12 interpretation has no basis in the text or context of MCC 39.7515(A). It is
13 incorrect. (Frankly, it is also nonsense.)

14 The finding of no significant effect upon wildlife (JtApp-41)
15 incorporates PWB’s argument at JtApp-191. The finding is inadequate because
16 PWB only addresses post-construction impacts, failing to rebut identified
17 impacts upon wildlife habitat and movement during construction.

18 PWB’s incorporated argument contrives a dispute over the meaning of
19 “consistent.” JtApp-192. No one contends that it means “exactly the same.”

1 *Id.* As stated above, *Webster's, supra*, 484, defines "consistent" as "marked by
2 harmony, regularity, or steady continuity throughout : showing no significant
3 change***." The H.O.'s contrary, incorporated interpretation is incorrect.
4

5 Conditions of Approval

6 The H.O. found that the *completed* project "as conditioned" would be
7 consistent with the character of the area. JtApp-A-37. He did *not* find that the
8 standard would be met during the interminable period of construction,
9 including regarding noise. JtApp-41 and incorporated argument at JtApp-172-
10 77. The incorporated findings also fail to rebut the testimony relating to post-
11 construction noise set out above. The findings are thus inadequate to show
12 compliance with the MCC 39.7515(A) Compatibility Standard and
13 unsupported by substantial evidence..

14 The adopted conditions, set out at JtApp-81-97, would not produce
15 consistency in any event. Among the conditions, PWB must install a
16 "delineated," "paved pedestrian route," but only on Carpenter east of Cottrell.
17 JtApp-92. This does not account for other affected roads, or for bicyclists or
18 equestrians who cannot safely share such a walkway with pedestrians. Further,
19 the pedestrian route is required to be removed after the facility first receives its
20 temporary certificate of occupancy. *Id.* This will leave the conditions

1 described by community members—increased, faster traffic, incompatible with
2 and dangerous to walkers, runners, cyclists, and riders—in place permanently. If
3 MCC 39.7515(A) contained an *In*compatibility Standard, PWB’s proposal
4 would meet it with flying colors.

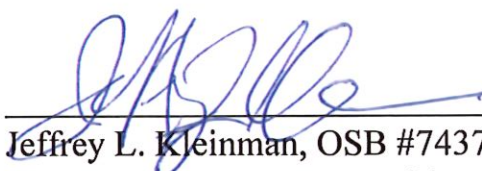
5 **V. CONCLUSION**

6 For all the reasons set out above, intervenors’ assignment of error
7 should be sustained.

8 Respondent’s decision must be reversed or remanded.

9 Dated: July 5, 2024.

10 Respectfully submitted,

11 
12 _____
13 Jeffrey L. Kleinman, OSB #743726
14 Attorney for Intervenor-Petitioners Pleasant
15 Home Community Association and Angela
16 Parker, dba Hawk Haven Equine
17
18

SUPPLEMENTAL APPENDIX

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR
MULTNOMAH COUNTY, OREGON
ORDINANCE NO. 148

An Ordinance amending Ordinance No. 100, establishing new districts to regulate development in areas designated "Rural or Natural Resource" by the Multnomah County Comprehensive Framework Plan; establishing standards and administrative review procedures for developments in the Willamette River Greenway and designated Areas of Significant Environmental Concern; adding and revising certain other sections and defining terms; all for the purpose of implementing various provisions of the Comprehensive Framework Plan.

Multnomah County ordains as follows:

SECTION 11

Section 7.00 of Ordinance No. 100 is amended to read:

7.00 COMMUNITY SERVICE CS

7.010 PURPOSE

This Section provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate in any district, but not suitable for listing within the other sections of this Ordinance.

7.020 GENERAL PROVISIONS

7.021 Application for approval of a Community Service use shall be made in the manner provided in subsection 12.20.

7.022 The Hearings Council shall hold a public hearing on each application for a Community Service Use, modification thereof, or time extension.

7.023 The approval of a Community Service Use shall expire two years from the date of such approval if substantial construction or development has not taken place, unless the Hearings Council shall have established a longer period.

7.024 A Community Service approval shall be for the specific use or uses together with the limitations or conditions as determined by the Hearings Council. Any change of use or modification of limitations or conditions shall be subject to Hearings Council approval after a public hearing.

7.025 In granting approval of a Community Service Use, the Hearings Council may attach limitations or conditions to the development, operation or maintenance of such use in relation to the purposes of this Ordinance, including but not limited to setbacks, screening and landscaping, off-street parking and loading, access performance standards, performance bonds, structure height and location or construction standards.

