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Via Hand Delivery and email to LUP-Comments@multco.us
Land Use Hearings Officer
Multnomah County
1600 SE 190th Av.
Portland, OR 97233

Re: Case File No. T3-2022-16220 (Portland Water Bureau)

Dear Hearings Officer:

I represent the Pleasant Home Community Association ("PHCA"). The following matters are set out on its behalf. The purpose of this letter is to set out the legal framework for the evidence that will be presented by fact witnesses at the hearing in this matter, especially as to the county's protection of ongoing, accepted farm practices under MCC 39.7515(C). The impacts of the applicant's proposed facility and related pipelines, and especially those impacts arising during the projected five-year construction period, would result in continuous, ongoing violation of this provision. In any event, as we will explain, PWB has come nowhere near meeting its burden of proof herein and apparently perceives no need to do so.

The Farm Impacts Test

The fundamental approval criteria for the proposed Community Service use are contained in MCC 39. Section 39.7515(C) requires a showing that:

> (C) The use will not:
>
> (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor

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

This is often referred to as the "farm impacts" test, and tracks precisely with the language of ORS 215.296(1) regarding conditional uses on lands designated for agricultural use, except that the county uses the connector "nor" rather than "or" to make its meaning even more clear. We would also note that the statute contains an added provision allowing for mitigation of farm impacts by means of conditions of approval.[1] However, the county chose not to include that provision. This reflects a desire on the part of the county to provide even more protection for farming in the face of proposed conflicting uses.

In *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 444-45, 435 P3d 698 (2019) ("*SDC*"), the Oregon Supreme Court described the operation of the farm impacts test as follows:

> Petitioners, on the other hand, see the test operating in granular terms, farm by farm and farm practice by farm practice. They contend that the text of ORS 215.296 indicates that the farm impacts test requires (1) the applicant to properly identify the surrounding lands, the farms on those lands, the accepted farm practices on each farm, and the impacts of the proposed nonfarm use on each farm practice; (2) the local government to determine whether the proposed nonfarm use will force a "significant" change to, or cost increase in, an accepted farm practice, as that term is ordinarily used; and (3) if there is a significant change, the local government to determine whether the applicant has demonstrated that, with conditions of approval imposed pursuant to subsection (2) of the statute, the nonfarm use

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[1]ORS 215.296(2) provides:

> (2) An applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

> meets the test. As we will explain, we agree with petitioners that the legislature intended the farm impacts test to apply on a farm-by-farm and farm practice-by-farm practice basis and intended to use the ordinary meaning of "significant" and "significantly" in ORS 215.296(1), not a specialized meaning tied to the supply of agricultural land, supply of food, or farm profitability.

(Again, "subsection (2)" mitigation via conditions is not an element of the county's code provision here.)

PWB's application materials describe a construction period for the filtration facility and related pipelines of approximately five years (assuming that their current construction schedule actually holds). As staff states,

> The PWB application discusses the impacts the Water Filtration Facility, Pipelines, Communication Tower and other physical improvements will have once they are completed. The County's code states that the terms "development" and "use" are synonymous. This would seem to mean that the act of improving land is part of the use. When reviewing the use, significant impacts created by the development/construction need to be considered. In addition, the development of the Water Filtration Facility, Pipelines, etc. will take significantly more time than the average construction project within the County's jurisdiction.

Staff Report, 47.

As LUBA held with respect to the farm impacts test in *Von Lubken v. Hood River County*, 28 Or LUBA 362, 369 (1994), even an increased cost of just $20,000 to mitigate for dust generated during a short, 2½-month construction period must be taken into account–even when construction was complete by the time the appeal was decided:

> We conclude the court of appeals determined LUBA was incorrect in concluding in *Von Lubken III* [118 Or App 246 (1993)] that changes in or increases in costs of accepted farm practices attributable to dust generated during the construction phase need not be considered in addressing ORS 215.296(1), simply because those impacts and costs occurred prior to approval of the disputed decision.

The cited Court of Appeals decision also made clear that in determining the significance of impacts upon farm practices, the cumulative effect of two or more impacts upon a farm were to be considered together:

> Finally, petitioners argue that LUBA erred by considering the six impacts of the golf course on their farm operations in isolation and that ORS 215.296(1) should be construed to require their cumulative effects to be considered. We agree with petitioners' reading of the statute. Because we remand, the county and/or LUBA will have the opportunity to reconsider the compatibility of the proposed use with ORS 215.296(1).

