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August 30, 2023

Via Email

Multnomah County Hearings Officer
Multnomah County Community Services, Land Use Planning
1600 SE 190th Avenue
Portland OR 97233-5910

Dear Hearings Officer:

In the matter related to proposal by the City of Portland Water Bureau to develop and operate a drinking water filtration facility, communications tower and related transmission pipelines on lands zoned for agricultural use (Case File T3-2022-16220) the Oregon Department of Agriculture (ODA) offers for your consideration, the following response to the rebuttal comments provided by the Portland Water Bureau.

PWB Comment

Mr. Johnson states that reference to the Oregon Right to Farm laws does not apply to regulation of pesticides, as stated in Exhibit A.33 report, on page 113.

Comment — “In response to area farmers stated concerns about potential impacts to their ability to use farm chemicals, the applicant responds that they will “comply with right to farm laws” and allow farmers to continue to use farm chemicals. It is important to note that Oregon “Right to Farm” (RTF) laws relate to nuisance and trespass situations and the ability of local government to regulate farming practices. RTF does not regulate the lawful application of pesticides. Any analysis of potential impacts to the utilization of chemicals would need to evaluate the common chemicals and application practices utilized by area farmers and the requirements for the use of the identified pesticides established on the label of the subject pesticides. Moreover, putting the burden on farmers to show that RTF laws have been violated creates conflicts among neighbors and creates costs on farmers that the farm impacts test is designed to prevent. The appropriate question should be would the location and operation of the proposed nonfarm land use impose

limitations or impact area farm operations related to lawful pesticide use?"

Response — The quotation related to the Right to Farm laws is taken out of its context (in the Operations Report, Exhibit A.33, page 113) which has a number of other responses to this concern, including a reference to Dr. Felsot's pesticides report. The Water Bureau has done precisely what Mr. Johnson states is needed for this evaluation. In Dr. Felsot's 70-page report (staff's Exhibit A.39), "the common chemicals and application practices utilized by area farmers and the requirements for the use of the identified pesticides established on the label of the subject pesticides" is evaluated.

Moreover, while not needed to prevent a significant change in accepted farm practices or a significant increase in the cost of those practices as demonstrated by Dr. Felsot's report, right to farm laws do protect the lawful application of pesticides, according to the Oregon Department of Agriculture fact sheet apparently written by Mr. Johnson. These laws and the recorded covenants in the deed records provide additional protections against any impact on accepted farm practices related to pesticide use in the Surrounding Lands.

ODA response:

As the Oregon Department of Agriculture's land use specialist, I have been the department's expert on Oregon's Right to Farm (RTF) laws for nearly 27-years. I routinely respond to complaints, questions and provide technical assistance to local governments on issues related to the regulation of farming practices. I have appeared as an expert witness in circuit court cases related to RTF issues.

"Right to Farm" does not protect farmers from land use actions that may impact the use of pesticides due to conflicting land uses of adjacent and nearby lands. RTF in effect does two things. First, RTF precludes **local** governments (not state and federal) from enacting and enforcing regulations that would regulate qualifying farming practices for nuisance or trespass reasons. Second, RTF provides immunity for qualifying farming practices from civil actions related to nuisance or trespass.

The PWB consultant appears to misunderstand the ODA fact sheet he references in his rebuttal comments. Pesticide regulation is best described as the requirements that are found on the label of each subject pesticide. For example, some pesticide labels require buffers or setbacks. This is the law established by federal and state regulations and is not impacted by RTF. Land uses on adjacent lands can and many times do impact what pesticides can be used and how pesticides can be used/applied. It does not matter whether an adjacent landowner does not complain, supports the use or is subject to a



covenant. The requirements on the label must be complied with by the applicator regardless.

A good example of this is a recent land use case in Yamhill County where a trail was proposed to be developed through the middle of active agricultural operations. It was determined that the introduction of this new land use would require, pursuant to the pesticide label requirements, that a setback distance be maintained between the new trail, its users and adjacent pesticide applications. This would have resulted in the adjacent farms not being able to spray certain pesticides historically used on parts of the adjacent farmland. The new nonfarm land use would have taken away the ability of the farmers to conduct historically common agricultural practices adversely impacting crop yields and choice of crops over time.

Thank you for the opportunity to provide these comments for your consideration. Please enter our comments into the record of this case.

Respectfully,



James W. Johnson
Land Use and Water Planning Coordinator

CC: Lisa Estrin, Multnomah County Planning
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