7.025.1 Uses authorized pursuant to this section shall be subject to design review approval pursuant to Section 7.60.

7.026 A Community Service approval shall not be construed as an amendment of the Zoning Map, although the same may be depicted thereon by appropriate color designation, symbol or short title identification.

7.027 COMMUNITY SERVICE APPROVAL IN CERTAIN DISTRICTS: STANDARDS

The following standards shall be applied to the approval of a Community Service Use in the BFU-38, CFU-38, MUA-20, MUF-20, RR and RC districts:

7.027.1 The Hearings Council shall find that the proposal:

- a. is consistent with the character of the area;
- b. will not adversely affect natural resources;
- c. will not conflict with farm or forest uses in the area;
- d. will not require public services other than those existing or programmed for the area;
- e. will not create hazardous conditions; and
- f. will satisfy the applicable policies of the Comprehensive Plan.

7.030 USES

Except as otherwise provided in Section 3.10, the following uses, and those of a similar nature, may be permitted in any district; provided such is consistent with the purposes of this Ordinance and when approved at a public hearing by the Hearings Council:

- a. Boat moorage, marine or boathouse moorage.
- b. Camp or campground.
- c. Cemetery, crematory, mausoleum, mortuary or funeral home.
- d. Church.
- e. Government building or use.
- f. Hospital, sanitarium, rest or retirement home.
- g. Library.
- h. Park, playground, sports area, golf course or recreational use of a similar nature.
- i. Philanthropic or eleemosynary institution.
- j. Power substation or other public utility building or use.
- k. Private club, fraternal organization, lodge.
- l. Racetrack.
- m. Radio or television station or tower.
- n. Refuse dump or sanitary landfill.

- o. Resort, dude ranch, hunting or fishing lodge.
- p. Riding academy or the boarding of horses for profit.
- q. School, private, parochial or public; educational institution.
- r. Accessory uses to the above when approved by the Hearings Council.
 - 1. Approval of a Community Service Use shall be deemed to authorize associated public utilities, including energy and communication facilities.

7.040 RESTRICTIONS

These buildings and uses shall meet the following requirements:

7.041 Minimum yards in EFU-38, CUF-38, F-2, MJA-20, MUF-20, RR, RC, R-40, R-30, R-20, and R-10 districts:

- a. Front yards shall be 30 feet.
- b. Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.
- c. Rear yards shall be as required in the district.

7.042 Minimum yards in R-7.5, R-7, R-4, A-2, and A-1-B districts:

- a. Front yards shall be 30 feet.
- b. Side yards for one-story buildings shall be 15 feet; for two story buildings, 20 feet.
- c. Rear yards shall be as required in the district.

7.043 Minimum yards in other districts shall be as required in the district.

7.044 Minimum Site Size:

- a. For day nurseries and kindergartens, shall provide not less than 100 square feet per child, of outdoor play area located other than in the required front yard.
- b. For primary (kindergarten through fourth grade), private and parochial schools shall be one acre for each 90 pupils or one acre for each three classrooms, whichever is greater.

SECTION 14 ADOPTION

This Ordinance being necessary for the health, safety and general welfare of the people of Multnomah County, shall take effect on the thirtieth (30th) day after its adoption pursuant to Section 5.50 of the Charter of Multnomah County.

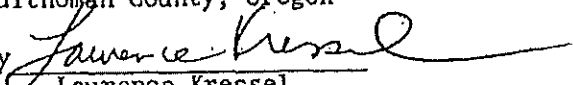
Adopted this 6th day of September, 1977, being the date of its SECOND reading before the Board of County Commissioners of Multnomah County, Oregon.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By 
Chairman

APPROVED AS TO FORM:

John B. Leahy
County Counsel for
Multnomah County, Oregon

By 
Laurence Kressel
Deputy County Counsel

(2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(D) Will not require public services other than those existing or programmed for the area;

(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

(F) Will not create hazardous conditions;

(G) Will satisfy the applicable policies of the Comprehensive Plan;

(H) Will satisfy such other applicable approval criteria as are stated in this Section.

(I) In the West of Sandy River Rural Planning Area, the use is limited in type and scale to primarily serve the needs of the rural area.

(Ord. 1270, Amended, 03/14/2019)

§ 39.7520 USES.

(A) Except as otherwise limited in the EFU, all CFU and OR base zones, the following Community Service Uses and those of a similar nature, may be permitted in any base zone when approved at a public hearing by the approval authority.

