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Initiation of Remand Procedures by Portland Water Bureau in File No. T3-2022-16220

1 message

Zoe Powers <zpowers@radlerwhite.com>

Tue, Feb 25, 2025 at 10:43 AM

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REGARDING: Land Use Board of Appeals ("**LUBA**") Final Opinion and Order in LUBA No. 2023-086 (the "**LUBA Order**"), related to the County Hearings Officer's decision in file No. T3-2022-16220 issued on November 29, 2023 (the "**Prior HO Decision**")

Multnomah County:

Pursuant to ORS 227.181(2)(a), the City of Portland, by and through the Portland Water Bureau, the applicant in the Prior HO Decision and in these remand proceedings, respectfully requests that the county initiate remand proceedings pursuant to the LUBA Order. **Please confirm receipt and that receipt of this email constitutes the "applicant request[] in writing" under ORS 227.181(2)(a).**

Based on the LUBA Order, it appears to the applicant that the sole issue within the scope of remand is summarized as follows:

"Under a proper construction of MCC 39.7515(B) on remand, the hearings officer should determine whether any of the identified natural resources will be affected by the community service use and must find that the proposed use will not adversely affect those natural resources or explain why the identified natural resources are not subject to the criterion."

LUBA Order, slip opinion page 127.

As that sole issue on remand relates only to MCC 39.7515(B) – one of the approval criteria for the community service use conditional use permit approvals ("**CUP**") – there are no unresolved issues remaining related to the CUP for the for Radio Transmission Tower nor to any of the other non-CUP land use permits (all of which were approved by the county in the Prior HO Decision and subsequently fully upheld by LUBA in the LUBA Order). Accordingly, the Water Bureau respectfully asks that, as a first step in the remand proceedings, the County issue a new written land use decision to re-approve the following permits (refer to Prior HO Decision, page 1) which were fully upheld by LUBA:

- Community Service Conditional Use Permit for Radio Transmission Tower
- Review Use for Utility Facility (Pipeline – EFU)

Exhibit N.1

- Design Review for Filtration Facility

- Design Review for Pipelines

- Design Review for Intertie Site

- Design Review for Radio Transmission Tower

- Significant Environmental Concern for Wildlife Habitat (Lusted Rd Pipeline)

- Significant Environmental Concern for Wildlife Habitat (Raw Water Pipeline)

- Geologic Hazard (Raw Water Pipeline)

- Lot of Record Verifications (all subject properties)

Separately from the decision to re-approve the permits above, please commence proceedings to achieve a new decision pursuant to the LUBA Order's remand instructions. That second decision would relate to the following permits, as they are the subject of the LUBA Order (with MCC 39.7515(B) as a required approval criterion):

- Community Service Conditional Use Permit for Utility Facility (Filtration Facility)

- Community Service Conditional Use Permit for Utility Facility (Pipelines)

As noted above, please confirm receipt and that receipt of this email constitutes the “applicant request[] in writing” under ORS 227.181(2)(a).

The Portland Water Bureau understands that, after this written notice, the County will provide an invoice to the applicant to pay the full recovery deposit estimate for the remand proceedings.

Thank you,

Zoe Lynn Powers

Partner



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Pronouns: She/her

Work Hours: I work normal business hours all days except for Tuesdays. **On Tuesdays, I work until 2:30 PM and then return around 7 PM.** If you have an urgent matter on a Tuesday afternoon between 2:30 PM and 7 PM, please call my legal assistant, Brittany, at 971.634.0216. Brittany will be able to contact me.

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