

## Notice of Hearings Officer Decision

Attached please find notice of the Hearings Officer's decision in the matter of **T3-2022-16220**, issued and mailed **11/29/2023**. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

The Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals  
775 Summer Street NE, Suite 330  
Salem, Oregon 97301

503-373-1265  
[www.oregon.gov/LUBA](http://www.oregon.gov/LUBA)

For further information call the Multnomah County Land Use Planning Division at: 503-988-3043.

1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## DECISION OF THE HEARINGS OFFICER

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**An Application for Community Service Conditional Use Permit for Utility Facility (Filtration Facility), Community Service Conditional Use Permit for Utility Facility (Pipelines), Community Service Conditional Use Permit for Radio Transmission Tower (Communication Tower), Review Use for Utility Facility (Pipeline – EFU), Design Review (Filtration Facility, Pipelines, Communication Tower, Intertie Site), Significant Environmental Concern for Wildlife Habitat (Lusted Rd Pipeline, Raw Water Pipeline), Geologic Hazard (Raw Water Pipeline) and Lot of Record Verifications**

**Case File:** T3-2022-16220

**Applicant:** Bonita Oswald, Portland Water Bureau, City of Portland

**Property Owner(s):** Various

**Address:** Across from 35319 SE Carpenter Lane, Gresham  
Map, Tax Lot 1S4E22-00400 & 1S4E22D-00100 Alt. Acct. #R994220980 &  
R994220820 Property ID #R342619 & R342603

**Base Zone:** Multiple Use Agriculture – 20 (MUA-20)

**Overlay:** Significant Environmental Concern for wildlife habitat (SEC-h) & water  
resources (SEC-h), Geologic Hazards (GH)

**Site Size:** 94 Acres, plus pipelines

**Public Hearing:** 9:00am, June 30, 2023, Multnomah County Building 501 SE Hawthorne Blvd,  
Portland Oregon

## Site Description:



### Applicable Approval Criteria:

**Multnomah County Code (MCC):** General Provisions: MCC 39.1250 Code Compliance and Violations, MCC 39.2000 Definitions, MCC 39.6850 Dark Sky Lighting Standards.

**Lot of Record:** MCC 39.3005 Lot of Record – Generally, MCC 39.3010 Lot of Record - CFU, MCC39.3070 Lot of Record - EFU, MCC 39.3080 Lot of Record – MUA-20, MCC 39.3090 Lot of Record – RR.

**Multiple Use Agriculture – 20:** MCC 39.4305 Uses, MCC 39.4320(A) Conditional Uses, Community Service Uses, MCC 39.4325 Dimensional Requirements and Development Standards, MCC 39.4335 Lot Sizes for Conditional Uses, MCC 39.4340 Off-Street Parking and Loading.

**Exclusive Farm Use:** MCC 39.4215 Uses, MCC 39.4225(A) Review Uses, Utility Facilities..., MCC 39.4245 Dimensional Requirements and Development Standards.

**Rural Residential:** MCC 39.4355 Uses, MCC 39.4370(A) Conditional Uses, Community Service Uses, MCC 39.4375 Dimensional Requirements and Standards, MCC 39.4385 Lot Sizes for Conditional Uses, MCC 39.4390 Off-Street Parking and Loading.

Commercial Forest Use: MCC 39.4065 Uses, MCC 39.4080 (A) (5) Conditional Uses, Community Service, Water intake facility, related treatment facility, pumping station, and distribution line, MCC 39.4100 Use Compatibility Standards, MCC 39.4105 Building Height, MCC 39.4110 Forest Practice Setbacks and Fire Safety Zones, MCC 39.4115 Development Standards for ...Structures, MCC 39.4140 Lot Size for Conditional Uses, MCC 39.4145 Off-street Parking and Loading.

Utility Facilities Community Service Conditional Use: MCC 39.7520(A)(6) Use, Utility Facilities, MCC 39.7505 General Provisions, MCC 39.7515(A) through (H) Approval Criteria, MCC 39.7525 Restrictions, MCC 39.7750 Maintenance.

Radio Transmission Towers Community Service Conditional Use: MCC 39.7520(A)(8) Uses, Radio Transmission Towers, MCC 39.7560 Application Requirements, MCC 39.7565 Approval Criteria for New Transmission Towers, MCC 39.7570 Design Review, MCC 39.7575 Radiation Standards.

Design Review: MCC 39.8005 Elements of Design Review Plan, MCC 39.8010 Design Review Plan Approval Required, MCC 39.8020 Application of Regulations, MCC 39.8025 Design Review Plan Contents, MCC 39.8030 Final Design Review Plan, MCC 39.8040 Design Review Criteria, MCC 39.8045(C) Required Minimum Standards, Required Landscape Areas.

Parking, Loading, Circulation and Access: MCC 39.6505 General Provisions, MCC 39.6510 Continuing Obligation, MCC 39.6515 Plan Required, MCC 39.6520 Use of Space, MCC 39.6525 Location of Parking and Loading Spaces, MCC 39.6530 Improvements Required, MCC 39.6535 Change of Use, MCC 39.6540 Joint Parking and Loading Facilities, MCC 39.6545 Existing Spaces, MCC 39.6555 Design Standards: Scope, MCC 39.6560 Access, MCC 39.6565 Dimensional Standards, MCC 39.6570 Improvements, MCC 39.6575 Signs, MCC 39.6580 Design Standards: Setbacks, MCC 39.6585 Landscape and Screening Requirements, MCC 39.6590 Minimum Required Off-Street Parking Spaces, MCC 39.6595 Minimum Required Off-Street Loading Spaces, MCC 39.6600 Exceptions from Required Off-Street Parking or Loading Spaces.

Signs: MCC 39.6710 Conformance, MCC 39.6720 Exempt Signs, MCC 39.6725 Prohibited Signs, MCC 39.6730 Determination of Frontages, MCC 39.6740 Base Zone Sign Regulations, MCC 39.6745 Signs Generally, MCC 39.6780 Sign Placement, MCC 39.6805 Directional Signs, MCC 39.6820 Sign Related Definitions and Figures.

Significant Environmental Concern: MCC 39.5510 Uses; Sec Permit Required, MCC 39.5515 Exceptions, Wildlife Habitat: MCC 39.5520 Application for Sec Permit, MCC 39.5545 Definitions, MCC 39.5560 General Requirements for Approval in The West of Sandy River Planning Area Designated As SEC-wr or SEC-h, MCC 39.5860 Criteria for Approval Of SEC-h Permit -Wildlife Habitat.

Geologic Hazard: MCC 39.5075 Permit Required, MCC 39.5085 Geologic Hazards Permit Application Information Required, MCC 39.5090 Geologic Hazards Permit Standards.

Comprehensive Plan Policies: Land Use 2.50, Farm Land 3.14, 3.15, Natural Hazards 7.1, 7.2, 7.3, 7.4 Public Facilities 11.3, 11.10, 11.11, 11.12, 11.13, 11.17

### **Transportation Planning - Multnomah County Road Rules (MCRR):**

MCRR 4.000 Access to County Roads, MCRR 4.100 Application for New or Reconfigured Access, MCRR 4.200 Number of Accesses Allowed, MCRR 4.300 Location, MCRR 4.400 Width, MCRR 4.500 Sight Distance, MCRR 5.000 Transportation Impact, MCRR 6.000 Improvement Requirements, MCRR 6.100 Site Development: A. Dedication of Right of Way Requirement & B. Frontage Improvement Requirements, MCRR 8.000 Off-Site Improvement Requirements, MCRR 9.000 Compliance Method, MCRR 13.000 Temporary Road Closures, MCRR 15.000 Truck and Transit Restrictions, MCRR 18.250 Access/Encroachment Permit, and MCRR 26.000 Stormwater Management.

**DECISION:** I approve, with conditions, the Application (hereinafter the Application) for Community Service Conditional Use Permit for Utility Facility (Filtration Facility), Community Service Conditional Use Permit for Utility Facility (Pipelines), Community Service Conditional Use Permit for Radio Transmission Tower (Communication Tower), Review Use for Utility Facility (Pipeline – EFU), Design Review (Filtration Facility, Pipelines, Communication Tower, Intertie Site), Significant Environmental Concern for Wildlife Habitat (Lusted Rd Pipeline, Raw Water Pipeline), Geologic Hazard (Raw Water Pipeline) and Lot of Record Verifications.

The hearings officer’s decision is supported by the following findings.

Dated this 29<sup>th</sup> day of November 2023

*Alan A Rappleyea*

Alan A. Rappleyea  
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. Appeals may be filed with the Oregon Land Use Board of Appeals within the time frames allowed by State law.

## **A. HEARING AND RECORD HIGHLIGHTS**

This is an extremely complicated and difficult decision. The City of Portland (City) was forced to construct this facility. It is not in my purview to judge whether this is the correct type of facility or whether the facility could be built elsewhere. The local elected leaders decide that. I believe that this facility is necessary for public health. Throughout history, the creation of safe drinking water has been one of the greatest human public health achievements. This facility continues that legacy. I agree with the City and our State and Federal Governments, that if this facility is not built people can die. I also believe this facility is necessary to continue to provide safe water for up to a million Oregonians when a natural disaster affects the Bull Run Watershed. It is only a matter of time before a fire, landslide, earthquake or flood impacts that watershed and puts one quarter of Oregonians drinking water at risk. Weighing up against that, there is the impact to the neighbors and local farmers from the construction of the facility. The construction will be lengthy and difficult for the surrounding community. I completely understand why they oppose the project but I am also aware of the importance of this facility to the million Oregonians who are not now directly involved. Although I recognize the importance of the project, I neutrally applied the criteria to the facts of this case to reach my conclusion,

The hearing was well attended with the recording of all the participants statements found at the County website at: <https://www.multco.us/landuse/document-library-pwb-treatment-plant>.

I appreciated the excellent testimony submitted by all parties and the professional and polite behavior of all the participants despite the strong emotions the project brought forth. The hearing was held on June 30, 2023, the record was held open until August 7, 2023, a rebuttal period was set for September 6, 2023 and the final arguments were due on September 28, 2023, at which point the record was closed. I have reviewed the entirety of the voluminous record to come to this conclusion.

In order to keep this decision to a reasonable length, I am incorporating portions of the record in this decision without great elaboration.

## **B. FINDINGS OF FACT**

**FINDINGS:** As written are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as “**Staff:**” and address the applicable criteria. Additional findings written by the hearings officer are preceded by the words “**Hearings Officer.**” The Hearings Officer adopts all of those findings of fact in the Staff Report of June 22, 2023, and Staff Reports at B-16, I.45, J.44, J.45 where staff found the criteria is met. The remaining criteria that staff believe are not met shall be addressed with specific findings below.

### **1.00 Project Description**

The Staff Report provided the following descriptions.

“**Staff:** The proposed project includes the following water facilities and appurtenances:

- **Water Filtration Facility** - The 135 million gallon per day drinking water filtration facility and a communications tower, located on a 94-acre site in the Multiple Use Agriculture (MUA-20) zone and served by Carpenter Lane and approximately 0.33 miles (1,756 ft.) east of SE Cottrell Rd. An emergency access road is proposed via easement over EFU zoned private property in Clackamas County.
- **Raw Water (RW) Pipelines** - Two RW pipelines that extend approximately 0.4 miles (2,112 ft.) from existing conduits running along Lusted Road across private property just north of the county line to the filtration facility, through areas zoned Rural Residential (RR) and Exclusive Farm

Use (EFU). The RW pipelines will start in a narrow tax lot on the east side of SE Lusted Rd adjacent to 37069 SE Lusted Rd and then cross SE Lusted Rd westward running onto 36910 & 36800 SE Lusted Rd and 36322 SE Dodge Park Blvd connecting into the filtration facility.

- **Finished Water (FW) Pipelines** - One FW pipeline extends approximately 1.5 miles in the MUA20 zone from the Filtration Facility to the finished water Intertie. The pipeline is entirely in the existing Dodge Park Boulevard right-of-way (ROW) except for the portions within two lots, one on Carpenter Lane and one on Lusted Road. The FW pipeline will cross 35227 SE Carpenter Ln and 33304 SE Lusted Rd.
- **Finished Water (FW) Intertie** - The FW Intertie located on Lusted Road east of Altman Road in an area zoned MUA-20. The Intertie controls the flow of finished water to the water transmission system. The facility is located at the northwest corner of 33304 SE Lusted Rd property.
- **Other Pipelines** - Three pipelines located entirely in existing county ROW through areas zoned MUA-20 and EFU, which extend from the Intertie location various distances to connect with existing conduits: one at Altman Road and Lusted Road, one at Altman Road and Pipeline Road, and one at Altman Road and Oxbow Drive.
- **Lusted Hill Distribution Main (LRDM)** - The LRDM connects the new pipeline in Dodge Park Boulevard to the existing main adjacent to the Lusted Hill Treatment Facility on Cottrell Road. This main will supply water to existing local water customers and five wholesale water districts. The 0.6mile main travels within the Cottrell Road ROW in the MUA-20 zone, then crosses the Water Bureau property at 6704 SE Cottrell Rd in the Commercial Forest Use (CFU) zone and connects to the existing main in an adjacent easement on 34747 SE Lusted Rd.

The proposed development requires approval of a Community Service Conditional Use Permit for a Utility Facility (Filtration Facility & Pipelines), Community Service Conditional Use Permit for a Radio Transmission Tower (Communication Tower located at Filtration Facility), Review Use for Utility Facility (Pipeline – EFU), Design Review, Significant Environmental Concern for wildlife habitat permit, and Geologic Hazard Permit. In addition, various Lot of Record Verifications for the private properties involved in the applications.”

## 2.00 Public Comment

The public comment on this application is voluminous with many thousands of pages and will not be listed here. The vast majority of the public comments were opposing the application. For all the public comment, please see the Multnomah County website at: <https://www.multco.us/landuse/document-library-pwb-treatment-plant>.

## 3.00 Code Compliance and Applications Criteria

**Hearings Officer:** The June 22, 2023 Staff Report at section 3.00 found that “there are no known open compliance cases associated with the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property.” No issues were raised concerning code compliance in the open record period. I adopt the finding in the Staff Report and find that this criterion is met.

## 4.00 Lot of Record Criteria

### 4.1 MCC 39.3005; 39.3080; 39.3090; 39.3070; 39.3010 - LOT OF RECORD

**Hearings Officer:** The June 22, 2023 Staff Report at section 4.00 found that the criteria above was met for all of the parcels involved in this application. No issues were raised regarding this criterion

during the open record period. I adopt the finding in the Staff Report and find that the Lot of Record criteria is met.

**5.0 Multiple Use Agriculture—20 Approval Criteria**

The Staff Report made the following findings.

“**Staff Note:** The initial land use application for the Water Filtration Facility Site included a request for public tours. The applicant is no longer seeking approval for this Community Service accessory use (Exhibit A.163, page 6, B.2.a Response).

**5.1 § 39.4305 USES.**

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this base zone except for the uses listed in MCC 39.4310 through 39.4320 when found to comply with MCC 39.4325 through 39.4345 provided such uses occur on a Lot of Record.**

**Staff:** The properties known as Filtration Site (1S4E22D-00400 and 1S4E22D-00100), 35227 SE Carpenter Ln (1S4E22DB-00300), and 33304 SE Lusted Rd (1S4E21A-00900) were all found to be Lots of Record in Section 4.0 above. Provided the proposed use complies with the applicable land use laws, they may be approved on these Lots of Record.

**5.2 § 39.4320 CONDITIONAL USES.**

**The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:**

**(A) Community Service Uses listed in MCC 39.7520 pursuant to the provisions of MCC 39.7500 through MCC 39.7810;**

**Staff:** The applicant has applied for Community Service Conditional Use Permit for a Utility Facility (Utility Facility CS) and a Community Service Conditional Use Permit for a Radio Transmission Tower (Communication Tower CS) in the MUA-20 zone (Exhibit A.1). The Utility Facility CS includes the construction of the Water Filtration Facility, various Pipelines, Finished Water Intertie facility and portion of the Lusted Hill Distribution Main that will be located in the MUA-20 zone. The findings for the Utility Facility CS can be found in Section 9 below. The Communication Tower CS findings are located in Section 10.

**5.3 § 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

**All development proposed in this base zone shall comply with the applicable provisions of this section.**

**(C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.**

\* \* \*

**(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

\* \* \*

**Staff:** Applicant’s narrative addressing Minimum Yard requirements for the Filtration Facility site is located in Exhibit A.3 starting on page 20.

Filtration Facility /Communication Tower Site: The physical improvements located at the Filtration Facility site include a number of buildings, structures, security fencing and the Communication Tower with its accessory building. The County’s Transportation Planning Division has determined that a 15-ft right-of-way dedication will be required along the south side of SE Carpenter Lane (Exhibit B.16). The applicant’s Proposed Conditions Site Plan (Exhibit A.212, LU-302) shows this 15-ft dedication, as such, the Minimum Yard Dimensions listed above are applicable and do not need to be increased to allow for future right-of-way dedication.

There are thirty (30) buildings or structures proposed for this development site that must comply with the Yard requirements. The applicant has identified the closest building/structure to each property line. The Front Lot Line is adjacent to SE Carpenter Lane. The closest structure to the front lot line is the Pleasant Home Water District (PHWD) Pump Station (#27 on Exhibit A.212, LU-302). It will be 110 ft+/- from the front lot line after 15 ft dedication. The opposite property line from the front lot line is the southern lot line. The closest building/structure to the southern lot line is the East Electrical Building (#16 on Exhibit A.212, LU-302) and it will be located between 465 – 733+/- ft from this rear lot line. The lot line adjacent to SE Dodge Park Blvd right-of-way is a Street Side Yard. The Pilot Conex Structure (#10 on Exhibit A.212, LU-302) is 182+/- ft from the northeastern lot line. The Communication Tower Accessory Building (#40 on Exhibit A.212, LU-302) is the closest building/structure to the eastern lot line at 1,206+/-feet which is a side yard. The West Electrical Building (#31 on Exhibit A.212, LU-302) is 167+/- ft from the western lot line which is also a side yard. All other buildings/structures are located to meet the Minimum Yard Dimensions listed MCC 39.4325(C) as shown.