Allowed Community Service Uses in the EFU, CFU and OR base zones are limited to those uses listed in each respective base zone.

(1) Church, or other nonresidential place of worship, including the following activities customarily associated with the practices of the religious activity:

- (a) Worship services;
- (b) Religion classes;
- (c) Weddings;
- (d) Funerals;

(e) Meal programs;

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education; and

(g) Providing housing or space for housing in a building that is detached from the place of worship, provided:

(i) The subject property is located in a base zone that lists single-family dwelling as an Allowed Use, or where a single-family dwelling is permitted through a non-discretionary land use review process.

(ii) The subject property is located inside the urban growth boundary.

(iii) At least 50 percent of the residential units provided under this subsection (g) are affordable to households with incomes equal to or less than 60 percent of the median family income for Multnomah County.

(iv) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone, including the density standards for dwellings in the applicable zone.

(v) Housing and space for housing provided under subsection (g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of the building or any residential unit contained in the building from selling or renting any residential unit described in subsection (g)(iii) of this section as housing that is not affordable to households with

incomes equal to or less than 60 percent of the median family income for Multnomah County for a period of 60 years from the date of the certificate of occupancy.

- (2) Group care facility.
- (3) Kindergarten or day nursery.
- (4) Library.
- (5) Park, playground, sports area, golf course or recreational use of a similar nature.
- (6) Utility facilities, including power substation or other public utility buildings or uses, subject to the approval criteria in MCC 39.7515(A) through (H).
- (7) Private club, social organization, lodge.
- (8) Radio and television transmission towers.
 - (a) VHF and UHF television towers, FM radio towers, two-way radio, common carrier, and cellular telephone towers, and fixed point microwave towers are permitted in any base zone, provided only self-supporting structures are permitted in the Exclusive Farm Use base zone.
 - (b) Low-power television towers, satellite ground stations, AM radio towers, and building-mounted towers are permitted in any base zone except urban residential base zones, provided only self-supporting structures are permitted in the Exclusive Farm Use base zone.
 - (c) Ham radio, amateur sole source emitters, Citizen Band transmitters, and structures to support them are permitted in any base zone as an accessory use and do not require a

Community Service use designation if used for non-commercial purposes only. Any such tower shall comply with the regulations of the base zone in which it is located. Non-amateur sole source emitters shall also comply with the registration requirements of MCC 39.7575 (B).

- (d) Receive-only facilities in conjunction with a permitted use are exempt from the provisions of this section, but shall comply with all other requirements of this paragraph (A) (8) and 39.7550 through 39.7575.
- (9) Recycling collection center.
- (10) Riding academy or the boarding of horses for profit.
- (11) School, private, parochial or public; educational institution.
- (12) Transit station, or park and ride lot.
- (13) Waste collection, transfer, processing, or recovery facility.
- (14) Museum.
- (15) Ambulance Service Substation.
- (16) Mining and processing of geothermal resources.
- (17) Limited alternative uses of surplus public school space pursuant to the provisions in MCC 39.7650.
- (18) Fire Station.
- (19) Accessory uses to the above.

(B) In addition to those uses listed in subsection A of this section, in the West Hills, Sauvie Island/Multnomah Channel and East of Sandy Rural Planning Areas, the following Community Service Uses and those of a similar nature may also be permitted when approved at a public hearing by the approval authority

(1) Boat moorage, marina, or boathouse moorage.

(2) Camp, campground, or recreational vehicle park.

(3) Cemetery, crematory, mausoleum, mortuary or funeral home.

(4) Government building or use.

(5) Hospital, sanitarium, rest or retirement home.

(6) Philanthropic or eleemosynary institution.

(7) Racetrack

(8) Refuse dump or sanitary landfill.

(9) Resort, dude ranch, hunting or fishing lodge.

(10) Regional sanitary landfills.

(11) Wireless communication facilities.

(C) Approval of a Community Service Use shall be deemed to authorize associated public utilities to serve the site, including energy and communication facilities.

(Ord. 1309, Amended, 08/18/2022; Ord. 1270, Amended, 03/14/2019)

§ 39.7525 RESTRICTIONS.

A building or use approved under MCC 39.7520 through 39.7650 shall meet the following requirements:

(A) Minimum yards in EFU, CFU (Note – not applicable to CFU-1 through CFU-5), MUA-20, RR, BRC, OCI, OR and PH-RC, UF-20, LR-10, UF-20, MUF, SRC, and RC base zones:

(1) Front yards shall be 30 feet.