Von Lubken v. Hood River County, 118 Or App 246, 251, 846 P2d 1178 (1993).

The requirement to consider cumulative impacts upon farms that suffer multiple, but less than significant, individual impacts, has been observed ever since. *See e.g. SDC*, *supra*, 364 Or at 458-60.

The evidence will show many instances of cumulative impacts in this case including, for example, substantial impediments to time-sensitive farm traffic, and damage to nursery crops from dust generated by pipeline construction and the applicant's own heavy truck traffic, and the costs of attempting to remove that dust to restore nursery stock to a saleable condition.

As LUBA stated in *Van Dyke v. Yamhill County*, 80 Or LUBA 348, 388 (2019),

> As noted, ORS 215.296(2) authorizes the county to establish compliance with the farm impacts test in ORS 215.296(1) by imposing clear and objective conditions. However, permissible conditions cannot themselves cause significant changes to accepted farm practices, even if the conditions mitigate the direct adverse impact of the proposed non-farm use. *SDC-IV*, 364 Or at 460.

Among the relevant factors forming the basis for LUBA's remand in *Van Dyke* was the need for farmers to avoid spraying needed pesticides within a 100-foot buffer of the proposed recreational trail. 80 Or LUBA at 364-69. The evidence presented to you will show that the same problem is present here. Moreover, while the recreational trail in question in *Van Dyke* was sensitive conflicting use, it pales in comparison with a facility filtering drinking water for the entire city of Portland and other jurisdictions, as well.

Another basis for LUBA's remand in *Van Dyke* was evidence of likely interference with farm equipment and vehicles on local roads and a state highway resulting from parking of trail users' vehicles. *Id.* at 384-86. That manifestation of interference with farm traffic would be a minor nuisance compared to that created by five years of PWB's construction traffic, including more than 300,000 truck trips.

On this subject, the applicant has veered figuratively all over the road, and literally all over the map. The site is proposed to have a permanent access on the north, onto Carpenter Lane, and a temporary entrance to the south on Bluff Road in Clackamas County, which would serve as a barricaded emergency access after construction is complete. The latter access requires an easement from a farmer which the applicant does not now possess. Not very long ago, PWB proposed to route essentially all construction traffic via the southern access road. Now, apparently, it proposes to route essentially all construction traffic onto Carpenter Lane and into the Carpenter Lane entry! In the meantime, perhaps reflecting the ultimate, confused reality of the proposed project, the following discourse took place among PWB personnel in response to questions at the April 13, 2023 online Neighbor Update meeting (video available at:

https://www.portland.gov/water/bullruntreatment/events/2023/4/13/bull-run-filtration-neighbor-update-meeting-april-2023). (Bonita Oswald is PWB's "project communications coordinator" and conducted the meeting .)

Bonita Oswald: All right. Jaime, in the chat. What other roads will trucks be using during construction, will drivers be allowed to use to change the routes? Do this Ken or Michelle. Do any of, either of you have the answer to that?

Michelle Cheek: I can jump in or Ken as well, I can jump in. And Ken as well. But we had, I guess this is specific to the routes, not road closures. In terms of routes that will be used during construction, our contractor will be identifying those as part of their construction planning. And certainly as we know more about that we can share that information. And in terms of drivers being allowed to change their routes, I don't know the answer to that question honestly. I, you know we will have traffic control plans that have to go through review. But if a driver deviates from their route, and I am not sure why they would. I am not sure what would be the course of, the course of action would be. Ken, I think you are a little more familiar with this type of work than I am. So, if you've got anything better to share please do so. If not, that's okay.

Ken Ackerman: So each contractor is preparing a traffic plan or access plan both in and out for trucks. So we're getting them from both of them and trying to facilitate work between both of them and it also ties to their schedules because as much as when they are hauling. It's as much as where they are hauling, is when they are hauling, and obviously when we have work on Dodge Park down to one lane. You know how that impacts the public as well as the construction traffic in and out of the site. So we're working on getting those all integrated together and then those will also be going to the county. So it's in process, we're trying to do it and there has been some discussion on whether trucks will have choices of routes. And choices of routes in the immediate area and then once they get beyond. So that's all being considered. And how that's integrated into their construction

> management plan. So, and some of it may depend on whether it's somebody hauling in a one time thing versus say for the pipes, the contractor or the pipe supplier delivering the pipe. We may dictate more on the pipes. Or somebody that's going to be there more often as opposed to the one time person whose delivering something that they only have one of. So more to come and I know we're getting down there on time before we start construction. But we are trying to make sure that it is integrated and well thought out.
>
> **Michelle Cheek:** Like a puzzle.