The Security Fence and various gates surrounding the Filtration Facility and the PHWD Pump Station will be 8-ft in height so must be set back a minimum of 8-ft from all lot lines (Exhibit A.216). The security fence is closest to the southern lot line but still has a setback of approximately 44 feet (Exhibit A.212, LU-302). The minimum yard requirement listed in MCC 39.4325(C)(1) for fencing has been met.

Applicant’s narrative addressing building height for the various buildings/structures is located in Exhibit A.3, Page 22, in Table 2.

The Maximum Structure Height of 35 feet is applicable to all buildings and structures except the chemical silos and the communication tower. Building Height is defined in MCC 39.2000 and is measured from finished grade to a set point based on the style of the building’s roof type. Most of the buildings/structures are not close to the maximum height requirement. The applicant indicates that the Administration Office (#6 on Exhibit A.212, Sheet LU-302) will be 34.5 ft tall when completed. This is the only building that is close to the maximum building height.

The height of the Communication Tower is regulated by the site size in relation to the tower height as part of the approval criteria listed in MCC 39.7565. The tower is proposed at 180 feet and not 175 ft as listed in Table 2. The chemical silo may exceed the 35-ft height limitation as allowed by MCC 39.4325(E) above if located at least 30 feet from any property line. The chemical silos are located to the south of the chemical building (#12 on Exhibit A.212, Sheet LU-302) towards the center of the property and are significantly further than 30 feet from all property lines.

*Criteria met.*

Intertie Development Site:

**Staff:** As shown on the plan in Attachment H.2a (Exhibit A.186), the electrical building will be set back 121 feet from the north property line, 2,355 feet from the south, 96 from the east, and 112 feet from the west. The stairwell cover and fan cover will be set back 35 feet and 75 feet from the north property line, respectively, and 42-ft from the east property line and over 2,355 feet from the south. From finished grade to roof ridge of the Electrical Building is 16 feet. The highest point of the Intertie Vault is the cover of the stairway at 10 feet.

*Criteria met.”*

**Hearings Officer:** I concur for MCC 39.4305; 39.4320(A); 39.4325 (C), (D) and (E) and adopt Staff finding above as my finding.

**(G) On-site sewage disposal, storm water/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.**

- (1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**
- (2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24 hour storm event is no greater than that before the development.**

\* \* \*

**Staff:** Applicant’s narrative addressing sewage disposal, storm water and water service requirements for the Filtration Facility site is located in Exhibit A.3 starting on page 24.

Filtration Facility /Communication Tower Site: The County Sanitarian has reviewed the applicant’s proposal for an on-site sewage disposal for the water filtration facility site (Exhibit A.124). The location for the approved septic system (#4 & #5) is shown on the Proposed Conditions Site Plan (Exhibit A.212, Sheet LU-302) and is to the northeast of the main parking area. The Sanitarian has placed specific restrictions on the use of the site for the septic system on the site. Land Use Planning recommends a condition of approval for the Water Filtration Facility to encompass these restrictions.

The applicant has provided a Stormwater Certificate (Exhibit A.197) signed by a registered professional engineer. A Stormwater Management Report (Exhibit A.73) was prepared that designed stormwater facilities for the Water Filtration Facility site that complies with MCC 39.6235 Stormwater Drainage Control regulations and will be adequate to handle the rate of runoff from the lot for the 10-year, 24-hour storm event from the newly created impervious surfaces at the site (Exhibit A.212, Sheet LU-307).

The Water Filtration Facility site is located outside of the Pleasant Home Water District service boundary (Exhibit A.126, page 3). The initial water service at the Water Filtration Facility during the construction phase of the project will be provided by the Pleasant Home Water District (Exhibit A.128). Once the Water Filtration Facility is completed, the Facility site will obtain its water from the Portland Water Bureau (Exhibit A.126 and Exhibit A.220).

Intertie Development Site: Applicant's narrative addressing sewage disposal, storm water and water service requirements for the Intertie site is located in Exhibit A.7 starting on page 19.

The physical improvements at the Intertie site will not have any sink or restroom facilities that will require the provision of an on-site sewage disposal system. The site is unoccupied.

The applicant has provided a Stormwater Certificate (Exhibit A.198) signed by a registered professional engineer. A Stormwater Management Report (Exhibit A.75) was prepared that designed stormwater facilities for the Intertie site that complies with MCC 39.6235 Stormwater Drainage Control regulations and will be adequate to handle the rate of runoff from the lot for the 10-year, 24-hour storm event from the newly created impervious surfaces at the site.

The Pleasant Home Water District is able to serve this site from a 6-inch line located on the south side of Lusted Road (Exhibit A.127). Water is needed for a hose bib and for watering landscaping. Any water generated by the irrigation will be captured by the stormwater system.

*Criteria Met."*

The Applicant provided additional testimony at Page 231, September 28, 2023 submittal in regards to his criteria and requests a modified condition of approval.

*"The Staff Report findings for the Filtration Facility / Communication Tower Site state: "The Sanitarian has placed specific restrictions on the use of the site for the septic system on the site. Land Use Planning recommends a condition of approval for the Water Filtration Facility to encompass these restrictions."*

The language below which is essentially a hybrid of staff's two recommended conditions. If the Hearings Officer declines to impose the requested Condition 12.a language, the Water Bureau will accept the revised condition language most recently suggested by staff.

The filtration facility geotechnical expert did confirm that his original conclusion that the septic drain field is not anticipated to have a negative effect on the slope stability remains unchanged provided the drain field for an alternative treatment technology system is in the same location and is equal in size to or small than the original drain field design. Exhibit J.67. As conditioned, the standards of MCC 39.4325(G) are met.

**Staff's Original Condition 12.a:** The Water Filtration Facility shall have ten maximum employees per day, and not more than 30 visitors per day. Wastes 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. [MCC 39.4325(G)]

**Staff's Revised 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"]

**Hearings Officer:** I concur with Staff that this criterion is met with a condition. The Applicant also requests some flexibility in its construction of its septic system. I agree that Applicants revised condition 12.a below, is reasonable as it is designed to ensure that any system adopted handles the

maximum number of employees. Stormwater issues will be further discussed under the Comprehensive Plan Policies.

**“Applicant’s Requested Condition 12.a:**

If the applicant provides the septic system identified in the application, the water filtration facility shall have a maximum of 10 full-time employees per day and no more than 30 visitors per day.

If the applicant provides an alternative treatment technology system, the water filtration facility shall have a maximum of 26 full-time employees, with a maximum of 10 on the largest shift, and no more than 30 visitors per day. The alternative treatment technology system must be sized to handle the increased number of employees and visitors and the drain field must be the same size or smaller and in the same location as the drain field identified on Exhibit A.212.3e, 00-LU-303. If the County Sanitarian finds that the site with the alternative treatment technology system provided cannot handle the larger number of employees and visitors, the Sanitarian may limit the maximum number of full-time employees and the maximum number of visitors allowed at 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 onsite sewage system can accommodate the amount of effluent that would be generated.”

**(I) Required parking, and yard areas shall be provided on the same Lot of Record as the development being served.**

Filtration Facility /Communication Tower Site: Applicant’s narrative addressing required parking and yards for the Water Filtration Facility site is located in Exhibit A.3 on page 20 and in Exhibit A.5 starting on page 35.

Intertie Development Site: Applicant’s narrative addressing required parking for the Intertie site is located in Exhibit A.9 starting on page 15. The Yard standards are addressed above in Exhibit A.7 for MCC 39.4325(C) starting on page 17.

*Criteria met.”*

**Hearings Officer:** I concur with Staff and based on the findings above find that this criterion is met.

**(J) “All exterior lighting shall comply with MCC 39.6850.**

**Staff:** Filtration Facility/Communication Tower Site: Applicant’s narrative addressing exterior lighting for the Water Filtration Facility are contained in Exhibit A.4 starting on page 53 and in Exhibit A.51 labeled E.2 Land Use Permitting Lighting Report.

In 1.A Filtration Facility CU Application Narrative (Exhibit A.4), the applicant discusses existing light impacts within the West of Sandy River area starting on page 44 through 52. This background information is informational only and is not needed to address the approval criteria of MCC 39.6850. Applicant’s Exhibit A.51 includes lighting fixture details for each proposed fixture. In addition, applicant’s Exhibit A.212, Sheets E-322 through Gen E-142 (pages 28 through 42 of the plan set) has a Site Lighting Key Plan, Site Lighting & Receptacle Plans, and General Lighting Schedules. See Section 17 for additional findings.

*Criteria Met.*

Intertie Development Site: Applicant’s narrative addressing exterior lighting for the Intertie site is contained in Exhibit A.92.B Pipelines Design Review Application Narrative starting on page 19 and in F.1 Exterior Site Lighting Analysis Finish Water Intertie Facility (Exhibit A.63). See Section 17 for additional findings.

*Criteria Met.”*

**Hearing Officer:** This section will be discussed later under MCC 39.6850. Based on the findings in that section by Staff and Applicant, I find that this criterion is met.

**“5.4 § 39.4335 LOT SIZES FOR CONDITIONAL USES.**

**The minimum lot size for a Conditional Use permitted pursuant to MCC 39.4320, except subsection (C)(1) thereof, shall be based upon:**

- (A) The site size needs of the proposed use;**
- (B) The nature of the proposed use in relation to its impact on nearby properties;**
- (C) Consideration of the purposes of this base zone; and**
- (D) A finding that the lot or parcel is at least two acres in area and in the West of Sandy River Rural Plan Area, if a lot or parcel is created to support a conditional use, a finding that the remainder parcel is not less than five acres.**

**Staff:** Applicant’s narrative addressing this standard for the Water Filtration Facility is contained in Exhibit A.3 on page 25.

For MCC 39.4335(C), the conditional use must be reviewed against the purpose of the MUA-20 zone. **MCC 39.4300- PURPOSE** states **“The purposes of the Multiple Use Agriculture base zone are to conserve those agricultural lands not suited to full-time commercial farming for diversified or part-time agriculture uses; to encourage the use of non-agricultural lands for other purposes, such as forestry, outdoor recreation, open space, low density residential development and appropriate Conditional Uses, when these uses are shown to be compatible with the agricultural uses, natural resource base, the character of the area and the applicable County policies.”**

Conditional uses must be shown to be compatible with agricultural uses, natural resource base, the character of the area and the applicable County policies. The applicant has addressed the compatibility issues listed above in Section 9 for the Water Filtration Facility, Pipelines and Intertie Site. Section 10 for the Communication Tower.

Filtration Facility/Communication Tower Site: The development site has approximately 94 acres available to site the entirety of the development. The applicant has indicated that approximately 50 acres will be used for the physical improvements, required yards, parking and access, landscaping, stormwater, and buffer areas. A detailed discussion of the Water Filtration Facility use was made in Section 9 below and potential impacts to neighboring properties and uses. The MUA-20 zone has a minimum lot size of 20 acres to create a new lot size. The applicant is proposing to aggregate the two lawfully existing parcels into a single 95.51 acre (including r.o.w. acreage) which is over 4.5 times the minimum lot size for the zone.

Approximately 44 acres of land will remain on the subject parcel after the development that will be placed in native grasses and available for future land uses. Portland Water Bureau is not proposing to divide off a remainder parcel from the site. A condition of approval has been included that addresses the Lot Consolidation process.

The subject site, when consolidated into a single parcel, is a suitable size for the proposed community service conditional use for the utility facility and communication tower use as proposed.

*As conditioned, criteria met.*

Intertie Site & Pipelines:

**Staff:** Applicant’s narrative addressing this standard for the Intertie Site and Pipelines is contained in Exhibit A.7 on page 20. MCC 39.4335 Lot Sizes for Conditional Uses in the MUA20 zone does not just apply to the creation of new lots or parcels for the use but that the site size for a use is adequate to ensure that the site adequately sized to ensure it does not impact nearby properties and uses.

The Intertie Site is a 160-ft by 138-ft easement that will be used to house the Intertie Valve and Meter Vault, associated Electrical Building and other physical improvements and landscaping (Exhibit A.214, Sheet LU-501). The distance from the front lot line to the Valve and Meter Vault is 34 feet and contains screening landscaping and the stormwater basin for the site. The distance from the western edge of the easement to the electrical building is 20 ft and mostly landscaped to screen the site. A 20-ft wide landscape area exists between the eastern edge of the easement and the Valve and Meter Vault to screen the site.

If the property where a pipeline will cross is not owned completely by the Portland Water Bureau, it will be located in an easement. A significant amount of the pipelines will be located in the public rights-of-way. A single Finished Water Pipeline (Exhibit A.216) exits the Water Filtration Facility on SE Carpenter Lane in the MUA-20 zone. It will cross tax lot 1S4E22DB00300 at an angle and then follow SE Dodge Park Blvd west to 1S4E21A -00900 where it will enter at the southeast corner of the property and head north to the Intertie Site. The permanent easement will be approximately 65 feet in width and run up to the Intertie improvements. All other pipelines in the MUA-20 zone will be placed in the public rights-of-way. Based upon the findings in this section and Sections 9 and 11 below, the Lot Size for the physical improvements associated with the pipelines in the MUA-20 zone on private property is a suitable size.

*Criteria met.”*

**Hearings Officer:** Based on Staff Finding above and as conditioned, I find this is criteria met. The criteria regarding impact on neighboring properties will be addressed later. Those findings are incorporated here.

#### **“5.5 § 39.4340 OFF-STREET PARKING AND LOADING.**

**Off-Street parking and loading shall be provided as required by MCC 39.6500 through 39.6600.**

**Staff:** The Intertie Site has a 4,000+ area of asphalt available between the Valve and Meter Vault and the Electrical Building available for off-street parking. An area that is more than adequate for two parking space is available to the east of the Electrical Building that also meet the backing requirements of the Parking code in MCC 39.6500 *et al.* PWB has indicated the site will be unmanned on a daily basis and has not proposed delineating any parking spaces at the site. Planning staff finds that the site is similar in use to a Wireless Communication Facility and County Code requires two parking spaces for those unmanned facilities. Any vehicles entering the site will be able to maneuver and park on the asphalt area. A condition of approval has been recommended that the area be maintained available for vehicle maneuvering and parking and not be used for outdoor storage.”

**Hearings Officer:** Off-Street Parking will be more fully discussed under MCC 39.6500 through 39.6600. I agree with Staff findings above and based on the finding under the code sections cited here, I find that as conditioned, the Applicant meets this criterion.

#### **“6.0 Rural Residential Approval Criteria**

##### **6.1 § 39.4355 USES.**

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this base zone except for the uses listed in MCC 39.4360 through 39.4370 when found to comply with MCC 39.4375 through 39.4395 provided such uses occur on a Lot of Record.**

**Staff:** The properties known as 36910 SE Lusted Rd (1S4E23C-01400), 36800 SE Lusted Rd (1S4E23C-01500), and 1S4E23C-00800 were all found to be Lots of Record in Section 4.0 above.

Provided the proposed use complies with the applicable land use laws, they may be approved on these Lots of Record.

**6.2 § 39.4370 CONDITIONAL USES.**

**The following uses may be permitted when found by the Hearings Officer to satisfy the applicable standards of this Chapter:**

**(A) Community Service Uses under the provisions of MCC 39.7500 through 39.7810;**

**Staff:** The applicant has applied for Community Service Conditional Use Permit for a Utility Facility (Utility Facility CS) in the RR zone (Exhibit A.1). The portion of the Utility Facility CS occurring in the RR zone is the Raw Water Pipeline. The findings for the Raw Water Pipeline portion of the Utility Facility CS can be found in Section 9 below.

**6.3 § 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

**(C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.**

\* \* \*

**Staff:** The proposed Raw Water Pipelines are located underground, but will have an at-grade vault on tax lot 1S4E23C -01500, two above ground less <30-inch tall vents on tax lot 1S4E23C -00800 (Exhibit A.7, page 21). In addition, a single utility 24” deep by 72” wide by 90” tall cabinet (Exhibit A.209) is to be installed on tax lot 1S4E23C-01400 to house CPRs and a distribution panel. The applicant has indicated that the cabinet on the RR zoned tax lot will be set back a minimum of 30 feet from the Lusted Road right-of-way. It will also need to be located outside of the 10-ft wide side yard of the property. The plans do not show the location of this cabinet. **MCC 39.2000 Definition** defines a **Yard** as “**An open space, on a lot with a building and bounded on one or more sides by such building, such space being unoccupied and unobstructed from 30 inches above the ground upward, except as otherwise specified in the base zone...**” The above ground structures will comply with the maximum structure height.

As part of the Raw Water Pipelines project, an existing retaining wall will be replaced. The wall location is shown on the Raw Water Pipeline Proposed Conditions Plan (Exhibit A.212, Sheet LU-200). The applicant has indicated that the new retaining wall will be three feet high (Exhibit A.163, page 10, Response to #6.)

A condition of approval has been included requiring that Exhibit A.214, Sheet LU-200 be modified to show the location of the utility cabinet to comply with MCC 39.4375(C) and MCC 39.7525(A)(2), if the Hearing Officer finds it applicable as discussed below in Section 9.