(2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.

(3) Rear yards shall be as required in the base zone.

(B) Minimum yards in LR-7, LR-5 and MR-4 Base zones:

(1) Front yards shall be 30 feet.

(2) Side yards for buildings 25 feet or less in height shall be 15 feet; for buildings over 25 feet in height, 20 feet. (3) Rear yards shall be as required in the base zone. (C) Minimum yards in other base zones shall be as required in the base zone.

(C) Minimum Site Size:

(1) A day nursery or kindergarten shall provide not less than 100 square feet per child, of outdoor play area located other than in a required front yard.

(2) Primary (kindergarten through fourth grade), private and parochial schools shall be on sites of one acre for each 90 pupils or one acre for each three classrooms, whichever is greater.

(3) Elementary public schools shall be on sites of one acre for each 75 pupils or one acre for each two and one-half classrooms, whichever is greater.

(4) Churches shall be on sites of 15,000 square feet.

(D) Off-street parking and loading shall be provided as required in MCC 39.6500 through 39.6600.

(E) Signs for Community Service Uses pursuant to the provisions of MCC 39.6700 through 39.6820.

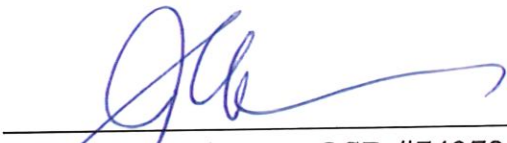
(F) In the MUA-20, RR, and BRC, SRC and RC base zones, the length of stay by a person or vehicle in a camp, campground, campsite or recreational vehicle park shall not exceed a total of 90 days during any consecutive 12 month period by an individual, group or family unless otherwise provided in State law. This provision is not applicable in the West of Sandy River Planning Area or Urban Planning Area.

**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH
AND TYPE SIZE REQUIREMENTS**

I certify that this brief complies with the word-count limitation in OAR 661-010-0030(2), and the word count of this brief as described in OAR 661-010-0030(2) is 10,995 words.

I certify that the size of the type in this brief is not smaller than 14 point for both text of the brief and footnotes as required by OAR 661-010-0030(2).

Dated: July 5, 2024.



Jeffrey L. Kleinman, OSB #743726
Attorney for Intervenor-Petitioners Pleasant
Home Community Association and Angela
Parker, dba Hawk Haven Equine

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 5, 2024, I filed the original of this PETITION FOR REVIEW OF PLEASANT HOME COMMUNITY ASSOCIATION AND ANGELA PARKER, dba HAWK HAVEN EQUINE together with one copy, with the Land Use Board of Appeals, 775 Summer Street NE, Suite 330, Salem, OR 97301-1283, by first class mail.

I hereby certify that on July 5, 2024, I served the foregoing PETITION FOR REVIEW OF PLEASANT HOME COMMUNITY ASSOCIATION AND ANGELA PARKER, dba HAWK HAVEN EQUINE by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Carrie A. Richter
William Kabeiseman
Bateman Seidel Miner Blomgren
Chellis & Gram, PC
1000 SW Broadway, Suite 1910
Portland, OR 97205
*Attorneys for Petitioners and Multnomah County
Rural Fire Protection District No. 10*

James D. Howsley
Ezra L. Hammer
Steven L. Shropshire
Jordan Ramis PC
1211 SW Fifth Avenue, Floor 27
Portland, OR 97204
*Attorney for Intervenor-Petitioner Oregon Association of
Nurseries and Multnomah County Farm Bureau*

///

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Elliot R. Field
Garrett Hemann Robertson PC
PO Box 749
Salem, OR 97308
*Attorneys for Intervenor-Petitioner Gresham-Barlow School
District 10J*

Andrew Mulkey
1000 Friends of Oregon
340 SE Sixth Ave
Portland OR 97214
Attorney for Intervenor-Petitioner 1000 Friends of Oregon

David N. Blankfeld
Jenny M. Madkour
Multnomah County Attorney's Office
501 SE Hawthorne Blvd, Suite 500
Portland, OR 97214
Attorney for Respondent Multnomah County

Zoe Lynn Powers
Renee M. France
Radler White Parks & Alexander LLP
111 SW Columbia Street, Suite 700
Portland, OR 97201
Attorneys for Intervenor-Respondent Portland Water District

DATED: July 5, 2024.



Jeffrey L. Kleinman, OSB #743726
Attorney for Intervenor-Petitioners
Pleasant Home Community Association
and Angela Parker, dba Hawk Haven
Equine