(Emphasis added.)

A puzzle indeed. And one without a solution, whether set out in the record or hypothetically feasible. Simply stated, the applicant has not met its burden of proof as to traffic impacts upon accepted farm practices or the cost of those practices. Indeed, it has not even tried. PHCA members and other witnesses will present evidence of the significant impacts of this project upon accepted farm practices within an extensive impact area. To the same effect, opponents will also provide a detailed written report and oral testimony from Michael Ard, their traffic engineer.

Farm Impacts Relating to Traffic Addressed in Staff Report

Although the county does not have a code provision allowing an applicant to achieve compliance with MCC39.7515(C) via mitigating conditions, the staff report touches upon possible conditions suggested by Transportation staff. The evidence will show that none of these conditions, even if imposed and even if somehow complied with, would provide any such mitigation. The staff report states in material part:

> **If the Hearings Officer finds the applications can be approved, Transportation Planning recommends the following conditions be included:**

> 1. Pursuant to MCRR 5.200, the County Engineer determination of pro-rata share of improvements will expire twelve months from the date of the County Engineer's determination or after the associated land use permit is granted or closed. If the applicant has not entered into a Project Agreement or Construction Permit(s) within 12 months, a review and new determination shall be required.
>
> * * *
>
> 4. Pursuant to MCRR 6.100D, Applicant is required to submit a Transportation Demand Management (TDM) Plan prior to start of construction. The plan will identify person/people responsible for coordinating demand reduction strategies (carpooling, offset arrival times, incentive program, etc.), when the strategies will be deployed, and how the strategies will be measured for impact. Applicant will provide progress reports to the County every 6 months during the construction of the facility. If traffic volumes exceed overall recommended volumes entering the site, applicant will develop new strategies.

Staff Report, 11.

Such a TDM Plan apparently would address employees and contractors onsite, but overlooks over 300,000 heavy trucks hauling in cement, gravel, pipe, and construction materials, and hauling excavated sand out. Moreover, the development of the Plan requires public participation in a public process in order to comply with the requirements for deferral of the Plan. In addition, there is no evidence that such a Plan would feasibly eliminate significant impacts on farm practices and the costs of those practices, as required by MCC 39.7515(C).

In this regard, we do not intend criticism of county Transportation staff. They worked with only the limited information provided by PWB and without the volume of evidence of farm practices to be adduced at your hearing. As a result, they necessarily failed to propose workable conditions–to the extent that

conditioning is permissible and can or will be effective here.

The proposed conditions then address required permits for right of way construction. We set these out here only to show the scope of the affected farm road system, even within the limited impact area identified by the applicant. (Other affected farm traffic routes will be identified at the hearing.)

5. Prior to construction in the Right of Way (ROW), obtain Construction permit (MCRR 9.200, 18.200) for:

a. All frontage/ road improvements of SE Carpenter Ln and SE Cottrell Rd consistent with the preliminary Civil Plan set, Exhibit A.16, A.17 (MCRR 6.100B; MCRR 8.000).

i. applicant must ensure that all geologic hazard and environmental overlay permits from County Land Use have also been obtained, if applicable;

b. All roads requiring full or partial road work due to pipeline installation:

i. SE Dodge Park Blvd from SE Cottrell Rd to east of SE Altman Rd

ii. SE Altman Rd from SE Lusted Rd to SE Oxbow Rd

iii. SE Cottrell Rd from SE Dodge Park Blvd to SE Lusted Rd

iv. SE Lusted Rd from the Intertie Site to SE Altman Rd

c. All roads requiring preliminary or ongoing maintenance due to projected use:

i. SE Altman Rd from SE Oxbow Drive and Dodge Park Road

ii. SE Cottrell Rd from SE Lusted Road and SE Dodge Park Road

iii. SE Lusted Rd from SE Altman Road and SE Cottrell Road

iv. SE Hosner Rd from SE Lusted Road and SE Oxbow Parkway

v. SE Lusted Rd from SE Altman Road to SE Pleasant Home Rd

Staff Report, 12.

