

MEMORANDUM

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To: Hearings Officer Alan Rappleyea

From: Land Use Planning

Date: August 7, 2023

8/7/23 at
7:40 am

BY: LE

Land Use Case: T3-2022-16220 PWB Water Filtration Facility & Pipelines

As part of the Portland Water Bureau's Exhibit H.3, they requested modifications to proposed Conditions of Approval. Land Use Planning has reviewed the proposed modifications and has the following comments.

Land Use Planning Proposed Condition 11.d:

Applicant proposed amendment Condition # 11d is not consistent with Multnomah County Code (MCC) 39.6600(C). The County is not in support of this modification to its condition.

MCC 39.6600(C) states "An exception in excess of 15% of the required number of spaces shall include a condition that a plan shall be filed with the application, showing how the required number of spaces can be provided on the lot in the future."

If the Hearings Officer does not grant the requested Exception to the required number of parking spaces, the additional parking spaces would need to be reviewed as part of the Final Design Review plan along with the other improvements listed in Proposed Condition No. 8.

Land Use Planning Proposed Condition 12.a:

Condition No 12.a is a condition set by the Sanitarian's Certificate, but the number of employees is also set by the Community Service approval and the applicant's submittal. **MCC 39.7505(A) specifies "Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority."** The applicant cannot add employees beyond those specified in their narrative levels without first amending their Community Service approval. A Community Service approval does not grant a zone change to the PWB site nor does it allow the PWB to operate or modify the use so that it is not in compliance with their application materials.

The applicant's narrative (Exhibit A.3, page 2) does state "The filtration facility will have 26 full-time employees, with 10 on the largest (morning) shift." The applicant provided conflicting information in its application and should have rectified this conflict before applying. The proposed condition was placed on the permit as the MUA-20 Dimensional Requirements and Development Standards requires under **MCC 39.4325(G) "On-site sewage disposal, stormwater/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot."**

Planning staff discussed increasing the number of employees from a maximum of 10 employees per day to a maximum of 26 full-time employees with 10 employees on the largest (morning) shift with the County Sanitarian, Lindsey Reschke. The Sanitarian evaluated the site for the amount of sewage generated for 10 employees in a 24-hour period plus 200 more gallons for the washing machines and visitors. Per our discussion, the County Sanitarian would only be comfortable with an increase to the number of employees proposed if a condition was included requiring an alternative treatment technology system which allows for reduced drainfield linear footage.

Planning staff recommends the following modification to Condition 12.a.:

The Water Filtration Facility shall have a maximum of 26 full-time employees, with 10 on the largest shift and no more than 30 visitors per day. Waste including those associated with the drinking water quality analysis laboratory must be containerized and not enter the septic system. Only domestic strength wastewater is allowed. The on-site sewage disposal system shall be sized to handle the above number of employees and visitors and shall be an alternative treatment technology system. If the County Sanitarian finds that the site even with the alternative treatment technology system cannot handle the above number of employees and visitors, the Sanitarian may limit the maximum number of full-time employees and the maximum number of visitors to the site per day. At no time may the number of employees or visitors exceed the above limitations even if the Sanitarian finds that the on-site sewage system can handle the amount of effluent that could be generated. [MCC 39.4325(G), MCC 39.7505(A) and Policy 11.13]

Construction Impacts:

The applicant discusses construction activities starting on page 8 and mentions the construction of the Lattice tower at their Lusted Hill Facility (Staff Exhibit B.11). Various improvements to the Lusted Hill Facility site have occurred over a number of years: 1983, 1991, 1995, 1996/1997, 2006, 2012, 2017, 2019, 2022 and now as part of this application in 2023. These improvements to the site did not occur in a single land use project, but incrementally with various land use reviews.

In 2018, Multnomah County amended its definition of Development in its zoning code. The prior definition read “**Development** – Any act requiring a permit stipulated by Multnomah County Ordinances as a prerequisite to the use or improvement of any land, including a building, land use, occupancy, sewer connection or other similar permit, and any associated grading or removal of vegetation.”

The current definition reads “**Development** – Any act requiring a permit stipulated by Multnomah County Ordinances as a prerequisite to the use or improvement of any land, including, but not limited to, a building, land use, occupancy, sewer connection or other similar permit, and any associated ground disturbing activity. As the context allows or requires, the term “development” may be synonymous with the term “use” and the terms “use or development” and “use and development.”