*As conditioned, this criterion can be met.*

**(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the lot.**

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24hour storm event is no greater than that before the development.**

\* \* \*

**Staff:** The proposed Raw Water Pipelines will have no aboveground features that will require on-site sewage disposal. Surface trenching and other ground disturbance will occur for approximately 1,050 ft on tax lots 1S4E23C -01500 and 1S4E23C -01400 to install the two Raw Water Pipelines until the entrance to the tunnel portal where the pipeline installation will go underground until surfacing on the Water Filtration Facility site (Exhibit A.212, Sheet LU-200). The County Sanitarian has reviewed the ground disturbance on these two tax lots and finds that it will not impact the existing on-site sewage disposal systems for these properties (Exhibit A.221). No new impervious surfaces are being created on tax lots 1S4E23C -01500 and 1S4E23C -01400 so no stormwater/drainage control systems are required. No water systems are required for the underground pipeline.

*Criteria met.*

**(H) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** The applicant's states that there will be no lighting associated with the proposed Raw Water Pipelines (Exhibit A.7, page 22).

#### **6.4 § 39.4385 LOT SIZES FOR CONDITIONAL USES.**

**The minimum lot size for a conditional use permitted pursuant to MCC 39.4370, except (B) (8) thereof, shall be based upon:**

- (A) The site size needs of the proposed use;**
- (B) The nature of the proposed use in relation to the impacts on nearby properties; and**
- (C) Consideration of the purposes of this base zone; and**
- (D) A finding that the lot or parcel is at least two acres in area and in the West of Sandy River Rural Plan Area, if a lot or parcel is created to support a conditional use, a finding that the remainder parcel is not less than five acres.**

**Staff:** The amount of land needed for the Community Service Conditional Use Permit for the Raw Water Pipelines in the RR zone would correspond with the size of the easements obtain by the Portland Water Bureau plus the crossing area for the pipelines in SE Lusted Road and its connection to the existing pipeline in tax lot 1S4E23C-00800. The applicant has indicated the size of the permanent easements over tax lots 1S4E23C -01500 and 1S4E23C -01400 is 100 feet wide for a total of 3.42 acres. Tax lot 1S4E23C -01500 is 5 acres in size and the easement will use 1.32 acres of land (Exhibit A.219). Tax lot 1S4E23C -01400 is 8 acres and the easement will use 2.1 acres of the land. Staff has added 600 sq. ft. (100-ft wide path by 60-ft wide right-ofway) as the pipelines cross SE Lusted Road to connect into the pipeline that will supply the raw water to the Filtration Facility in tax lot 1S4E23C-00800 which is owned by the PWB. The total area is 3.43 acres. No additional land is needed to accommodate the Raw Water Pipeline use on these properties as no parking requirements are necessary for the use. The easement will not create any new unit of land from these existing Lot of Records.

*Criteria met.*

#### **6.5 § 39.4390 OFF-STREET PARKING AND LOADING.**

**Off-street parking and loading shall be provided as required by MCC 39.6500 through 39.6600.**

**Staff:** The code does not require on-site parking or loading for the proposed Raw Water Pipelines as there are no above ground facilities that require regular site visitation.

*Criterion met”*

**Hearings Officer:** I adopt the Staff findings above and find that as conditioned, the Application complies with MCC section 39.4355, 39.4375, 39.4385, and 39.4390.

## **7.0 Exclusive Farm Use Approval Criteria**

The Staff Report made the following findings.

### **7.1 § “39.4215 USES.**

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this base zone for the uses listed in MCC 39.4220 through 39.4230 when found to comply with MCC 39.4245 through 39.4260 provided such uses occur on a Lot of Record.**

**Staff:** The property known as 36322 SE Dodge Park Blvd (1S4E23C-02200) was found to be a Lot of Record in Section 4.0 above. Provided the proposed use complies with the applicable land use laws, it may be approved on the Lot of Record.

### **7.2 § 39.4220 ALLOWED USES.**

**The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.**

**(F) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and subsurface of public roads and highways along the public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings will occur, or no new land parcels result. Reconstruction or modification also includes “channelization” of conflicting traffic movements into definite paths of travel by traffic islands or pavement markings.**

**Staff:** From the Intertie site, three Pipelines exit onto Lusted Road. The two Pipelines traveling along the northern side of Lusted Road right-of-way will be located within the EFU zone. The Pipelines travel west along SE Lusted Road to SE Altman Road and then head north on Altman Road. When the pipeline towards the center of the road nears SE Pipeline Road, it will turn left and re-enter the MUA-20 zone. It terminates shortly into an existing pipeline once entering SE Pipeline Rd (Exhibit A.214, Sheets LU-203, LU-204, LU-205). The other pipeline will remain in the EFU zone on the east side of the road until it reaches SE Oxbow Rd where it will connect into an existing Portland Water Bureau pipeline. For the entire distance the one pipeline will remain in the EFU zone except for approximately 30 ft when it enters the Lusted right-of-way in the MUA-20 zone. The other pipeline will exit the Intertie site in the MUA-20 zone and travel approximately 30 feet and then enter the EFU zone and when it terminates it will re-enter the MUA-20 zone for approximately 75 feet. The placement of the pipeline in a public right of way in the EFU zone is an Allowed Use.

### **7.3 § 39.4225 REVIEW USES.**

**(A) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating power for public use by sale or transmission towers over 200 feet in height provided:**

\* \* \*

**(3) All other utility facilities and/or transmission towers 200 feet and under in height subject to the following:**

**(a) The facility satisfies the requirements of ORS 215.275, “Utility facilities necessary for public service; criteria; mitigating impact of facility”; and**

**Staff:** The applicant has applied for Review Use for Utility Facility in the EFU zone (Exhibit A.1). Two Raw Water Pipelines installed under the EFU zoned property, 1S4E23C-02200 by tunneling at a depth ranging from 147 to 217 ft before surfacing on the Portland Water Bureau property in the MUA-20 zone (Exhibit A.10, page 1).

To be able to place the utility facility on the EFU zoned property, the application must demonstrate compliance with criteria in **ORS 215.275 Utility facilities necessary for public service; criteria; rules; mitigating impact of facility.** It states:

**(1) A utility facility established under ORS .... 215.283 (1)(c)(A) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.**

**(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS .... 215.283 (1)(c)(A) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:**

**(a) Technical and engineering feasibility;**

**(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;**

**(c) Lack off available urban and nonresource lands;**

**(d) Availability of existing rights of way;**

**(e) Public health and safety; and**

**(f) Other requirements of state or federal agencies.**

**(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.**

**(4) The owner of a utility facility approved under .... 215.283 (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.**

**(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under .... 215.283 (1)(c)(A) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.**

**(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.**

**Staff:** The applicant states as part of their narrative that they considered six Raw Water Pipeline alternative alignments. The six alignments are shown in applicant's Raw Water Pipeline Alternatives from Lusted Road to Filtration Facility document. (Exhibit A.85, see Figure 2). The narrative concentrates on the Technical and Engineering Feasibility Factor under ORS 215.275(2)(a) to establish that the proposed route must cross 1S4E23C-02200 for the project's objectives (Exhibit A.10, starting page 7), and technical and engineering feasibility reasons.

Staff is uncertain that all of PWB's objectives for the project qualify as technical and engineering feasibility factors for the application.

The geologic and seismic hazards identified along the SE Lusted Road Alternative 4 seems to preclude its use through the RR zoned lands avoiding the single EFU zoned property. Alternative routes through Clackamas County would have affected significantly more EFU zoned lands.

Alternative 2 was also discounted due to engineering concerns from geotechnical borings, soil characteristics and historic landslide records. The proposed pipeline route crossing one EFU parcel is technically feasible and the applicant has mitigated any impacts that would be created to the agricultural land by tunneling the routes for the two pipelines under the parcel so no restoration will be necessary to return the property to its former condition. The property should remain available for farming practices to occur on the property in the future as no above ground evidence of the pipelines will be evident. Staff has recommended a condition of approval that for any unanticipated disturbance, the PWB will be required to restore, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the pipeline.

*The criteria in ORS 215.275 have been met.*

**(b) The facility satisfies the requirements of MCC 39.6500 through 39.6600; 39.7525(A); 39.8000 through 39.8050; and 39.6745.**

**Staff:** The code does not require on-site parking or loading for the Raw Water Pipelines, as there is no above ground facilities. MCC 39.6500 *et al* are the County criteria for Parking, Loading, Circulation and Access have been met or are not applicable. MCC 39.7525(A). Restrictions specify front, side and rear yard requirements that are different from the standard EFU Yard requirements. Pursuant to **MCC 39.2000 Definitions, Yards** are only applicable to buildings or structures that are taller than 30 inches above the ground. As the pipelines are below ground, they do not need to meet the Yard requirements of MCC 39.7525(A). A Design Review application has been applied for the entire pipeline project in the various zones and meets the requirements listed in MCC 39.8000. See Section 11 for the Design Review findings. MCC 39.6745 is the requirements for signage in the EFU zone. No signage has been proposed for the Raw Water Pipelines within the EFU zoned portion of the project.

*As designed the Raw Water Pipeline portion in the EFU zone has complied with (b) above."*

**Hearings Officer:** There are two segments of the pipeline that cross EFU lands. Exhibit A.7., Page 3, Figure 1. Segment 1, along Lusted Road will be outside of the road right of way but will be tunneled under the ground. Segment 3 will be in the road right of way (ROW) along Lusted and Altman Roads.

Segment 1, outside of the ROW, has to comply with the additional standard in the MCC above and mirror ORS 215.283(C) and ORS 215.275 regarding utilities in the EFU that are not in the ROW. This is a much more complicated process. The Applicant addresses these standard in Exhibit A.10 titled [2.C Pipeline EFU Review Application Narrative](#). I adopt that as finding to demonstrate it meets this standard. Exhibit A.10 page 4 explains that the EFU alignment was necessary to connect the facility to

the pipeline to “technical and engineering” feasibility reasons. I also adopt the Applicant’s legal reasoning found in its Final Rebuttal Argument, Exhibit L.1., Section E.

The Applicant correctly argues that there is no alternatives analysis requirement for the Filtration Facility itself (which I agreed to in the introduction to this decision.) The alternative analysis is only required for this small portion of the pipeline that is in the EFU and outside of the ROW. I specifically find that the Applicant’s analysis of *City of Albany v. Linn County*, 40 Or LUBA 38 (2001), is correct.

“In *City of Albany v. Linn County*, 40 Or LUBA 38 (2001) LUBA recognized that the “justification for siting one component of a utility facility in an EFU zone does not necessarily justify siting other components in that zone.” *Id.* at 48. In other words, the Water Bureau could not first have selected a pipeline route through EFU land under ORS 215. 275 and then justified locating the filtration facility on EFU simply because the pipeline met the locational standards of ORS 215.275. Here, in fact, just the opposite occurred. The Water Bureau selected a nonresource zone property for the filtration facility, routed the overwhelming majority of pipelines through non-resource lands and, as a result, only a single EFU property outside of the right-of-way is needed— with the tunnel being located between 147 and 217 feet *below the surface* of the property.”

I also agree with Applicant’s analysis of ORS 215.283. As the filtration facility will not be established under ORS 215.283, ORS 215.275 does not apply to the filtration facility. I also agree with the reasoning that just because the pipeline is in the EFU does not mean the Filtration Facility has to comply with ORS 215.275.

Segment 3, will be located in the ROW. As such, it meets the requirements or ORS 215.283(i) and does not have to comply with the analysis under ORS 215.283(c) and 215.275.

I find that the Application for the pipelines, as conditioned, complies with MCC 39.4225(A), (3)(a) and ORS 215.275 and ORS 215.283(c) and (i).

**“7.4 § 39.4245 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

**(C) Minimum Yard Dimensions – Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height – 35 feet**

\* \* \*

**Staff:** The proposed Raw Water Pipelines are located underground. **MCC 39.2000 Definition** defines a **Yard** as “**An open space, on a lot with a building and bounded on one or more sides by such building, such space being unoccupied and unobstructed from 30 inches above the ground upward, except as otherwise specified in the base zone....**” The pipelines installed in the EFU zone in the public right-of-way are also chiefly underground but have appurtenances that rise to the surface or are located on the surface. These appurtenances are not located on a Lot. The Minimum Yard Dimensions are not applicable.

**(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.**

**(1)Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24hour storm event is no greater than that before the development.**

\* \* \*

**Staff:** The proposed Raw Water Pipelines will have no aboveground features that will require on-site sewage disposal. No new impervious surfaces are being created on tax lot 1S4E23C02200 so no stormwater/drainage control systems are required. No water systems are required for the underground pipeline.

The applicant has addressed stormwater for the pipelines to be installed in the public right-of-way (Exhibit A.77, A.199, A.215).

*Criteria met.*

**(H) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** The applicant's states that there will be no lighting associated with the proposed Raw Water Pipelines or the pipelines within the public rights-of-way (Exhibit A.7, page 24).

*Criteria met".*

**Hearings Officer:** I find that criteria MCC 39.425(C), (F) and (H) for the pipelines are met and adopt staff findings above.

## **8.0 Commercial Forest Use Approval Criteria**

### **8.1 § 39.4065 USES.**

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in the CFU except for the uses listed in MCC 39.4070 through 39.4080 when found to comply with MCC 39.4100 through 39.4155 provided such uses occur on a Lot of Record.**

**Staff:** The properties known as 6704 SE Cottrell Rd & SE Lusted Rd (1S4E22BA-00200 & 1S4E22BA-00100 combined), and 34747 SE Lusted Rd (1S4E15C-00801) were all found to be Lots of Record in Section 4.0 above. Provided the proposed use complies with the applicable land use laws, they may be approved on these Lots of Record.

### **8.2 § 39.4080 CONDITIONAL USES.**

**The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:**

**(A) The following Community Service Uses pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 39.4100, MCC 39.4105, MCC 39.4110, MCC 39.4115, and MCC 39.7500 through MCC 39.7525. For purposes of this Section, the applicable criteria of MCC 39.7515 shall be limited to Subsections (A) through (H) of that Section.**

**(5) Water intake facility, related treatment facility, pumping station, and distribution line. The term "distribution line" includes water conduits and water transmission lines.**

**Staff:** The applicant has applied for Community Service Conditional Use Permit for a Utility Facility (Utility Facility CS) in the CFU zone (Exhibit A.1). A portion of the Lusted Road Distribution Main (LRDM) occurs in the CFU zone. The LRDM travels up SE Cottrell Rd in the MUA-20 zone and as it enters the existing Portland Water Bureau's Lusted Hill Treatment Facility (LHTF) (1S4E22BA-00200) at the corner of Cottrell and Lusted Roads, it enters the CFU zone. Once on the LHTF property, it will cross it diagonally, tunnel under SE Lusted Rd and continue underground through 1S4E22BA-00100 and connect into an existing pipeline on tax lot 1S4E15C-00801 in an existing

easement. The applicant's narrative for the LRDM in the CFU zone is in Exhibit A.7 starting on page 25. The Pipeline plans are contained in Exhibit A.214, Sheets LU-206 and LU-207. The findings for the Utility Facility CS portion of the can be found in Section 9 below.

*Criteria met.*

### 8.3 § 39.4100 USE COMPATIBILITY STANDARDS.

**(A) Specified uses of MCC 39.4075 (D) and (E) and MCC 39.4080 (A), (B) and (C) may be allowed upon a finding that:**

**(1) The use will:**

**(a) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;**

**(b) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and**

**(2) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.**

**(B) In the East of Sandy River Planning Area single family dwellings as specified in MCC 39.4075 (B) may be allowed upon a finding that they will not significantly impact open space, public facilities, wildlife habitat, and rural community character.**

**Staff:** The applicant's narrative addressing the Use Compatibility Standards are located in Exhibit A.7 starting on page 26. The portion of the Lusted Road Distribution Main (LRDM) located in the CFU zone is shown on Exhibit A.214, Sheets LU-206 and LU-207.

(A)(1)(a) The pipeline will be installed underground and cross the existing Portland Water Bureau's Lusted Hill Treatment Facility. It will then be bored under SE Lusted Rd, through tax lot 1S4E22BA - 00100 on the north side of the road and onto the adjacent tax lot S4E15C-00801 where the newly installed distribution main will connect into the existing Lusted Road Distribution main to serve residential and wholesale water customers east of the Lusted Hill Treatment Plant. The connection will take place in an existing utility corridor under an existing driveway. The area is not forested.

The applicant has provided an Agricultural Compatibility Study (Exhibit A.33) and a Forest Compatibility Study (Exhibit A.37) that found that the pipelines would not force a significant increase or change in farm or forest practices on surrounding lands.

(A)(1)(b) As the distribution main is installed underground in the CFU zone and connects to the existing pipeline under a driveway. The distribution main contains water and will not increase the risk for fires, increase fire suppression costs or increase risks to fire suppression personnel based on the Forest Compatibility Study (Exhibit A.37) and the fact it is underground.

(A)(2) In applicant's narrative (Exhibit A.7, page 27), they state that the required statement was recorded and provided in Appendix D.7. It is actually the applicant's exhibit D.6 (Exhibit A.43).

*Criteria Met*

(B) All of the proposed development is located within the West of Sandy River Rural Plan area. No single-family dwelling is proposed.

*Criterion is not applicable.*

**8.4 § 39.4105 BUILDING HEIGHT REQUIREMENTS.**

**(A) Maximum structure height – 35 feet.**

**(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.**

**Staff:** No portion of the proposed pipelines or distribution main will be above ground. There will be no above ground appurtenances associated with the pipeline (Exhibit A.7, page 25, last paragraph).

**8.5 § 39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.**

**The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:**

\* \* \*

**Staff:** No portion of the proposed pipelines or distribution main will be above ground. There will be no aboveground appurtenances associated with the pipeline (Exhibit A.7, page 25, last paragraph).