Then, the staff report suggests transportation conditions to mitigate some of the impacts upon local traffic:

7. Temporary road closures, partial or complete, in relation to the construction of the Pipelines and facilities that form this land use application, requires prior review and approval by County Transportation (MCRR 13.000). Applications will need to be submitted to row.permits@multco.us for review and approval by County Engineer (MCRR 18.250). Application requirements and documents can be found at the following webpage: https://www.multco.us/roads/road-and-bridge-permit-applications.

a. Traffic Control Plan (TCP) shall be submitted during the Construction Permitting process that shows detours and road closures. Any deviation to the approved TCP during construction shall require a resubmittal of the TCP for approval.

b. <u>All roads identified on the approved TCP as part of the construction area, whether as a detour and/or road closure, shall be evaluated for mitigation for serviceability during and after construction. The process for this will be outlined in the Project Agreement (see condition 6)</u>.

c. <u>TCP(s) must demonstrate consultation/engagement with Agricultural businesses abutting the pipeline and detour routes and Gresham-Barlow School Districts, as recommended in the</u>

Construction TIA (Exhibit A.230) to ensure impacts on the local transportation network are known in advance.

d. Rural roads with a Pavement Condition Index (PCI) rating below 50 must not be used as detour routes in the Traffic Control Plan unless the applicant submits construction plans to mitigate impacts and improve the PCI. The Construction Permit process (see condition 5 above) will be used to review TCP and confirm appropriate detour routes.

Staff Report, 12-13 (Emphasis added).

This condition quite literally kicks the can down the road with respect to impacts on farm traffic, with no assurance and no demonstration of the feasibility of compliance with MCC 39.7515(C). It illustrates one of PHCA's primary points: PWB has failed to even establish a minimal baseline of the requisite burden of proof. What is the nature and volume of the impacted farm traffic? Is it seasonal or year around? Is it most intense during PWB's prime construction season? (In other words, are traffic conflicts maximized during spring, summer and fall?) In addition, as the evidence will show, farm operations "abutting the pipeline and detour routes" are far from the only ones which will suffer significant adverse impacts. Indeed, the mere designation and existence of needed "detour routes" makes a *prima facie* case of a significant change in accepted farm practices and increase in the cost of those practices.

Applicable Legislative History

We turn now to the legislative history of ORS 215.296(1), the language of which the county adopted in MCC 39.7515(C). The statutory language in question initially arose in the context of 1983 legislation governing nonfarm dwellings on EFU land. As of 1981, the controlling language was contained in ORS 215.213(3):

> (3) Single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:
>
> (*a) Is compatible with farm uses described in ORS 215.203(2) and is consistent with the intent and purposes set forth in ORS 215.243;*
>
> *(b) Does not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use*;
>
> (c) Does not materially alter the stability of the overall land use pattern of the area * * *.

(Emphasis added.)

By 1981, the legislature had become concerned about issues adversely affecting EFU lands:

> In 1981, the Joint Legislative Committee on Land Use ("JLCLU") established an EFU Task Force to recommend changes to the EFU statutes that would "improve the quality of county exclusive farm use (EFU) zone decisionmaking." In November of 1982, the Task Force submitted its report and recommendations to the JLCLU. They considered the recommendations of the EFU Task Force on amendments to the EFU statute in ORS chapter 215. Some of these became part of the 1983 Marginal Lands legislation.

Sullivan and Eber, *The Long and Winding Road* at 27 (footnotes omitted).

The EFU Task Force proposed replacement language which was incorporated into 1983 Senate Bill 237, and adopted by the Senate. It replaced the language of ORS 215.213(3)(a)-(c) with the following:

> "(a) The dwelling or activities associated with the dwelling will not force a major change in or measurably increase the cost of accepted farming practices on nearby lands devoted to farm use."

SB 237 then came before the House Committee on Environment and Energy. The above language was discussed at its July 7, 1983 work session. Minutes, House Committee on Environment and Energy, July 7, 1983, p. 1. (App A) Concerns were raised about whether farmers would be adequately protected by a test based upon whether the proposed nonfarm dwelling "will not force a major change in or measurably increase the cost of accepted farming practices on nearby lands devoted to farm use." Committee members discussed the possibility of applicants for nonfarm dwellings compensating farmers for increases in the cost of farming, whether by agreement or through litigation. Representative VanLeeuwen stated:

> "An unmeasurable cost that really gets into this situation is the activity associated with the dwelling if that person has a big dog, or even a little dog, and then they run out through your field a number of times, you can't really measure that cost, but you know there was a cost in shattered seed."