If planning staff has failed to realize a significant change in the definition has occurred in past decisions, it does not preempt the County from correctly applying its code as part of this land use application.

1000 Friends Discussion

Farm Impacts:

Land Use Planning’s discussion regarding Policy 3.14 and 3.15 is located on page 129 of the County’s staff report (Exhibit C.7).

1000 Friends identified Policy 3.16 as being applicable to the subject application.

Policy 3.16: New non-agricultural businesses should be limited in scale and type to serve the needs of the local rural area.

The Portland Water Bureau is a government agency and provides a utility service. It is not a commercial business. Land Use Planning finds that this Policy is not applicable. To support this conclusion, the approval criteria MCC 39.7515(I) is not applicable to the Utility facilities use listed in MCC 39.7520(A)(6).

§ 39.7515 APPROVAL CRITERIA.

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria,...

(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.

§ 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. ...

(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).

Policies 11.1, 11.2 & 11.3:

Land Use Planning has reviewed the written testimony submitted by 1000 Friends of Oregon (Exhibit H.11) and has the following comments.

Planning staff again reviewed Policy 11.1 and 11.2 to see if these policies provided direction to Land Use Planning or should be applied to the Portland Water Bureau (PWB) land use application. The full policies have been provided below:

Policy 11.1: Taking the following factors into consideration, plan and ensure a timely and efficient arrangement of public facilities and services to serve as a framework for appropriate levels of development of land within the County's jurisdiction.

1. The health, safety, and general welfare of County residents;
2. The level of services required, based upon the needs and uses permitted in urban, rural, and natural resource areas;
3. Environmental, social, and economic impacts.

Policy 11.2: Develop and implement public services and facilities plans and capital improvements programs that will result in the following:

1. Coordination of land use planning and provision of appropriate types and levels of public facilities.
2. Coordination of a full range of public facilities and services among all agencies responsible for providing them.
3. Provision of adequate facilities and services for existing uses.
4. Protection of natural resource and rural areas.

Policy 11.1 and 11.2 are direction to Land Use Planning when preparing long range planning projects to ensure coordination with the independent service providers so that appropriate levels of development will result. These policies are not applicable to the PWB application.

Policy 11.3: Support the siting and development of public facilities and services appropriate to the needs of rural areas while avoiding adverse impacts on farm and forest practices, wildlife, and natural and environmental resources including views of important natural landscape features.

In the original staff report (Exhibit C.7) on page 130, Land Use Planning found that Policy 11.3 was met. Both the Lusted Water District and the Pleasant Home Water District currently obtain water via the PWB's Bull Run water system. These districts serve the West of Sandy River area. Policy 11.3 states "Support the siting and development of public facilities..." It does not provide policy direction to exclude or not support public facilities that provide a preponderance of their services to urban areas.

The second half of the policy regarding adverse impacts have been addressed directly in current zoning code criteria. Farm and Forest Practices are considered through MCC 39.7515(C). The County has adopted the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay in the West of Sandy River area. Natural and environmental resources including views are considered by MCC 39.7515(A) and (B). The Hearings Officer should consider any adverse impacts generated by the proposed uses through these approval criteria and the mitigation measures proposed for the SEC-h Wildlife Conservation Plan.

Policy 11.10: Except as otherwise provided by law, new electrical substations and water system storage tanks or reservoirs intended to solely serve uses within the urban growth boundary shall not be located outside the urban growth boundary unless it can be demonstrated that there is no practical alternative site within the urban growth boundary that can reasonably accommodate the use.

The Water Filtration Facility at the end of SE Carpenter Lane involves the active treatment of water coming from the Bull Run reservoirs. The Finish Water Clearwell located below grade (#26 on LU-302) is the only storage facility that could potentially be deemed a storage tank, but as PWB has storage tanks and reservoirs in the city, Land Use Planning does not view it in the same context as the Pleasant Home Water District storage tanks. The Clearwell is part of the overall Filtration Facility.

If the Hearings Officer disagrees with Land Use Planning's interpretation, it is the applicant's responsibility to demonstrate that there is no practical alternative site within the UGB that can accommodate the use.

Land Use Planning has no further comments on the submitted materials at this time. It is the applicant's burden to demonstrate compliance with the approval criteria.