**8.6 § 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.**

**All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:**

**Staff:** The applicant is proposing to install a water distribution main underground in the CFU zone. The distribution main is composed of parts and will connect to an existing pipeline. **MCC 39.2000 Definitions** defines a “**Structure**” as “**That which is built or constructed. An edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.**” MCC 39.2000 also defines a “**Building**” as “**Any structure used or intended for supporting or sheltering any use or occupancy.**” As the distribution main qualifies as a “structure” that supports a use, planning staff has addressed MCC 39.4115.

The proposed distribution main will not have any exterior lighting installed on or near it.

*Criterion met.*

**(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):**

\* \* \*

**(2) The structure shall satisfy the following requirements:**

- (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;**
- (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**
- (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**
- (d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

**Staff:** (2)(a) The distribution main is a structure. Based upon its design features, planning staff will address (B)(2) and (B)(3). There are no single-family dwellings on any of the three tax lots associated

with the development of the distribution main in the CFU zone. MCC 39.4110 are the County's Forest Practice Setbacks and Fire Safety Zones. There are no above ground appurtenances associated with the distribution main (Exhibit A.7, page 25, last paragraph) and as such they do not apply to the structure. The applicant discusses potential impacts to nearby forest and agricultural lands in their reports Agricultural Compatibility Study and Forestry Compatibility Study (Exhibits A.33 and A.37). The installation of the distribution main on tax lot 1S4E15C-00801 will involve boring up to the existing distribution main and then connecting to it within an existing cleared area that has previously been disturbed (Exhibit A.214, Sheets LU-206 & LU-207 and Exhibit A.7, page 26, last paragraph). Based upon applicant's design and compatibility studies, the structure's location has the least impact on nearby and adjoining forest and agricultural lands.

(2)(b) The distribution main will be installed in an existing utility corridor and setback from existing forested areas on the tax lots. A portion of the main will be bored so as to not impact these forested areas and SE Lusted Road (Exhibit A.214, Sheets LU-206 & LU-207 and Exhibit A.7, page 26, last paragraph). No farm uses exist on 1S4E22BA-00100 or 1S4E22BA-00200. A mixture of farm and forest uses exist on 1S4E15C-00801 but the distribution main connection to the existing pipeline will occur within an existing driveway. No additional lands will be taken out of farm or forest use to install the proposed distribution main. Adverse impacts on the three tax lots have been minimized.

(2)(c) No new access roads or service corridors are proposed. The distribution main will be installed within an existing utility corridor (Exhibit A.214, Sheets LU-206 & LU-207 and Exhibit A.7, page 26, last paragraph). The amount of forest land used has been minimized.

(2)(d) All access roads or service corridors are existing. No extensions are proposed.

*Criteria met.*

**(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

**(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;**

**(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;**

**Staff:** The proposed distribution main will be installed within an existing utility corridor. The Lusted Hill Treatment Facility was last reviewed for fire access as part of T3-2019-11784 in September 2019 (Exhibit A.162.b). The connection point for the new distribution main to the existing main on tax lot 1S4E15C-00801 will be located in an existing driveway. There is no perennial water source on the tax lot.

*Criteria met.*

**(C) The dwelling or structure shall:**

**(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;**

**(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**

**(3) Have a fire retardant roof; and**

**(4) Have a spark arrester on each chimney.**

**Staff:** The proposed distribution main does not require a plumbing permit or any other type of building permit (Exhibit A.218). The distribution main is installed underground and does not have any above ground appurtenances that will need to be fire retardant or have spark arresters (Exhibit A.7, page 26, last paragraph).

*Criteria met.*

**(D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.**

\* \* \*

**Staff:** The Lusted Hill Distribution Main does not require a domestic water supply. The Lusted Hill Treatment Facility is serviced by the Pleasant Home Water District if a water supply is needed during construction (A.162).

*Criterion not applicable.*

**(E) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.**

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24hour storm event is no greater than that before the development.**

**Staff:** The proposed Lusted Hill Distribution Main will have no aboveground features that will require on-site sewage disposal. No new impervious surfaces are being created on tax lot 1S4E15C-00801, 1S4E22BA-00100 or 1S4E22BA-00200 so no stormwater/drainage control systems are required. No water systems are required for the underground pipeline.

The applicant has addressed stormwater for the pipelines to be installed in the public right-of-way (Exhibits A.77, A.199, A.215).

*Criteria met.*

**8.7 § 39.4140 LOT SIZE FOR CONDITIONAL USES.**

**Lots less than the minimum specified in MCC 39.4120(A) may be created for the uses listed in MCC 39.4070® and 39.4080(A)(1) through (6), (9) through (13), and (16) and (B)(1) through (4), after approval is obtained pursuant to MCC 39.4100 and based upon: (A) A finding that the new lot is the minimum site size necessary for the proposed use;**

**(B) The nature of the proposed use in relation to its impact on nearby properties; and (C) Consideration of the purposes of this base zone.**

**Staff:** The applicant is not proposing to create any new lots as part of the proposed Community Service Conditional Use application for the Lusted Hill Distribution Main (Exhibit A.7, page 28). Installation of the distribution main will occur within existing public rights-of-way, on existing private property owned by the Portland Water Bureau or within easements.

*Criteria not applicable.*

**8.8 § 39.4145 OFF-STREET PARKING AND LOADING.**

**Off-street parking and loading permitted as an accessory use shall be provided as required by MCC 39.6500 through 39.6600.**

**Staff:** The code does not require any on-site parking or loading for the proposed Lusted Hill Distribution Main as there is no above ground facilities that require regular site visitation.

*Criterion met.”*

**Hearing Officer:** I adopt the staff findings above and find that they demonstrate that the application meets the criterion under MCC Sections 39.4080; 39.4100; 39.4105; 39.4115; 39.41403; and 39.4145. I also adopt the Applicants finding that the small portion of the pipeline in the CFU will not create a significant impact on forestry or farm operations as found in Exhibit A.33 and A. 37. I also find no structures will be above ground which satisfies MCC 39.4105(A)(B). Additional discussion of farm and forest impacts are found in under the discussion of MCC 39.7515 below. The findings below are incorporated here on farm impacts. There was no opposition testimony regarding forestry practices.

**“9.0 Utility Facilities Community Service Conditional Use Approval Criteria:**

The Staff Report addressed this approval criteria and whether the impacts of the construction of the use must be considered.

**“Staff Notes:**

\* \* \*

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.

**"Development" in MCC 39.2000 Definitions is “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.”**

Staff then followed up with a Memo to the Hearings Officer on August 7, 2023.

“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.”

**Hearing Officer:** The opponents agree with the Staff interpretation of “development”. The Applicant in its Final Argument goes to great lengths to rebut these arguments. I agree with the Applicant. I all my many years of work in land use, I cannot remember coming across an application where the construction impacts were considered. It is only the impacts of the actual permitted use that are considered. In the olden days of residential development (before clear and objective criteria), there were zoning codes requiring that new subdivisions be harmonious or fit in with the character of the area. One hundred acres of graded bare land, massive piles of dirt, thousands of dump trucks and construction trips, dust, neighboring roads torn up, rock hammers (in central Oregon), continual noise from pounding nails and saws, graders, bull dozers and clouds of dust, all create impacts. These subdivisions are often in phases that go on for years. These subdivisions are generally immediately adjacent to densely packed existing neighborhoods. Yet many thousands or acres were permitted to be developed. All of the neighbors of all of the subdivisions ever built across our state suffered these temporary impacts. All of the farmers across the roads from these residential subdivisions also suffered these temporary impacts.

Similarly, every major transportation project creates impacts on all adjoining and nearby properties. These are the same lengthy and difficult impacts involved with this case. County Transportation Staff disagree with the Planning Staff as to this code interpretation. Exhibit J.44, Page 2, September 6, 2023. This Staff memorandum is after the memorandum quoted above so perhaps the County position has changed.

“There is testimony that argues that the construction period is too long to be considered “temporary.” [Exhibit I.35] The County disagrees. The proposed development is a complex development, therefore, the construction period will take longer than a residential home, for example. In analyzing state regulatory rules, LUBA soundly presumed that the Land Conservation and Development Commission does not view a “temporary construction area” to be a use under land use regulations, but rather “an accessory function that is necessary to construct the authorized use.” Citizens Against LNG, Inc., et. al. v. Coos County, 63 Or LUBA 176 (2011). Here, the five-year construction period is necessary to build a complex water filtration facility, that if the application is approved, will be an authorized use.”

I am certain County Transportation Planners recognize that if any of their transportation projects have to meet this standard, it would create extra burdens for their projects.

County Transportation Planners cite to the same case that the Applicant relies upon. I will not repeat Applicants argument here but I adopt and incorporate Applicants Final Rebuttal, September 28, 2023,

Pages 1-13 into this decision (except as noted below). I agree with Applicants construction of the code and the same analysis applies to the County Code as would apply to statutes. I agree with Applicant’s interpretation as to “uses” as applying to ultimate uses and as opposed to temporary uses that are called out in the code. I agree with Applicant’s interpretation of the *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011), where the focus of the land used regulations is on the permanent use, just like the regulations here. I agree with Applicant’s analysis of *McLaughlin v. Douglas County*, \_\_\_ Or LUBA \_\_\_ (2021) (April 13, 2021, LUBA No. 2020-004). Before I read that case, I was of the belief that since the legislature allowed pipelines and transmission lines in the EFU zone it, “reflects a legislative determination that those inevitable impacts [from construction] are also allowed.” This case confirms that belief. There also is a legislative preference to put these uses in ROW’s. This temporary impact must certainly have been weighed and it was permitted in EFU.

I agree with Applicant and disagree with Planning Staff that the change in the definition of “development” changes the results here. It does not appear to be a significant change and if it was intended to include all temporary construction activity which would be a major policy shift, it should be made explicit in the code and also found in the legislative history. I agree with Applicant that the legislative history does not support such an interpretation.

The only legal argument of the Applicant on this issue that I do not accept is its interpretation of *Waveseer of Or., LLC v. Deschutes County*, 308 Or App 494, 501 (2021). The County has some latitude on how it interprets its code and I will not set that limit here in this case, where it appears that the County itself is not consistent. I certainly agree with staff and have often given the same advice myself: just because we erred in our code interpretation before, does not mean we must continue to do so.

The staff then addressed the specific approval criteria in the code.

## 9.1 “§ 39.7505 GENERAL PROVISIONS.

**(A) Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority.**

**(B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 39.8000 through 39.8050.**

**(C) 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.**

**Staff:** (A) The applicant has requested various (A) community service approvals (Exhibit A.1) in order to construct the proposed development in the West of Sandy River area. Please see the detailed description of each portion of the Utility Facility Community Service Conditional Use application in the MUA-20, RR and CFU zones.

(B) Section 11 contains the discussion of the Design Review applications for the Community Service Conditional Use applications.

(C) This is not an approval criterion, but a clarification that a CS approval does not amend the zoning of the property.

## 9.2 § 39.7515 APPROVAL CRITERIA.

**In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC 39.7550 through 39.7575, wireless communications facilities, subject to the provisions of MCC 39.7705, and except for regional sanitary landfills, which shall comply with MCC 39.7600 through 39.7625.**

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

**Staff:**

Water Filtration Facility: The applicant discussed the general character (Exhibit A.4, starting on page 4) of the project study area as shown in Figure 4 (page 12). They then focused on midsize to large agricultural operations (see A.157 for Study Area Images) near the Water Filtration Facility. Moving on to forest practices (woodlots and small-scale forest operations discussions (Exhibit A.37) within the area and then public facilities. The predominant rural land use in the study area is residential (Exhibit A.4, page 20) with it being the most sensitive use to potential impacts. The applicant looked at the various impacts that each of these individual uses generate to broaden the “Character of the Area”.

The growing of plants, limited preparation of agricultural products grown on a property that do not rise to the level of the “Commercial Processing of Agricultural Products conditional use (MCC 39.4320(B)(2))”, growing and non-frequent harvesting of forest products, and residential uses are primary uses in the MUA-20 and RR zone at all times. Once residential uses are established in the EFU and CFU zones, they also become primary uses provided they remain habitable. All of these primary uses qualities combined together are what define or create the character of the West of Sandy River. Community Service Conditional Uses may be permitted provided they are found or modified to be “consistent with the character of the area”.

The application looks at three core analysis areas: Transportation, Rural Development and Farm & Forest Areas (Exhibit A.4 starting on page 25).

*Transportation* - The applicant provided a Traffic Impact Analysis (TIA) for the built-out conditions of the proposed development (Exhibit A.31). Table 5 in the TIA shows 124 total site generated trips per day for the finished Water Filtration Facility site, with 32 trips in the morning peak hour and 32 trips in the evening peak hour. The applicant found that their project would not have a transportation impact.

**Multnomah County Road Rule (MCRR) 5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a *Transportation Impact*. A minimum increase of 10 new trips per day is required to find a transportation impact.**

Transportation Planning interprets this rule as follows: This criterion sets out that a transportation impact will be generated if the proposal generates trips according to one, or more, of the three qualifying criteria:

- by more than 20 percent,
- by more than 100 trips per day; or
- by more than 10 trips in the peak hour

As the site generated trips will increase by more than 20 percent, exceed 100 trips per day, and exceed 10 trips in the Peak AM and PM hours, the Water Filtration Facility is found to have a transportation impact. In Transportation Planning’s Memorandum to the Hearings Officer (Exhibit B.16) various mitigation measures are proposed to off-set the impacts being generated by the proposed use.

The Water Filtration Facility construction is projected to begin in the third quarter of 2023 and finish in 2028. The Water Filtration Facility is scheduled to be operational by September 30, 2027. During the construction of the Water Filtration Facility, truck (material import/export, concrete and miscellaneous deliveries) and commuter (site worker, staff, client and craft labor) trips were analyzed in Exhibit A.230. Truck traffic will be spread out throughout the workday.

Commuter trips will typically occur during the AM and PM peak periods. The Construction Traffic Impact Analysis report (Exhibit A.230) on page 8 includes tables of the Project Construction Traffic Trip Generation Summary, Average Construction Traffic Trip Generation Summary and Peak Construction Traffic Trip Generation Summary. Two proposed access routes are proposed to and from the Water Filtration site. One access will be from SE Carpenter Lane and the other will be from SE Bluff Rd via an easement through the Surface Nursery to the Water Filtration Facility's south property line (Emergency Access Road) (Exhibit A.212, LU305). The EFU access easement connects to SE Bluff Road and is within Clackamas County's jurisdiction. They will need to grant a discretionary permit for its authorization. A condition of approval has been included should this route not become available for emergency access for the Water Filtration Facility. Transportation Planning has proposed a number of conditions for the project so that the transportation network is maintained in a safe condition and that the truck traffic does not create safety hazards for the traveling public (Exhibit B.16). A Traffic Control Plan will be required. Over-Dimension Permits for all truck movements through the County which exceed the legal limit and weight specified by Oregon Department of Transportation must be obtained. In addition, demand reduction strategies must be utilized.

*Rural Development* – The applicant looked at the impacts to residential uses and schools that could be adversely impacted by the Water Filtration Facility (Exhibit A.4, starting on page 30).

Figure 23 (page 31) shows where these sensitive uses under a worst-case scenario could potentially be impacted based upon the applicant's review. These potential impacts included noise and vibration, light and glare, air quality, water quality and hazardous conditions.

**Noise & Vibration:** The applicant submitted a baseline noise study conducted in April 2019 for the Water Filtration Facility site (Exhibit A.172). The April 2019 study found the existing median hourly daytime  $L_{50}^1$  sound levels at the site ranged between 41 dBA and 49 dBA and median nighttime  $L_{50}$  sound levels ranged between 38 dBA and 49 dBA.

The applicant has indicated that the Water Filtration Facility has been designed to keep normal filtration facility operations to 50 dBA at the property lines at all times except when the emergency generators and fire pumps are being tested. (Exhibit A.4, page 33 & 34). Generators and fire pumps will only be tested during daytime hours and will not exceed 60 dBA. The hours listed for daytime hours are 7 am to 10 pm.

Land Use Planning recommends the Hearings Officer limit the testing of the emergency generators and fire pumps to daylight hours. In addition, once the facility is fully operational, a noise verification study will be conducted to verify that the noise at the property lines does not exceed 50 dBA at all times during normal operations and 60 dBA during testing of emergency equipment.

**Light and Glare:** The applicant has provided a Lighting Report (Exhibit A.47 and Exhibit A.212.x through ll.) that has designed the various lighting for the Water Filtration Facility to be maintained completely within the boundaries of the property without spillage outside of the property. Attachment B (Exhibit A.47, page 10) shows all lighting on the property 100% on (fully energized). Attachment C (Exhibit A.47, page 12) shows the lighting on a typical night with lights dimmed. Attachment D (Exhibit A.47, starting on page 14) provides the lighting details for the fixtures to be used throughout the Water Filtration Facility. All light fixtures are compliant with the County's Dark Sky Lighting Standards in MCC 39.6850 provided they are appropriately mounted to point downwards. Land Use Planning recommends the Hearings Officer include a condition of approval that all light fixtures

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**1 Percent Sound Level (Ln).** The sound level that is exceeded n percent of the time; for example,  $L_{08}$  is the level exceeded 8 percent of the time,  $L_{25}$  is the sound level exceeded 25 percent of the time, and  $L_{50}$  is the sound level exceeded 50 percent of the time (median sound level)

comply with the County's Dark Sky Lighting Standards of MCC 39.6850 and be appropriately mounted.

**Air Quality:** The applicant's discussion on air quality begins on page 46 of Exhibit A.4. The applicant indicates that the Water Filtration Facility will have two potential dust sources – gravel roads and the residual solids. Dust being generated from use of gravel roads can be mitigated in a variety of ways such as by driving very slowly while they are in use during the summer months, use of dust control sprays, sprinkling/irrigation. The use of gravel roads requires a deviation from the paving requirements of MCC 39.6570(A)(1). A Dust Control Plan for the use of these roads during the dry season can be required by the Hearings Officer pursuant to MCC 39.6570(A)(2).