Transcript, House Committee on Environment and Energy, July 7, 1983, Tape 283, Side A, pp. 6-7.

Representative Throop stated:

> "We shouldn't be setting up a situation where we're going to be requiring that farmers get into compensation with their neighbors. I like the idea behind the criteria that is included in this draft is to prevent those situations from occurring in the first place. And I thought that was our objective in trying to redefine the criteria for the EFU zone. If it was going to have an impact on that farming practice, then that nonfarm dwelling wouldn't be allowed."

Id., 7.

Representative VanLeeuwen proposed an amendment to the Senate language, and the following discussion ensued:

> "CHAIRWOMAN HOOLEY: Your amendment, which would be, the dwelling or activities associated with the dwelling will not force a major change in * * * or major increases in the cost--because as I understood your motion, you did not want it to--you wanted it to reflect that if there was a major change in accepted farming practice, or a major change--a major increase in the cost of the farming practice–
>
> REPRESENTATIVE VanLEEUWEN: Okay. I said the dwelling or activities associated with the dwelling will not force a major change in the farming practices, or in the cost of accepted farming--
>
> CHAIRWOMAN HOOLEY: Or a major--in the cost of accepted farm practices.
>
> REPRESENTATIVE VanLEEUWEN: But Madame Chair, I would like to change the major -- I make a move that a friendly amendment to mine that would change that to significant instead of major. *Significant, in my mind, being less than major*."

Id., 10-11. (Emphasis added.)

After an initial vote, the following discussion occurred:

> "CHAIRWOMAN HOOLEY: Representative Anderson's motion would be, the dwelling or activities associated with the dwelling will not force a major change in the cost of accepted farming practices on nearby lands devoted to farm use.

> REPRESENTATIVE ANDERSON: Chair, I would make that, if it's friendly to everybody, *the word significant that is less onerous than major*.
>
> CHAIRWOMAN HOOLEY: Representative Anderson moves that the dwelling or activities associated with the dwelling will not force a significant change in the increase in the cost--significant change in the cost of accepted farming practices on nearby lands * * *"

Id., 12-13. (Emphasis added.)

Before a further vote, Lois Kenagy of Agriculture Oregon testified and clarified the distinction between impacts on farm practices, and impacts upon the cost of those practices:

> "I was going to comment on--following Hector's [Macpherson's] comments, that the one difference is for the * * * farm operator who is a one-person operation. And the major change can be the time on that farmer. And it's--it's a cost, but it's not a cost that I would guess the courts would recognize in terms of his hours. I mean, what kind of value do I put on my time, or my husband's time, when many times he's working for nothing as the year-end finances work out.
>
> But when I think of the time that's required to communicate with the neighbors, and to work out problems with all the surrounding rural residential things, that requires -- it's a major change when we're working on a farm process surrounded by houses * * *. That is a major change. But it does not measurably increase in terms of the dollar outlay.
>
> And from our own situation, from my own experience and working in both suburban and the areas outside urban growth boundaries in both Corvallis and Albany, I think having both--having a significant change in the accepted farming practices, or some kind of increase in the cost of accepted farming practices. I think both of those gives a better protection for agriculture * * *."

> CHAIRWOMAN HOOLEY: * * * How would you feel about, the dwelling or activities associated with the dwelling will not force a significant change in or significant increase in the cost of accepted farm practices?"

Id., 16-18.

Chair Hooley then proposed an amendment:

> "On line 12, a significant change in, or a significant increase in the cost of accepted farming practices on nearby lands devoted to farming."

Id., 19.

This language was adopted by the committee (*id.)* and enacted by the legislature. Or Laws 1983, ch 826 § 6. ("The dwelling or activities associated with the dwelling will not force a significant change in, or a significant increase in the cost of accepted farming practices on nearby lands devoted to farm use.") As is apparent from the above discussion, the committee's concerns in adopting the current language were directed at impacts upon individual farms and farmers. Compare Representative Van Leeuwen's concern about a single dog shattering seed in a field one or more times–upon which her committee acted in adopting the current language of the statute–with five years of blockage and delay of farm traffic as proposed here.