Residual solids are generated from the cleaning of the raw water through the water filtration process. The materials are dewatered to create a moist cake and then hauled off and disposed of at an appropriate facility. The loading areas for residual solids are washed down to minimize dust. The residual solids are chiefly the concentrates of the organic matter removed from the raw water through the filtration process. PWB has indicated that currently once the residual solids are loaded onto a truck, the solids are taken to a landfill. The material is inert and contains no hazardous materials.

Air quality can also be affected if odors were to be generated. Exhibit A.51 discusses potential emissions from the Water Filtration site and operations. The filtration facility will use ozone which can affect air quality. The applicant indicates any leaks will result in the ozone generators being shut down until repaired. PWB is in the process of converting its vehicle fleet to electric vehicles (EVs) and charging stations will be provided on site to support their use and reduce air quality impacts. No chlorine gas will be used at the site (Exhibit A.51) but a bleach solution (sodium hypochlorite) will be used. Applicant reference Appendix E.1 (Exhibit A.45) to evaluate other water treatment plant operations around the State. Land Use Planning finds Exhibit A.53 to be a better document to understand the proposed Water Filtration Facility processes and potential air quality effects from odor generation. The Water Filtration Facility does not appear to be a major contributor to air quality concerns once it is established.

**Water Quality:** The applicant's narrative looks at various potential water quality impacts that could be created by the Water Filtration Facility (Exhibit A.4, starting on page 49). The first potential impact is from the generation of stormwater from impervious surfaces. The Stormwater Management Plan (Exhibit A.73) and Stormwater Drainage Control Certificate (Exhibit A.197) complies with the County's Stormwater Drainage Control regulations of MCC 39.6235.

Applicant's report "Appendix E.7: Potential Discharges to Johnson Creek Memorandum" (Exhibit A.57) looks at various adverse events that could affect Johnson Creek that occupies the southwest corner of the property. The Report discusses the designs of the Facility that will prevent these impacts.

During the construction of the Water Filtration Facility, the water quality of Johnson Creek could be affected if inadequate erosion and sediment control or poor construction practices occur during its lengthy construction timeframe. Land Use Planning has included a condition of approval for the Hearings Officer requiring that the PWB obtain all necessary ground disturbing permits from the Department of Environmental Quality and Land Use Planning before any ground disturbing activities begin.

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

**Pipelines:** Applicant's narrative for this criterion is located in Exhibit A.8 starting on page 5 through 18 for the Pipeline Conditional Use application. Pipeline construction is projected to begin in the first quarter of 2024 and finish in 2028. The Pipelines routes are chiefly within the public rights-of-way of

SE Dodge Park Blvd, SE Lusted Rd, SE Altman Rd with small intrusions onto SE Oxbow Drive and SE Pipeline. SE Carpenter Lane will be crossed by the Finished Water Pipeline from the Water Facility site to gain access onto SE Dodge Park Blvd through 35227 SE Carpenter Lane, a private property currently owned by the City of Portland. Once the Pipelines are installed, only a few features will be at the surface. These are the air vents, appurtenance covers (Exhibit A.214, LU-208) cathodic protection rectifiers, and metal cabinets (Exhibit A.209).

A change to the applicant's initial application has occurred for the Finished Water Pipeline from where it leaves the Water Filtration Facility to its entrance at the Intertie Site. The initial application was for two pipelines to run parallel in Dodge Park Blvd. PWB has decided that only one Finished Water Pipeline is needed between the Water Filtration Facility and the Intertie Site (Exhibit A.216).

*Criterion met.*

Intertie Site: Analysis for the Intertie Site begins on page 18 of Exhibit 8 and looks at the visual, auditory and light impacts for the small compound. The Intertie Site contains an Electrical Building where the generator will be housed, Intertie Valve and Meter Vault, stormwater management control, landscaping, pavement that can be used for parking if needed (Exhibit A.214, Sheets LU-500, LU-501). The Finished Water Pipeline will enter the Intertie Valve and Meter Vault from the south after the Pipeline has traversed from SE Dodge Park Blvd across the agricultural field underground. The finished water will then exit the Vault in three Pipelines (Exhibit A.214, Sheets LU-203, LU-204).

The design of the Electrical Building and Intertie Vault is shown in Exhibit A.21. Lighting for the site is via two pole mounted lights and one wall mounted light on the Electrical Building (Exhibit A.63). The proposed lighting meets the County's Dark Sky Lighting Standards. PWB has proposed significant landscaping at the Intertie Site to screen the improvements (Exhibit A.214, Sheets LU-501, LU-502). The landscaping helps to blend the site with surrounding tree farms, mature ornamental trees in the area and other surrounding nursery uses.

Noise: The applicant submitted a baseline noise study conducted on November 19, 2022 for the Intertie Site location (Exhibit A.175). The study found the ambient sound levels varied during the day and night and were influenced by traffic along SE Lusted Road and agricultural activities on the site. The hourly background sound levels ranged between approximately 37 and 41 dBA. Vehicles passing on Lusted Road increased noise levels to approximately 70 dBA and hourly average  $L_{eq}^2$  sound levels exceeded 50 dBA.

The Acoustical Analysis (Exhibit A.65) for the Intertie Site identifies that the water valves within the Intertie Vault can be a source of noise during their operation. The Intertie Vault is underground and has limited openings. Two vents are proposed on the top of the Vault which could allow sounds to escape. These vents will have silencers added to them to reduce the level of sound that can be transmitted to the outside. Another limited noise source is the backup generator. The generator is housed in the concrete walled Electrical Building. The exhaust pipe and air inlets and outlets for the building will include acoustical silencers to reduce noise levels during testing and during emergency use. Modeling of sound levels for generator use sets it at less than 60 dBA at the closest noise sensitive unit (residential house to the west). Modeling of sound levels for the Intertie Vault at 50 dBA at the closest noise sensitive unit. Land Use Planning recommends a condition of approval that a Noise Study to verify that the acoustical silencers have successfully reduced the sound levels be included to meet the modeling study in Exhibit A.65.

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2 Equivalent Sound Level (Leq).  $L_{eq}$  is the A-weighted level of a constant sound having the same energy content as the actual time varying level during a specified interval. The  $L_{eq}$  is used to characterize complex, fluctuating sound levels with a single number. Typical intervals for  $L_{eq}$  are hourly, daily, and annually.

*As conditioned, this criterion can be met.”*

**Hearings Officer:** This is a crucial criterion for this application and one for which there is a great deal of testimony. I firmly believe that is because this standard is so vague and completely open to interpretation. I believe the Board must have intended some flexibility in this interpretation or else they would not have permitted these highly intensive community services uses in these zones. To narrow it down, what is evaluated under these criteria is the final uses and not the construction of these uses. I find that, as conditioned, the final uses, the filtration plant, the pipelines underground, and the intertie site meet these criteria and are consistent with the character of the area. I adopt the staff findings above as my findings. I also adopt as my finding the Applicant’s Final Argument Page 54-92. The Communication Tower portion of the Application does not have to comply with this standard.

I agree with the Applicant that the code allows impacts from these conditional uses to be mitigated by conditions. Final Argument, Page 51. I agree that the limited area proposed for Administrative Offices is allowed as part of the use. It is critical that these employees have immediate access to the facility. Final Argument Page 51-52.

To further narrow this criterion, the test of comparing “consistency” with the character of the area is not with how it would compare if the property is left as bare land but comparing it to the proposed use with the surrounding uses. The area already has pipelines and water facilities. The area also has large scale nurseries that create more impact on the surrounding area than will the proposed facility or the underground pipelines. I recognize these are outright allowed farm uses and they get separate treatment in other parts of the code but here, this criterion is merely comparing uses. Many of the videos in the record show a very nice area of farms and farm fields. If such proposed community service uses were just compared to farm land, they would never be permitted which would be contrary to the code which allows them.

I find that the area selected for the study and the rationale for selecting that area reasonable and adopt the finding in Applicant’s Final Argument at pages 56-64. In analyzing the competing arguments, I find the Applicant’s argument more compelling. I also find that Applicant’s analysis of the uses in the area consistent with case law. Applicant’s Final Argument Pages 64-66.

I accept Applicant’s expert analysis of the noise impacts and find that as conditioned, they comply with this criteria and adopt the findings at pages 67-71.

I find that as conditioned, the project lighting will not extend outside of the facility boundaries or impact dark skies and I adopt Applicant’s findings at pages 72-86. I also adopt as findings the technical analysis of lighting found in Exhibit A.47.

I find that as conditioned, the Application is consistent with the character of the area as it will not significantly affect wildlife and adopt as findings Applicant’s Final Argument Page 85. Wildlife impacts will be addressed later in this decision.

I find that as conditioned, the Application concerning transportation impacts is consistent with the character of the area as the use is consistent with County standards and adopt as findings Applicant’s Final Argument Page 86. Transportation issues will be addressed later in this decision.

I find that as conditioned, any limited odors generated and the chemical storage for the facility will be consistent with the character or the area and adopt as findings Applicant’s Final Argument Pages 86-87.

I find that as conditioned, any dust generated by the facility will be from rare maintenance trips on well-maintained gravel roads and consistent with the character or the area and adopt as findings Applicants Final Argument Pages 87.

I find that as conditioned, that any impacts on the water quality will be negligible and consistent with the character of the area and adopt as findings Applicant's Final Argument Page 86.

I find that as conditioned, there will be negligible impacts on safety and security and consistent with the character of the area and adopt as findings Applicant's Final Argument Page 87.

I find that as conditioned, the Application will blend into the area and have negligible visual impacts and will be consistent with the character of the area and adopt as findings Applicant's Final Argument Pages 90-92.

I agree with the Applicant that the designation of the property as a Rural Reserve does not change the areas zoning, characteristics, or existing and allowed uses. As such, it has no bearing on whether the use and consistent with the character of the area.

The Staff Report then addressed natural resources.

**“(B) Will not adversely affect natural resources;**

**Staff:**

Water Filtration Facility: Applicant's narrative for this criterion begins on page 68 of Exhibit

A.4. The site has two Significant Environmental Concern overlays on it: wildlife habitat (SEC-h) and water resources (SEC-wr) (Exhibit A.212, Sheet LU-102). The applicant's proposed development of the Water Filtration Facility remains outside the SEC-h and SEC-wr overlays (Exhibit A.212, Sheet LU-302).

*Criterion met.*

Pipelines and Intertie Site: Applicant's narrative for this criterion begins on page 23 of Exhibit

A.8. A portion of the installation of the Lusted Hill Distribution Main travels up SE Cottrell Road through the Significant Environmental Concern for water resources overlay (SEC-wr) overlay that protects the headwaters of a stream (Exhibit A.214, Sheet LU-102). The applicant will bore a 390-ft segment of the Distribution Main running up SE Cottrell to avoid any impacts to the riparian vegetation or stream (Exhibit A.214, Sheet LU201).

In order to connect the Distribution Main to an existing pipeline, it must cross through an SEC-h overlay on the Lusted Hill Treatment Facility (tax lot 1S4E22BA-00200) site and on tax lots 1S4E15C-00801 and 1S4E22BA-00100 (Exhibit A.214, Sheet LU-206, LU-207). A Significant Environmental Concern for wildlife habitat permit has been applied for and approved to offset the encroachment of the Distribution Main work within the SEC-h overlay (See Section 14 below).

Two Pipelines head north in the SE Altman Road right-of-way. The western Pipeline terminates into an existing PWB pipeline at the intersection of SE Altman Road and SE Pipeline Road outside of any SEC-wr overlay. The eastern Pipeline continues on in the Altman Road right-of-way connecting into an existing PWB pipeline at the intersection of SE Altman and SE Oxbow Drive. This connection occurs within a SEC-wr overlay, but is exempt from obtaining a Significant Environmental Concern permit pursuant to MCC 39.5515(A)(24) (Exhibit A.214, Sheet 206).

The Raw Water Pipeline will be installed in the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay (Exhibit A.214, Sheet LU-200). The Pipeline will be installed by boring underground within the SEC-h except at its connection point on tax lot 1S4E23C-00800. A Significant Environmental Concern for wildlife habitat permit has been applied for and approved to offset the encroachment of the Raw Water Pipeline within the SEC-h overlay (See Section 14 below).

The PWB has been able to design the rest of the Pipelines and the Intertie Site to avoid disturbing any natural resources.

*Criterion met.”*

**Hearings Officer:** I concur with staff and find that, as conditioned, including Applicant’s proposed conditions, this criterion is met for the application. I adopt staff findings above. The Applicant’s Final Argument also adopts extensive findings demonstrating compliance with this criterion. The Application also contains considerable evidence demonstrating that it complies with this criterion as shown in listed exhibits in the Applicant’s Final Argument at page 93. In comparing expert opinions under this criterion, I adopt the Applicant’s expert opinion as the more persuasive. I also find persuasive that the federal agency in charge of environmental protection, the EPA, made a Finding of No Significant Impact (FONSI). Exhibit J.80. I also find that many of the criteria here for protecting of resources are very central to the Applicant’s reason for being. Many of the criteria support clean water. I find that the Applicant has the motivation, expertise and the ability to meet all of the criteria.

I agree with Applicant that the natural resources only include those natural resources that have been inventoried and listed as Goal 5 resources. This is consistent with the Staff approach described above. I adopt the findings in Applicants Final Argument pages 94-97 and on pages 218-219. The natural resources which the “no adverse effect” standard applies are only those identified and protected under Goal 5 in the SEC overlay. This is how Goal 5 resources are typically addressed in development codes. I agree that policy 5.2 “Protect natural areas from incompatible development and specifically limit those uses which would significantly damage the natural area values of the sit” is direction to planning staff. Page 219

Outside of identified Goal 5 resources, the Applicant’s Final argument demonstrates that, as conditioned, the application would comply with listed Comprehensive Plan Natural Resource Topics and Policies.

I adopt as my finding the Applicant’s Final Argument pages 99-107 in regard to water quality and erosion control in Comprehensive Plan Chap 5 Policies 5.5 and 5.6, 5.7, 5.11, 5.14.

I adopt as my findings the Applicants Final Argument Pages 107-109 the Comprehensive Plan Chap 5 Policies 5.18 and 5.25 regarding rivers, streams and wetlands.

I adopt as my findings the Applicants Final Argument Pages 109-116 the Comprehensive Plan Chap 5 Policies 5.26 and 5.27 regarding Fish and Wildlife.

I adopt as my findings the Applicants Final Argument Pages 116 the Comprehensive Plan Chap 5 introduction regarding scenic views that this introductory statement does not apply to the Application.

I adopt as my findings the Applicants Final Argument Pages 117-120 the Comprehensive Plan Chap 5 Policies 5.40, regarding tree protection.

I adopt as my findings the Applicants Final Argument Pages 120-122 the Comprehensive Plan Chap 5 Policies 5.41, and 5.43 air quality, noise, and lighting impacts.

The Staff Report then turned to another key criteria to addressed in the Application, its effect on farm and forest practices. The Staff found:

**“(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.**

**Staff:**

Water Filtration Facility: Applicant’s narrative for this criterion begins on page 69 of Exhibit A.4. The applicant has also provided an Agricultural Compatibility Study (Exhibit A.33), Forest



(See Section 7). Once the Pipelines are installed, only limited appurtenances will be above ground (Exhibit A.214, Sheet LU-208).

The applicant has provided Agricultural Compatibility Study (Exhibit A.33), Forest Compatibility Study (Exhibit A.37) to support their findings that the proposed Pipelines will not significantly change accepted farm or forest practices or significantly increase the cost of accepted farm or forest practices of the surrounding farm and forest lands. The Pipelines will leave the public rights-of-way and enter private property in three cases. The Raw Water (RW) Pipeline is predominantly installed on private property (tax lots 1S4E23C-01400, 1S4E23C-01500, and 1S4E23C-00800) (Exhibit A.214, Sheet LU-200). The RW Pipeline enters an EFU zoned property before it enters the Water Filtration Facility site. Tax lots 1S4E23C-01400 and 1S4E23C-01500 are in limited farm use that will need to be restored once the construction project is completed.

The Finished Water (FW) Pipeline leaves SE Dodge Park Blvd and enters the MUA-20 zoned tax lot 1S4E21A-00900. As noted earlier, PWB is now only proposing one FW Pipeline between the Water Filtration Facility and the Intertie site. Land Use Planning does not know if that reduction in the number of pipelines on the property will reduce the size of the easement required from the property owner.

Tax lot 1S4E21A-00900 is owned by Shelly L. Ekstrom, LLC and is presently in nursery stock use. The Ekstroms provided the comments in Exhibit D.5. The FW Pipeline enters on the southeast side of the tax lot and runs northward to the Intertie Site. The Ekstroms indicate that approximately 5 acres of prime farm land will be taken out of production while physical improvements are being installed. PWB has not provided timelines as to how long the installation of the FW Pipeline will take on the property or when the Intertie Site will commence construction. Once the work is complete, PWB intends to restore the ground to its original soil layers so the land will not be harmed. In addition, PWB will allow a portion of the permanent easement to be farmed. An Agricultural Soil Restoration Study (Exhibit A.35) explains how this will be accomplished. The Ekstroms are concerned about loss of income and the actual feasibility of soil restoration which seem to go directly to the approval criteria.”

**Hearing Officer:** This criterion is perhaps the most debated issue and it is a very close point. In addressing it, I am paraphrasing it to “farm impacts.” I believe the farmers who I find to be experts in this area are correct in determining that there will be farm impacts. I have to determine if those impacts are significant. I also have to interpret the County code and State law to see how they apply to this application. The Staff Report under MCC Section 39.4100 above, find that this very similar criterion, is met. No such statement is made here but assume Staff would not have found 39.4100 met if Staff also did not find this section met. I incorporate that finding here.

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

I believe the legislative intent on allowing this less strict review in the EFU was to make sure that these all-important utility facilities that all the public rely on can be permitted. The legislature placed them in ORS 215.283(1), making them what’s known as a subsection (1) uses which are permitted outright. This utility use and under *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), is permitted outright by state statute and not subject to additional local regulations. If it was sited wholly on EFU zoned lands, the County would be prohibited by *Brentmar* from imposing this additional regulation of its code created farm impact test. There may be a few off-grid people out there, but most of us are on the grid. That grid is made from utility lines (water, power, sewer, gas etc.) and the legislature wanted to make sure that most of us could be on that grid.

There was also the legislative intent to encourage the use of the right of way for pipelines to avoid disruption to farm ground. ORS 215.283(1)(c) allows as an outright use the placement of subsurface utility lines in ROW's. The use of County ROW for a utility line is free. ORS 758.010(1). This is another indication of this intent.

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. Again, under *Brentmar*, if this was EFU zoning the County would be prohibited from applying the farm impact test. However, that is the law before me. The facility and the majority of the pipeline is in the MUA so this standard applies. For the portion of the pipeline in the EFU zone, neither State law nor County code require the farm impact test.

I find that most of the farm impacts will come from the construction of both the treatment facility and the pipelines. I find that once the pipelines are in the ground, the farm impacts will not be significant. The State is laced with utility lines and we are a successful agricultural state. I also find that once the treatment facility is constructed, its farm impacts will also not significant.

The Applicant's final rebuttal devotes 67 pages to this subject and I will use that as an abbreviated framework to make my decision using Applicant's numbering. The Applicant argues:

**"1. The State Law Test Does Not Apply Directly and the Comprehensive Plan Indicates Test Should Be Less Onerous in MUA-20 Exception Area"**

**Hearing Officer:** I agree that the State law test does not directly apply for the reasons in Applicant's Final Argument at pages 123, and that the County could interpret this differently. I will leave that to the Board of Commissioners or at least a Planning Director's Interpretation. However, as the Code wording matches the State law wording, I will use cases that interpret the statutory wording in this decision. The Applicant next argued:

*"a. Quoting Part of the Test Does Not Mean No Conditions Allowed"*

**Hearing Officer:** I agree with and adopt Applicant's Final Argument on page 123. The County explicitly made this utility use a conditional use so conditions are allowed. Next the Applicant argues:

**"2. Core Elements of Caselaw Interpreting the State Statute; Definition of Significant"**

**Hearing Officer:** I adopt the Applicants analysis of the case law interpreting the farm impact test.

*"a. There is no \$20,000, Single Dog, or "De Minimus" Threshold for Significance in Caselaw."*

**Hearing Officer:** I agree with and adopt Applicant's Final Argument at pages 124-125 and find that this rebuttal to Mr. Kleinman's argument to be the more persuasive.

**"3. Impacts of Construction Are Not Impacts of the Proposed Use"**

**Hearing Officer:** As stated earlier in this opinion, I find this to be true. I have reviewed *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994) (Von Lubken VII). I find that the Applicant's interpretation of that case is more accurate than the opponents and adopt that interpretation found in Applicant's Final Rebuttal pages 125-127. As stated above, I agree with Applicant that the state farm impact test case interpretations do not apply directly but they do provide guidance that I will use to review the application of the County test.

As to *ODFW v. Lake County*, (LUBA Nos. 2019-084/085/093; LUBA Nos. 2019-086/087/088 (2020), I also agree with Applicant's argument. The decision certainly did not specifically discuss construction impacts. My reading of the case correlated construction and use impacts as one. The remand was because the County failed to address the arguments. As another neutral analysis of this case, my former law clerk Caleb Huegel and former staff attorney at LUBA summarized this case for the Willamette Law. He addressed all the important issues in the case. He did not find that

construction impacts of the use must be considered.

<https://willamette.edu/law/resources/journals/wlo/orluba/2020/04/odfw-v.-lake-county.html>

I'm confident that such a groundbreaking legal precedent, had it been there, would've been picked up by the astute Mr. Huegel.

I also adopt the Applicant's Rebuttal Argument regarding the *PGE/Gains* analysis. Pages 126-127. I find that in context, the legislature mainly addressed "uses" and not "construction" for the reasons cited by the Applicant.

- a. *"Any Construction Impacts Are Temporary, Which Must Be Calculated into the Determination of Significance"*

**Hearings Officer:** As stated above, I find that temporary construction impacts do not have to be considered.

If they have to be considered, I agree with Applicant and adopt the findings at page 127-128, that the temporary nature of the impacts must be considered in determining whether the impact is significant.

- b. *"Requested Findings on Farm Impacts Test Related to Construction"*

**Hearings Officer:** I have found that temporary construction impacts are not applicable to the farm impact test. As cited by the Applicant and as I have adopted, the farm impact test requires farm specific analysis. *Stop the Dump Coal. v. Yamhill Cty* 364 Or 432, 445; *see also Van Dyke*, 80 Or LUBA slip op at 23. For the pipeline, it requires tearing up the roads directly in front of an individual farm for a temporary period. Although clearly and impact, for the reasons stated by the Applicant's Final Rebuttal at pages 173-186, they are not significant. I also adopt as my findings regarding temporary impact not being significant the County's Transportation's Memo to Hearings Officer dated September 6, 2023, exhibit J.44. This excerpt from that opinion is particularly relevant:

"Finally, an opponent argued there is insufficient evidence to support a finding that the county's approval standards are satisfied, or that feasible solutions to the identified problems exist and will be achieved by conditions of approval [Exhibit I.35]. The County respectfully disagrees and points to Applicant's submittals: Exhibits A.31, A.226, A.227, A.230, H.3, I.84 and I.84. Substantial evidence is evidence a reasonable person would rely on in reaching a decision. *Brandt v. Marion County*, 23 Or LUBA 316 (1992). Exhibits A.31, A.226, A.227, A.230, H.3, I.84 and I.84 are all evidence that a reasonable person would rely upon to determine that the conditions have been met.

Furthermore, where a reasonable person could reach the decision made by the local government, in view of all the evidence in the record, LUBA will defer to the local government's choice between conflicting evidence. *Bottum v. Union County*, 26 Or LUBA 407 (1994). Here, there is no conflicting evidence, just conflicting opinions. The applicants have provided 2 substantial evidence for County Transportation to determine that the conditions can and will be met; therefore, the Hearings Officer is respectfully asked to defer to the County's decision."

I put particular weight on this memorandum as I am very familiar with County Transportation Departments from many years of providing them legal advice. They are jealous of their roads want to see them maintained and function properly. The County Transportation Department is the single best expert on their own roads. I weigh this expert testimony over competing testimony. If the County Transportation Department, with the many and sometime onerous yet feasible conditions placed on the PWB, believe these roads can function and allow farmers to continue to successfully do business, I defer to these experts.

**“4. The Study Area Complies with Guidance for Defining “Surrounding Lands” Under the Statute “**

**Hearing Officer:** This standard has always been vague and the case law has not provided much guidance to cut through the mists. Applicant cites to *Hood River Valley PRD v. Hood River County*, 67 Or LUBA 314, slip op. at 7 (2013) where it states that the County has significant discretion on determining what are the “surrounding lands”. What that case tells us is that using **all** the surrounding EFU lands is too much and that maybe you can just use adjacent lands depending on circumstances. I agree the County has discretion.

It gave me pause reading the testimony from the Oregon Department of Agriculture from Mr. Jim Johnson regarding the need for a larger surrounding lands analysis. I agree with the Applicant that such a large surrounding lands analysis would be unworkable and not required under the law. Based on the findings in the Applicant Final Rebuttal at Pages 128-133, I find that the Applicant and County reasonably defined the “surrounding lands.”

**“5. The “Surrounding Lands” Do Not Include the Filtration Facility Site nor the Easement Areas (the Subject Properties) “**

**Hearing Officer:** I adopt Applicant Final Rebuttal argument pages 133-135. It makes common sense to not study farm impacts on land that will be paved over, this especially applies to easement areas. Such analysis would prohibit allowed uses.

*“b. Despite Not Being Part of the Surrounding Lands, the Water Bureau has Reduced Any Impacts”*

**Hearings Officer:** There was a great deal of testimony regarding farming on the easements and the replacement of soils in the pipelines. I adopt as my findings Applicant’s Rebuttal Argument and the exhibits cited therein that as conditioned, the application can satisfy this criterion. Pages 134-139. I have no doubt that in the past, utilities were lackadaisical with replacing soils in pipelines and that this impacted farming. I agree with Applicant that with the conditions imposed, which I find feasible, these impacts will be mitigated so that they will not be significant. I also agree with Applicant that any land that is condemned, the Oregon Constitution requires just compensation. Any compensation will reduce the impacts below the level of significance.

**“6. The Emergency Access Road is in Clackamas County’s Jurisdiction, and Subject to a Different Legal Standard”**

**Hearings Officer:** I agree and adopt Applicant Final Rebuttal page 139. The emergency access road is in Clackamas County which Multnomah County has no authority over.

**“7. “Accepted Farm Practices” Is Not Broadly Anything Associated with Farming; a Change or Increased Cost of Practices is Not Broadly Any Impact”**

**Hearings Officer:** I agree with and adopt Applicant’s Final Rebuttal interpreting how the farm test is applied. Pages 139-140. After struggling with this farm impact test over the years, I accept the analysis of the legislative history that the intent was simplify the useability of the test. It is complicated enough without adding other factors.

**“8. There is Extensive Analysis of Farm Impacts In the Record, Including Cumulative Impacts”**

**Hearings Officer:** I agree with and adopt Applicant’s Final Rebuttal that there was extensive review of a farm by farm and a farm practice by farm practice analysis performed by the Applicant. Pages 141-142. This analysis is burdensome and I am familiar with the LUBA opinions that remanded cases for failure to do the extensive analysis required. The question is whether Applicant’s or the opponent’s expert testimony is more accurate. I find that the farmers are experts in the area. I also find that the Applicant’s contractor is an expert in farm practices and impacts.

As discussed above, the impacts from construction should not be considered in analyzing farm impacts. I agree with the Applicant, that there is little testimony as to the impacts once the facility is constructed and the pipelines installed. Page 142.

Although not required to do so because construction is not a “use”, the Applicant discussed whether construction impacts of the pipelines and the facility would pass the farm impact test. Again, this is odd as if this was EFU zoned land, the test would not be required. It is only because the County Code requires this for its non-resource exceptions lands in its MUA zone. The Applicant argues that this violates the Comprehensive Plan and this could result in the prohibition of installing utilities in the ROW. Page 159. I do not go so far and will not ignore the plain wording of the text of the code. Although, I find that as this standard does not apply to the construction of the facility or a pipeline but only the end use, it is not overly burdensome and will not result in a prohibition of installing utilities in the ROW. If, however, a reviewing court finds that the farm impacts from the construction of the pipeline needs to be considered, then I believe the County will have a problem with this code provision conflicting with the comprehensive plan.

*“a. Traffic Impacts”*

I find that the Applicant’s testimony is more persuasive and that once the construction is complete, the impacts will not be significant. I adopt Applicant Final Rebuttal as to impacts of the operations of the facility as not creating a significant impact on farms. Pages 142-150.

Again, temporary construction impacts do not have to be considered. If they are considered then the temporary impacts of construction on the farms, that is a much closer question. Having been a driver for 48 years, I have sat in my share of construction delays and understand the frustration the area farmers will endure. I know that even multiple year construction headaches such as for Max lines will be completed and life will improve. When I.5 and I.84 have significant construction projects traffic does get through and the business continues. I have attended many meetings where neighbors complain about opening road projects through their neighborhoods and the terrible impacts of the traffic. However, our elected leaders understand that growth must be accommodated and that these road improvements and connections are necessary for the greater good.

These are shared public roads that we all use. We use them not just for transportation but to have access to water, sewer, gas, power etc. as ROWs are common (and free to use) conduits for these lifesaving utilities. When we share these roads, there often will be construction projects to fix the roads, fix or install utilities, widen the roads for new development and we need to slow down and take detours. There is irritation, delay and inconvenience but as this is part and parcel of sharing this public resource. I find that with the extensive but feasible conditions regarding construction, it will not create a significant impact under the farm impact test.

The fact that there will be only an average of three seconds of delay at area intersections supports this conclusion. Also, as stated about, the County Transportation Department believes the construction traffic can be adequately managed as to not create an unreasonable restriction on farm practices. The Applicant sums it up well in that this is “inherently the use of a shared public resource, and accommodation of other using that shared resource is part of the accepted farm practice.” Page 151. The Applicant then goes on to specifically discuss the construction of road improvements and pipelines in the public ROW.

The Applicant’s Final Rebuttal addresses opponent arguments under *Van Dyke v. Yamhill County*, 80 Or LUBA 348, 384-86 (2019). I concur with Applicant’s interpretation of that case. It did not involve a question about whether construction impacts could be considered. Any question of traffic impacts was from the final use of the project as a rail to trails. I agree with the Applicant that on this issue, the County failed to introduce any evidence regarding parking at certain access points that could interfere with farm traffic. Final Rebuttal Pages 151-152.

The Applicant's Final Rebuttal addresses Haul Routes at pages 152-153. I adopt those findings and agree that it is feasible to condition the Applicant to make drivers follow designated haul routes. Humans being imperfect there will be some straying but overall, with the conditions imposed this will limit farm impacts.

The Applicants Final Rebuttal addresses Road Safety and Sharing the road at pages 153-158. As a general perception, I believe professional truck drivers are generally better drivers than the average traveling public. I am sure Mr. Leathers will agree. I find Applicant's trust in truck drivers' skill to be warranted. Again, humans being imperfect, some may not be so professional. Generally, I agree that they will use due care in dealing with farm traffic. I watched the excellent and informative videos prepared by the opponents. Certainly, two large vehicles on a small road can create obstacles but I believe both operators will be aware of potential choke points, say near mail boxes, and avoid crossing there. Every day across Oregon trucks and farm vehicles share the road. Those videos showed me that there would be traffic impacts, but they did not convince me that they would be significant. I adopted Applicants findings at pages 153-158 and find that with the feasible conditions, impacts on road safety and sharing will not be significant.

The Applicant final Rebuttal then addresses access to the RH Nursery and the specific concerns of the nursery. I adopt applicant argument at pages 158-159 and find that as conditioned, these impacts can be mitigated.

*"b. Construction in the Public Right of Way (Pipelines and Road Improvements)"*

**Hearings Officer:** I adopt Applicant's Final Rebuttal argument and the conditions contained therein, particularly its citation to Exhibit J.84, as my findings under this criterion. Page 159-165. Next, the Applicant discusses the effect of detours on farm traffic.

*"i. Detours"*

**Hearings Officer:** There will be detours for the pipeline construction. I agree with Applicant that detours are a normal part of farming practice as there are always issues involved in the use of shared roads. I agree that the pipeline construction detours will be temporary as the installation will be on a rolling basis. PWB will install a pipeline in front of a driveway forcing a detour for a while and then move on. From reviewing the maps, area farmers have more than one way to enter their properties. Again, it is a close call and I find that there will certainly be impacts but with the mitigation of the proposed conditions, they will not rise to the level of significance. I adopt Applicant's Final Rebuttal Pages 165-167.

*"ii. Concerns About No Alternate Route & Peak Seasons in Farm Traffic Report"*

**Hearings Officer:** I agree with the Applicant that it will take the necessary steps to help farmers move their equipment and get access to their fields. I agree that there will be some problems, delays and inconveniences but I agree that as mitigated, that these temporary difficulties do not raise to the level of significance. I adopt as my findings the Applicant's Final Rebuttal and the exhibits cited therein at pages 167-169. I find that as conditioned, the concerns about alternate routes and peak seasons is adequately addressed by the Applicant and demonstrates that the pipeline construction impacts will not be significant.

*"iii. Wide Equipment and One-Lane or Flagged Passage Through Construction Zones"*

**Hearings Officer:** I agree with Applicant that with lane closures and a one lane road, area farmers will continue to be able to use the roads even for their 16-foot-wide equipment as confirmed by Applicant's contractor. Having flaggers should address safety concern about visibility on the one lane roads. Applicant proposes that if there is no detour, that the farm equipment will be treated like emergency vehicles and flagged through the construction zone, including having on-hand steel plates. Condition 7.d.iii, Page 171. I find that a reasonable mitigation measure. I adopt as my findings the

Applicant's Final Rebuttal and the exhibits cited therein at pages 169-171. I find that as conditioned the concerns about wide equipment and one-lane passages is adequately addressed by the Applicant and demonstrates that the pipeline construction impacts will not be significant.

**“iv. Product Shipping”**

**Hearings Officer:** I share farmer concerns that the pipeline construction may create delays in shipping product. I agree that agricultural products have tight timelines for shipping. Again, there will be delays and problems due to the construction. Truck drivers will not find a construction delay unusual and construction is a normal part of doing business. Based on the expert evidence regarding expected delays, and with the mitigating conditions, I find that these delays do not rise to the level of significance for the farm impact test and adopt Applicants Final Rebuttal as my findings. Pages 171-172.

*“c. Dust and Particulates*

i. Operations”

**Hearing officer:** I agree with Applicant that once constructed, neither the filtration facility nor the pipelines will create dust or particulates. There was no opposition testimony on this issue and I adopt Applicants Final Rebuttal pages 172-173.