In 1989, this standard was incorporated into ORS 215.296 in its present form. 1989 House Bill 2682; Or Laws 1989, ch 861, § 6. That which in 1983 had been made,

> only applicable to non-farm dwellings in Marginal Land Counties, was applied to the non-farm uses allowed through a discretionary review.[2] This new standard required a demonstration that the proposed use will not force a

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[2] *i.e.,* the uses listed in ORS 215.213(2) and 215.283(2). These are also commonly referred to as "conditional" uses in EFU Zoning Districts.

> significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Sullivan and Eber, *The Long and Winding Road* at 27 (footnotes omitted).

A review of the legislative history leading up to the enactment of Or Laws 1989, ch 861, § 6–the committee minutes and recordings relating to HB 2682–shed little additional light upon the test enacted in 1983. The farm impacts test first appeared in the A-9 amendments to that bill, after it had reached the Senate Committee on Agriculture and Natural Resources. The limited discussion of the language is reflected in the committee's hearing minutes. Minutes, Senate Committee on Agriculture and Natural Resources, June 16, 1989, p. 3. (App C) The minutes summarize the testimony of Neil Kagan of 1000 Friends of Oregon, that the "A-9 amendments add standards for approval of conditional uses in general." A transcript of the recording of that hearing provides Mr. Kagan's testimony verbatim:

> "Now, what the A-9 amendments do is simply add to that standards for the approval of conditional uses in general. From now on, all conditional uses may only be approved if there's a showing that they will not force a significant change."

Transcript, Senate Committee on Agriculture and Natural Resources, June 16, 1989, Tape 186, Side A, p. 10.

The evidentiary record before you will amply demonstrate the significant (and adverse) changes which would result if this application were approved, whether without mitigation measures or as a result of those measures. As a very small example–but one which alone is sufficient to defeat this application–we would point out the following. Mary and Ronald Roberts own the commercial nursery property at 34828 SE Carpenter Lane, at the southeast corner of Carpenter Lane and Cottrell Road. In order to accommodate farm traffic, including in-and-out traffic by farm vehicles moving between rows of crops, the property has, and has had, five driveways onto Carpenter Lane as well one onto Cottrell Road.

These have now been recognized by the county in its decision dated March 19, 2021, in Case File EP-2020-12990, allowing a Road Rules variance for those driveways.

Thus, five of these very active farm driveways are located on the stretch of Carpenter Lane upon which PWB has proposed to direct all its construction traffic. The resulting impact upon the nursery operation could not be mitigated even if most of that traffic entered and left he site via Bluff Road instead, unless all workers, supervisors, incoming construction materials, and outgoing excavated dirt were transported via dirigible. As the Bluff Road entry is to be blocked following completion of construction, even future employee and ongoing truck traffic entering and leaving the facility via Carpenter Lane would cause a significant change in the nursery's accepted farm practices.

MCC 39.7515(D) and (F)

MCC 39.7515(D) and (F) require the applicant to demonstrate that the proposed project:

> (D) Will not require public services other than those existing or programmed for the area;
>
> * * *
>
> (F) Will not create hazardous conditions; * * *

For the reasons set out above and based upon the evidence to be presented at the hearing, this project would require transportation services in the form of a road system which would prevent significant changes in farm practices or the costs of those practices. No such services exist or are planned. The contemplated street improvements would do little if anything to reduce these farm impacts.

By the same token, the proposed heavy truck traffic, with drivers trying to adhere to PWB's construction schedule, would inevitably create hazards for slow-moving farm traffic, as well as pedestrians and bicyclists.

Rural Fire Protection District 10 serves the affected area and has explained at length in its written submittals how the proposed project would require fire protection and emergency services other than those existing or programmed for the area, and would indeed create hazardous conditions. RFPD 10 is intimately familiar with the area and its road system, and possesses the expertise and experience to explain the applicant's inability to comply with these approval standards.

Conclusion

For the reasons set out here and all those identified in the written submittals and testimony of others, the applicant has utterly failed to meet its burden of proof in this matter.

This application must be denied.

Respectfully submitted,

Jeffrey L. Kleinman

Jeffrey L. Kleinman
Attorney for Pleasant Home Community Association

JLK:cme
cc: client