**“ii. Construction”**

**Hearing officer:** There is no doubt that construction of the facility and of the pipelines will create dust. The question is whether such dust will violate the farm impact test. I agree with Applicant that dealing with dust is a normal farm practice. Anybody who has ever been anywhere near farm fields has seen plumes of dust. Of course, that is the farm practice itself which is allowed. The question is whether the additional dust from construction will require additional measures, impacts or costs to the farmer that will violate the farm impact test.

I also agree with the Applicant, as will anyone else who lived all four seasons in the Portland area, that dust is not a problem for two-thirds of the year. I agree with the Applicant that the construction industry has extensive experience in dealing with dust and mud tracks on road. Exhibit J. 81 from the PWB is a good example of their experience in dealing with dust and mud. If the PWB can construct that massive project among the fancy houses in the Portland west hills they should be able to replicate that here. I know that the County Transportation is also greatly concerned with mud tracks on its roads and will enforce against contractors who track mud from job sites onto their roads. I believe that with the time limitation and mitigation conditions imposed the dust and particulates can be limited so that it does not create a significant impact on farms. I adopt as my findings the Applicant's Final Rebuttal argument pages 173-178 and find that dust and particulates created from the construction of the pipelines will not violate the farm impact test.

*“d. Noise*

i. Operations”

**Hearing officer:** I agree with Applicant that there is no evidence that a material amount of noise will be generated by operations and there is no evidence that noise would force a change in any accepted dust control or protection practices or the cost of those practices after construction. I adopt Applicant's Final Rebuttal as my findings. Pages 178-179.

**“ii. Construction and Workers”**

**Hearing officer:** I agree with Applicant that farms and crops are not typically noise sensitive uses. Again, anyone who has been around farm fields has heard the loud noise from the machinery necessary in modern farming. The test is whether the noise from the construction will create enough noise to violate the farm impact test. I agree with Applicant that its Noise Pollution Control Plan in

the proposed condition of approval will mitigate noise below the level of significance. I adopt Applicant's Final Rebuttal pages 179-181 that the noise from the workers and construction will not violate the farm impact test.

As to noise and the impacts on farm animals, I concur with Applicant that noise impacts on farm animals does not rise to the level of a significant impact for the reason cited in Applicant's final rebuttal page 181.

*"e. Use of Farm Chemicals and Spraying Practices"*

**Hearings Officer:** There is considerable debate about pesticide spraying and the need for setbacks on the farmers own fields creating impacts. I find that following the pesticides labels is an accepted farming practice. I agree based on the review of the cases cited by Applicant, that over spraying is not an accepted farm practice. Following pesticide labels likely results in not spraying close to neighboring farm houses or other farm uses or other ORS 215.283 subsection one uses. Thus, limiting spraying following the labels is an accepted farming practice.

I find that the Filtration Facility will be set back from adjacent areas where spraying can take place and so spraying or even over spraying will have no effect on the facility. I find that because the pipelines are underground, it will not affect spraying. Those pipelines are currently in this area and in the EFU zones across the State. I adopt Applicants Final Rebuttal arguments at pages 181-186 as findings to demonstrate that the application will not violate the farm impact test because of potential impacts on farm pesticides or fumigation.

*"f. Wells"*

**Hearing Officer:** I adopt as finding Applicant's Final Rebuttal arguments at page 186, that there will be no significant effect on wells that will violate the farm impact test.

*"g. Loss of Customers / Reputational Harm"*

i. Operations

**Hearings Officer:** I concur that there is no substantial evidence that operation of the project will cause a loss of customers or reputational harm.

ii. Construction

**Hearings Officer:** As stated above, the County Transportation Department, a neutral expert, has found that the construction of the project will not significantly affect transportation in the area. As such, this should not result in a loss of customers or reputations harm. I agree that these concerns are speculative. I adopt as finding Applicant's Final Rebuttal arguments at page 186-187, that there will be no significant effect on customers or reputation harm that will violate the farm impact test.

*"h. Security"*

**Hearings Officer:** I find testimony that there will be security risks as speculative and no substantial. I find that any security impacts will not violate the farm impact test.

*"i. Cumulative Impacts"*

**Hearings Officer:** I adopt the analysis of cumulative impacts in Exhibit J.88. I find that the cumulative impacts from the Applications does not violate the farm impact test. I agree with the Applicant that Mr. Prenguber qualifies as a farm expert. Whereas, certainly individual farmers are also experts, for this analysis of cumulative impacts, I put more weight on Mr. Prenguber's expert opinion.

I find that for both the operation and the construction under the Application, does not violate the farm impact test. This opinion will now return to follow the Staff Report numbering concerning impacts on public service.

The staff found:

**“(D) Will not require public services other than those existing or programmed for the area;**  
Water Filtration Facility: Applicant’s narrative for this criterion begins on page 84 of Exhibit A.4.

Public Services	Exhibit #
Water Service Pleasant Home Water District PWB	A.128 A.126 & A.220
On-Site Waste Water Service (Septic)	A.124
Stormwater Management	A.73, A.197
Fire Protection Rural Fire District #10	A.130.a
Sheriff	A.108
Other Services Portland General Electric Fiber	A.116 A.122
Trash & Recycling	A.120

The Fire District #10 Board of Directors submitted a resolution, report and recommendation regarding the Water Filtration Facility application (Exhibit D.1). The report evaluates the proposed use and discusses the Districts ability to serve it along with potential impacts, risks and hazards. District 10’s station for the area does not have specialty response services including hazardous materials, and confined space rescue. These services must be dispatched from other fire stations. Beginning on page 21 lists findings from the District regarding the staffing levels at their fire station, their training, need for assistance from surrounding stations, impacts to roads will impact their response times, etc. The Board of Directors recommends denial of the application with one of the reasons being that it requires public services other than those existing or programmed for the area. Gresham Fire has provided a comment (Exhibit D.16).

The applicant has provided a Response to Fire District 10 Comment Memorandum (Exhibit A.225). In addition, they have provided a Construction Traffic Impact Analysis (Exhibit A.230). Transportation Planning has reviewed Exhibit A.230 and has provided comments regarding the analysis (Exhibit B.16). The analysis findings do propose gaining access to SE Bluff Road via the Emergency Access Road during the construction phase of the project.

Pipelines & Intertie Site: Applicant’s narrative for the for this criterion begins on page 27 of Exhibit A.8.”

Public Services	Exhibit #
Water Service Pipelines Intertie Site	N/A Pleasant Home Water Dist. A.127

On-Site Waste Water Service (Septic) Pipelines Intertie Site	N/A N/A	N/A N/A
Stormwater Management Pipelines Intertie Site		A.77, A.199 A.75, A.198
Fire Protection Pipelines Intertie Site	Gresham Fire / Fire Dist #10	A.130.b
Sheriff Pipelines Intertie Site	Multnomah County “ “	A.110
Other Services Pipelines Intertie Site	PGE Fiber Trash & Recycling	A.118 N/A N/A

**Hearings Officer:** It does not appear that staff has made a recommendation as to this criterion. I specifically requested that the Applicant provide expert testimony in response to the expert testimony from the RFPD10. The Applicant did so.

In my reading of the code, this section just requires that the services be available. I believe the RFPD10 comments are more appropriately addressed in the later sections that concerns whether a lack of the amount of service creates a hazardous condition. I do not believe the RFPD10 is arguing there is no fire service, just that it is inadequate for the scale of the project and it will create a hazardous condition. I find that there is fire protection services for the project. I adopt Applicant Final Rebuttal pages 190-192 as my findings that the fire services are provided.

There was also considerable debate about specialty emergency services. The code does not specifically require all types of specialty fire protection services. I do not think an application could be denied under this criterion because the RFPD10 did not have a tall building fire response capability, a dive team, rope rescue team or hazmat team. An application that needed these capabilities and they were not in the area could potentially create a hazardous condition but that is not what the code requires. Similarly, just because an application may need more sheriff patrols or very rarely, a police negotiator, does not mean there is not sheriff service in the area. Even if the code did require these specialty teams to meet this requirement, I agree with Applicant that special response services exists in the area. I adopt Applicant’s Final Rebuttal arguments pages 192-194 as findings that to meet this criterion.

As to the term “programed for the area,” I understand that meaning as, for instance, if an application needed a water line, it could still be approved even if the water line was not currently in the area, if it was going to be installed before the project operated.

I also agree with Applicant that this standard does not mean there will be no impacts on the listed services. Every project in the zone will have some impact on the listed services. That standard is addressed elsewhere. I agree with Applicant that it will not require services from the schools. No one is living at the Filtration Facility or in the pipelines.

Mr. Mulkey from 1000 Friends addresses this criterion of whether the proposed access road and water line is programed for the area. Exhibit H.11 page 3. I am not certain I understand the argument but it

appears to be that the project cannot be approved because the project needs an access road and a water pipeline and those are not currently in the area. Mr. Mulkey's proposed standard would make any application impossible. As stated above the Application proposes the construction of those facilities and as such I find that these facilities are "programed for the area" and the Application meets this requirement.

**(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;**

Water Filtration Facility, Pipelines & Intertie Site: Applicant's narrative for the Water Filtration

Facility for this criterion begins on page 85 of Exhibit A.4. Applicant's narrative for the

Pipelines and Intertie Site for this criterion begins on page 28 of Exhibit A.8. The Oregon Department of Fish and Wildlife has provided an email indicating that the area appears to be impacted habitat (Exhibit A.59) and outside of big game winter habitat.

*Criterion met."*

**Hearing Officer:** I agree with staff and adopt the above findings and the finding in Applicant's Final Rebuttal page 185 demonstrating compliance with this criterion.

**(F) "Will not create hazardous conditions;**

Water Filtration Facility: Applicant's narrative for this criterion begins on page 86 of Exhibit A.4. The applicant has provided a Hazardous Materials Management Plan (Exhibit A.55) which addresses the materials to be used onsite at the Facility. The applicant has designed the Facility to use Chlorine in the form of a salt instead of a gas. The Facility is located out of the Geologic Hazard overlay zone on the property. Geologic and seismic hazard assessments of the site were conducted (Exhibit A.81). The physical improvements will be constructed using appropriate geotechnical foundation designs and site development. The ozone system is monitored and has control equipment designed to provide a safe and secure operation environment (Exhibit A.53, page 4)

The Fire District #10 Board of Directors submitted a resolution, report and recommendation regarding the Water Filtration Facility application (Exhibit D.1). The report evaluates the proposed use and discusses the Districts ability to serve it along with potential impacts, risks and hazards. District 10's station for the area does not have specialty response services including hazardous materials, and confined space rescue. These services must be dispatched from other fire stations. The District believes that not all hazardous materials have been clearly identified (Exhibit D.1, page 18). In addition, information has not been included regarding hazardous material amounts during the 5-year construction phase. The District has identified additional concerns regarding hazardous material truck deliveries, etc. The Board of Directors recommends denial of the application with one of the reasons being that it will create hazardous conditions.

The applicant has provided a Response to Fire District 10 Comment Memorandum (Exhibit A.225). Their response on the hazardous conditions' criterion starts on page 2.

Pipelines and Intertie Site: Applicant's narrative for this criterion begins on page 29 of Exhibit A.8. PWB indicates that there are no hazardous materials associated, used or stored with the proposed water pipelines or intertie site. Fire District #10 Comments (Exhibit D.1) express concern regarding hazardous conditions being created by the installation of the pipelines being installed in the rights-of-way and the increase of truck traffic during construction.

The applicant has provided a Response to Fire District 10 Comment Memorandum (Exhibit A.225). Their response on the hazardous conditions' criterion starts on page 2."

**Hearings Officer:** There is no staff recommendation as to the criteria. As an initial matter, I interpret this to mean the application will not create a significant or continuous hazardous condition. Almost any application in the area could create a hazardous condition. The introduction of one new vehicle on the road incrementally increases the chance for a hazardous condition. Almost all the uses listed under the Community Services could create hazards just by the nature of their operation: playgrounds, parks, reservoirs, dumps, landfills etc. If any hazard was the test, then none of these would be allowed. I do not believe that is what the legislation intended.

I agree with Applicant's interpretation of the context of this legislation. Applicant Final Rebuttal page 196-197. I agree that the interpretation of "hazardous condition" means something that is continuously being in a hazardous state not something that could remotely potentially happen. It also has to be a hazard that cannot be mitigated to a point where it is no longer a serious hazard. This comports with my analysis above, a playground could potentially be hazardous. To be denied, it would have to be something about the proposal such as an entrance with no sight clearance, a swing set that swung across a road or a sand box that was quicksand, that created an exceptional, unreasonable, continuous and unmitigated hazard. Just because the playground added trips to the road and incrementally made them more hazardous does not mean it would violate this criterion.

I agree with Applicant that past interpretations of this criteria have required applicants to evaluate potential hazards and identify mitigation and safety measures, so it does not create a hazardous condition. It does not require that there be no possibility of a hazardous condition and such an interpretation would be unreasonable. Applicant's Final Rebuttal Pages 197-201.

The Applicant's Final Rebuttal addresses the potential hazardous and proposed mitigations at the filtration facility. As the rebuttal is an orderly response to the issues, I will again quote the Applicant's headings and respond to the issues.

#### **"4. Filtration Facility Operations Will Not Create a Hazardous Condition**

##### *a. The Use of Chemicals"*

**Hearings Officer:** I find that the PWB is an expert in treating water. I agree with applicant that they have been treating water with chemicals for 95 years. I rely on this expertise to accept the fact that the proposed treatment of water is "inherently safer technologies." Page 200. The Applicant then addresses the two major concerns raised by opponents, the risk of an accident at the facility and the risk of an accident transporting chemicals.

##### **"i. Filtration Facility Use of Chemicals"**

**Hearings Officer:** I find that the Applicant has adequately documented its Hazardous Material Management Plan (HMMP). I find that the Applicant has the expertise to implement this plan based on its past 95 years of using chemicals. The Applicant has experts review their plan and update it and the Hazardous Materials Inventory System. I find the HMMP is adequate mitigation for the identified hazards. I adopt as findings the Applicant Final Rebuttal pages 201-204 to demonstrate that as mitigated and with feasible conditions, the use of chemicals at the facility will not create an unduly hazardous condition and complies with this criterion.

##### **"ii. Filtration Facility Design "**

**Hearing Officer:** I find that the Applicant's facility design has been guided by experts to prioritize safety and to minimize hazards. I find that the building is designed to comply with IBC building codes and NFPA fire codes. I find that the operational requirements promote safety. I agree the HMMP will mandate the design of the facility to mitigate hazards. I adopt as finding that the facility design mitigates safety hazards as found in Applicant's Final Rebuttal pages 204-205

**“iii. Staff Training”**

**Hearings Officer:** I find that the Applicant will provide adequate training to its employees that will mitigate any hazards associated with the operation of the facilities. I adopt as finding that the staff training will mitigate safety hazards as found in Applicant’s Final Rebuttal pages 205-206.

**“iv. Transport of Chemicals”**

**Hearings Officer:** I agree with the Applicant that deliveries of chemicals to the facility is anticipated to be 16 trucks per 5-day work week, or little over 3 per weekday. I find that there are no chemicals that are identified as being highly hazardous delivered to the facility. I find that the chemical truck drivers are trained and will receive site specific driver safety training requirements. Exhibit I.74, page 2. I find that the Applicant is experienced with truck deliveries of chemicals year around. All trucks coming to the facility only equate to approximately %0.4 and %0.8 of the background traffic on Dodge Park and Cottrel. Exhibit I.84 page 5. Certainly, any use of the shared roads can create hazards. The roads currently have trucks with hazardous chemicals on them now. Because of my findings above and based on Applicants Final Rebuttal pages 207-209, I find that the transport of chemicals to the facility will not create a hazardous condition.

**“b. *Facility Operation Traffic*”**

**Hearings Officer:** As mentioned earlier, the County Transportation Department is primarily concerned with the effective operation of their roads. This neutral entity has found that operation of the facility, with the conditions imposed, will not change the level of service of its roads. County Transportation staff rebutted the expert testimony of the opponent’s experts. I agree with the County Transportation staff. Exhibit J.44; I.84. I adopt as findings the Applicant’s Final Rebuttal argument pages 208-209 that as conditioned, the traffic from the operation of the facility will not create a hazardous condition.

The Applicant goes on to discuss conditions that impose the “fix it first” program and extensive improvements to the transportation system in the area. This decision of the Applicant to propose and agree to accepting the burden of these conditions goes a long way in helping me determine that transportation issues will not create hazardous conditions. It is rare to find an applicant who agrees to “fix it first.” I adopt Applicant’s Final Argument as to it conclusions on safety page 211.

**“c. *Emergency Vehicle Access*”**

The Applicant discusses the trade-off between placing the pipelines in farmland which could interfere with farming compared with putting pipelines in the ROW which could interfere with traffic. The Applicant made the correct choice as the ROW is the legislatively preferred option. Because of this trade off, there will be some temporary impacts on transportation and emergency vehicles. If the standard was no impact on emergency vehicles, no project would be approved. A sewer line could not even be put horizontally across a road. Some impact is allowed.

I am doubtful of the opponent’s arguments that emergency responders will be significantly hampered by construction delays. I would be shocked to learn that my professional fire responders would not know to avoid I.84 when there were lane closures. I assume the same would apply to major arterial construction projects. Responders will use their expert judgement on whether to go through or around a construction project. I expect the same to happen here. I find it feasible to impose conditions that require construction coordination with emergency responders. I adopt Applicant’s Final Argument pages 211-214, that as conditioned, the application will not create a hazardous condition by potentially slowing down emergency vehicles.

**“d. *Geotechnical*”**

**Hearings Officer:** The opponents offered expert testimony raising concerns regarding potential geotechnical hazards. The Applicant has also submitted expert testimony on the same. The Applicant

PWB has legal duties across its operations to deal with geological hazards. Its expertise in this area is crucial for the safety of the one million waters users. I find its testimony more compelling. I adopt Applicant's Final Rebuttal pages 214-215 as my finding that geotechnical issues will not create a hazardous condition.

Leaving the Applicant's Rebuttal Statement, I return to the Staff Report.

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

Water Filtration Facility, Pipelines and Intertie Site: See Section 16 below.

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

### **"9.3 § 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.**

**(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).**

**Staff:** The applicant has applied for various Community Service Conditional Use Permits for Utility Facility for the Water Filtration Facility, various Pipelines, Finished Water Intertie Facility, Lusted Hill Distribution Main.

### **9.4 § 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.**

**Staff:**

Water Filtration Facility: There are thirty (30) buildings or structures proposed for this development site that must comply with the Yard requirements. The applicant has identified the closest building/structure to each property line. The Front Lot Line is adjacent to SE Carpenter Lane. The closest structure to the front lot line is the Pleasant Home Water District (PHWD) Pump Station (#27 on Exhibit A.212, LU-302). It will be 110 ft+/- from the front lot line after 10 ft dedication. The opposite property line from the front lot line is the southern lot line. The closest building/structure to the southern lot line is the East Electrical Building (#16 on Exhibit A.212, LU-302) and it will be located between 465 – 733+/- ft from this rear lot line. The lot line adjacent to SE Dodge Park Blvd right-of-way is a Street Side Yard. The Pilot Conex Structure (#10 on Exhibit A.212, LU-302) is 182+/- ft from the northeastern lot line. The Communication Tower Accessory Building (#40 on Exhibit A.212, LU-302) is the closest building/structure to the eastern lot line at 1,206+/-feet which is a side yard. The West Electrical Building (#31 on Exhibit A.212, LU-302) is 167+/- ft from the western lot line which is also a side yard. All other buildings/structures are located to meet the Minimum Yard Dimensions listed MCC 39.4325(C) as shown.

*Criteria met.*

Pipelines: The pipelines are buried underground. Yards only apply to buildings or structures that are over 30-inches in height. The vents associated with the pipelines are under 30-inches in height (Exhibit A.185). The Raw Water Pipeline has a single utility 24” deep by 72” wide by 90” tall cabinet (Exhibit A.209) to be installed on tax lot 1S4E23C-01400 to house CPRs and a distribution panel. The applicant has indicated that the cabinet on the RR zoned tax lot will be set back a minimum of 30 feet from the Lusted Road right-of-way. It will also need to be located outside of the 10-ft wide side yard of the property. **MCC 39.2000 Definitions** defines a “**Building**” as “**Any structure used or intended for supporting or sheltering any use or occupancy.**”

*The Hearings Officer will need to decide if the cabinet is supporting or sheltering a use. If so, it will need to be set 20-ft from the south property line on tax lot 1S4E23C-01400.*

Intertie Site: As shown on the plan in Attachment H.2a (Exhibit A.186), the electrical building will be set back 121 feet from the north property line, 2,355 feet from the south, 96 from the east, and 112 feet from the west. The stairwell cover and fan cover will be set back 35 feet and 75 feet from the north property line, respectively, and 42-ft from the east property line and over 2,355 feet from the south.

*Criteria met.*

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

**Staff:** See Section 13 for the findings regarding Off-Street Parking and Loading requirements.

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

**Staff:** See Section 14 for the findings regarding the proposed signs for the proposed developments.

**(F) Other minimum yards, restrictions or limitations of use or development not required under this subsection shall be as provided in the base zone.**

**Staff:** The MUA-20 approval criteria are listed in Section 5. The RR approval criteria are listed in Section 6. The CFU approval criteria are listed in Section 8.”

**Hearings Officer:** I adopt the findings above and in Applicants Final Rebuttal pages 234-235 to demonstrate that the Application complies with these criteria. I find that the cabinet is a supporting or sheltering a “use”. It is conditioned so that it will need to be set 20-ft from the south property line on tax lot 1S4E23C-01400.

**“(I) The use is limited in type and scale to primarily serve the needs of the rural area.”**

**Hearings Officer:** As a helpful reminder, subsection (I) is the final criterion found in MCC 39.7515, Approval Criteria, listed many pages above. I find that this criterion does not apply because the proposed filtration facility is a “utility facility” subject only to conditional use criteria A through H. MCC 39.7520(A)(6).

Next the Staff Report turns to the transmission towers.

#### **“10.0 Radio Transmission Towers Community Service Conditional Use Approval Criteria:”**

**Hearing Officer:** There was little testimony regarding the transmission tower use other than the overall traffic concerns which are addresses elsewhere. As to MCC 39.7520; 39.7560; 39.7565; 39.7570 and 39.7575, I adopt as my findings the Staff Report dated June 22, 2023, at pages 59-74 that as conditioned the Application for the transmission tower meets these criteria. I also adopt Applicant Final Rebuttal pages 235-237 as my finding that the transmission tower meets these criteria.

**“11. DESIGN REVIEW APPROVAL CRITERIA”**

**Hearing Officer:** Again, there was little testimony opposing the application on these standards. As to MCC 39.8008; 39.8010; 39.8020; 39.8025; 39.8030; 39.8040 and 39.8045, I adopt the Staff Report dated June 22, 2023, pages 74-86, that as feasibly conditioned, the Application complies with these criteria. I also adopt Applicant Final Rebuttal pages 237-238 as my finding that Application meets the design review approval criteria.

**“12. OFF-STREET PARKING AND LOADING APPROVAL CRITERIA”**

**Hearing Officer:** Again, there was little testimony opposing the application on these standards. As to MCC 39.6505 through 39., I adopt the Staff Report dated June 22, 2023 pages 86-99, that as conditioned, the Application complies with these criteria. MCC 39.6570(d) and 39.6600 require more discussion.

In MCC 39.6570(a)(2), the Applicant seeks a deviation to paving requirements. I adopt the Staff Report findings at pages 92-94 as my finding and grant the deviation but with the exception that the Staff recommends: “except the portions of the Perimeter Road/Road K and the Emergency Access road discussed above.”

As to MCC 39.6600, the Applicant is requesting an exception from the number of required off-street parking spaces from 52 to 36 parking spaces. I find that the Applicant will use fleet parking spaces consistent with MCC 39.6520(B). Applicant’s Final Rebuttal page 241-242. I also agree to count the bus parking space so I find that there are 38 parking spaces proposed. As there will only be 10 employees per shift, I find the 30% deviation is warranted under this criterion down to 38 spaces. As I am granting the exception, I do not have to address the question regarding proposed condition 11.d. I adopt Applicant’s Final Rebuttal pages 238-240 as to these criteria.

I find that there will be a low frequency trips plus dust mitigation will prevent dust impacts on along the 420 ft portion of the Emergency Access Road.

**“13. SIGNS APPROVAL CRITERIA:”**

**Hearings Officer:** Again, there was little testimony opposing the application on these standards. As to MCC 39.6720; 39.6740; 39.6745; 39.6780 and 39.6805, I adopt the Staff Report dated June 22, 2023, pages 99-104, that as conditioned, the Application complies with these criteria.

**“14.0 Significant Environmental Concern Approval Criteria**

**§ 39.5510 USES; SEC PERMIT REQUIRED.**

**(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone; provided however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this subpart.**

**Staff:** The SEC-h overlay protects the forested area along SE Lusted Road and Dodge Park Boulevard in the project vicinity of the Raw Water Pipelines and the Lusted Road Distribution Main.

**Raw Water Pipelines:** Provided the Raw Water (RW) pipelines in the RR and EFU zones are approved by the Hearings Officer, a SEC-h permit is required for its use in the SEC-h overlay zone.

**Distribution Main:** The Lusted Road Distribution Main exits SE Cottrell Road near the intersection of SE Lusted Road and SE Cottrell Road at the Lusted Hill Treatment Facility (1S4E22BA-00200). The site is zoned CFU. Provided the Hearings Officer approves the use, a SEC-h permit is required for its installation on 1S4E22BA-00200, 1S4E22BA-00100 and 1S4E15C-00801 in the SEC-h overlay zone.

**14.2 § 39.5515 EXCEPTIONS.**

**(A) Except as provided in subsection (B) of this Section, an SEC permit shall not be required for the following:**

**(13) Right-of-way widening, new surfacing, and vegetation removal for existing rights-of-way when the additional right-of-way or surfacing or vegetation removal is deemed necessary by the county engineer to meet the needs of the traveling public.**

**(24) The placement of utility infrastructure such as pipes, conduits and wires within an existing right-of-way.**

**Staff:** As described in the response to MCC 39.5510(A), placement of the raw water pipelines and the Lusted Road distribution main will not be solely within an existing right-of-way. Therefore, the various projects on private property are not excepted from obtaining an SEC-h permit.

Significant Environmental Concern for Water Resource overlays: The following portions of the proposed pipeline projects are not required from obtaining a Significant Environmental Concern for Water Resource permit as the work will occur strictly within the public right-of-way:

1. The Finished Water Pipeline at the intersection of SE Altman Road and SE Oxbow Drive;
2. The Lusted Road Distribution Main at the intersection of SE Dodge Park Blvd and SE Cottrell Road and as it travels up SE Cottrell Road; and
3. Any ground disturbance, new surfacing, vegetation removal for the installation of the pipelines within the public right-of-way.”

**Hearings Officer:** I agree that the activities listed in 1, 2, and 3 above are exempt from obtaining a permit as the work will be in the public ROW.

The Applicant argues that it also meets the exception requirement on subsection (8)(B) *Within the SEC-h and SEC-s, there is no change to, or alteration or expansion of, the structure's or a driveway's ground coverage in excess of 400 square feet.* Applicant's Final Rebuttal page 246. I find that for TL 800 as shown in Exhibit I. 97, there will be no structure above grade and that ground coverage will be 0 feet so this exception also applies. In the event I am wrong, the Applicant has agreed to complete mitigation in Exhibit I.97 showing mitigation on tax lot 1S4E23C-01500. This mitigation complies with Condition 17.

**14.3 § 39.5520 APPLICATION FOR SEC PERMIT.**

**An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860.**

**(A) An application for an SEC permit shall include the following:**

**(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.**

**(2) A map of the property showing:**

- (a) Boundaries, dimensions, and size of the subject parcel;**
- (b) location and size of existing and proposed structures;**
- (c) Contour lines and topographic features such as ravines or ridges;**
- (d) Proposed fill, grading, site contouring or other landform changes;**

- (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
- (f) Location and width of existing and proposed roads, driveways, and service corridors.
- (g) In the SEC-wr overlay, the location of natural drainageways, springs, seeps, and wetlands on the site.

**Staff:** The applicant provided the written description in the applicant's Exhibit A.11 and provided required drawings in Exhibit A.194 & A.195.

*These requirements are met."*

**Hearings Officer:** I agree.

**"14.4 § 39.5560 GENERAL REQUIREMENTS FOR APPROVAL IN THE WEST OF SANDY RIVER PLANNING AREA DESIGNATED AS SEC-WR OR SEC-H.**

**The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas located in the West of Sandy River Planning Area in addition to the provisions of MCC 39.5800 or 39.5860 as applicable.**

**(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

**Staff:**

Raw Water Pipeline: Ground disturbance is proposed within the SEC-h zone for the RW Pipeline project area on tax lot 1S4E23C-00800 (Exhibit A.195). The work will include excavation, grading and removal of three trees for the pipe connection in the SEC-h overlay zone. An Erosion and Sediment Control permit will be required for all the ground disturbance work involved with the installation of the Raw Water Pipelines. A condition of approval is recommended to ensure this permit has been issued prior to any work occurring on the project.

*As conditioned, this criterion can be met.*

Distribution Main: Ground disturbance will occur within the SEC-h zone. As the distribution main enters the Lusted Hill Treatment Facility site, the applicant is proposing to trench within the existing driveway and parking area up until the Geologic Hazard zone (Exhibit A.194, Sheet LU-602). Just prior to the Geologic Hazard overlay, the installation project will switch over to trenchless installation (boring) and will remain trenchless until the main is to be connected to the existing pipeline on 1S4E15C-00801. An Erosion and Sediment Control permit will be required for all the ground disturbance work involved with the installation of the Raw Water Pipelines. A condition of approval is recommended to ensure this permit has been issued prior to any work occurring on the project.

*As conditioned, this criterion can be met."*

**Hearings Officer:** I agree that as conditioned, this criterion can be met and adopt the staff findings above.

**(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.**

**Staff:** Based on information provided in Exhibits A.11, A.47, A.63, and A.212, Sheet E-322, no outdoor lighting is proposed within the SEC-h zones of the Lusted Road Treatment Facility, RW pipeline, or the Lusted Road Distribution Main.

*This criterion is met.*

**(C) The nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone.**

**Staff:** None of the nuisance plant species listed in MCC 39.5580 Table 1 are proposed to be planted within any on-site SEC-h zones, as documented in Exhibit A.194, Sheet LU-602. A condition of approval requires that no nuisance plants listed in MCC 39.5580 Table 1 be planted. [table omitted]

*As conditioned, this criterion is met.”*

**Hearings Officer:** I agree that (B) and (C) above are met and adopt the staff findings above.

**“14.5 § 39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.**

**(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:**

**(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;**

**For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.**

**(2) Location of existing and proposed structures;**

**(3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;**

**(4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.**

**Staff:** The applicant provided this information in Exhibit A.194, Sheets LU-600 through 603.

*These requirements are met.*

**(B) Development standards:**

**(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

**Staff:**

Raw Water Pipeline: As depicted in Exhibit A.194, Sheet LU-601, and described in Exhibit A.11, trenchless boring will avoid all impacts to the forested SEC-h zones on the RW Pipelines, except for where the RW Pipelines connect into the existing pipeline (Exhibit A.195) on tax lot

1S4E23C-00800 on the eastside of SE Lusted Road. This ground disturbance on tax lot 1S4E23C-00800 will require the removal of three trees but is technically a non-forested “cleared” area.

*This standard is met.*

Distribution Main: Ground disturbance within the SEC-h zones on the Lusted Road Distribution Main is proposed mostly within non-forested cleared areas (Exhibit A.194, Sheet LU-602) except at the “Retrieval Portal” location on 1S4E15C-00801 where it shows a small portion of the forested area will be disturbed, but it appears it will be just outside of the SEC-h overlay zone. The applicant will need to carefully delineate the protected SEC-h forested area plus a 25 foot buffer zone to protect the root zone of the vegetation [see MCC 39.5505(E)]. The other option would be to modify the proposal to avoid encroachment into the forested area of any part of the construction zone to ensure no accidental encroachment.

*This standard is met.*

**(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

**Staff:** Based on information provided in Exhibit A.11, the Lusted Road Distribution Main and RW pipelines extend beyond 200 feet from the nearest public roads.

*This standard is not met.”*

**Hearings Officer:** I agree with staff that criteria in (A) and (B) are met as demonstrated above. I concur with staff that the development in Exhibit A.11 extends beyond 200 feet. As such a Wildlife Conservation Plan and related findings must be prepared to respond to the criteria in MCC 39.5860(C). The Applicant has prepared the required Wildlife Conservation Plans for both the distribution main (Exhibit A.69) and the RW pipelines (Exhibit A.67).

**(3) “The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

**Staff:**

Raw Water Pipelines: Based on information provided in Exhibit A.11, although no part of the access drive from Lusted Road to the RW pipeline tunnel portal is within the SEC-h zone, the proposed road is longer than 500 feet.

*This standard is not met.”*

Distribution Main: The Lusted Hill Treatment Facility has an existing driveway and service area that will need to be extended to install the distribution main by trench and then switch over to boring by opening a portal for access. The portal access approximately 645 feet from SE Cottrell Road.

*This standard is not met.”*

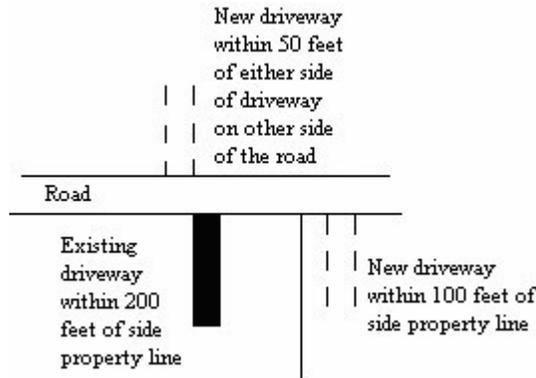
**Hearings Officer:** The distribution main pipeline will be extended through an existing driveway and service area to a portal that is 645 feet from Cottrell Road, and therefore the standard is not met. As described above, if an objective standard is not met, an applicant must prepare a Wildlife Conservation Plan and satisfy the requirements of MCC 39.5860(C). Applicant has done so.

**(4) “For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:**

- (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or**

**(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.**

**(c) Diagram showing the standards in (a) and (b) above.**



**For illustrative purposes only.**

**Staff:**

Raw Water Pipeline: The proposed permanent driveway access from SE Lusted Road to the RW pipeline tunnel portal is within 50 feet of an existing driveway on the opposite side of the road as depicted in Figure 9 of Exhibit A.11.

*This standard is met.*

Distribution Main: The proposed permanent driveway access from SE Cottrell Road to the Lusted Road Treatment Facility is also within 50 feet of an existing driveway on the opposite side of the road, as depicted in Figure 14 of Exhibit A.11.

*This standard is met.*

**(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).**

- 1. The modification shall be the minimum necessary to allow safe access onto the public road.**
- 2. The County Road Official shall provide written findings supporting the modification.**

**Staff:** The applicant is not requesting a modification.

*This standard does not apply.*

**(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

**Staff:**

Raw Water Pipeline: The RW Pipelines are approximately 100 feet from the south property line adjacent to the Clackamas-Multnomah County border. Three of the five properties immediately adjacent to the border have development within 200 feet of the common side property line.

*This standard is met.*

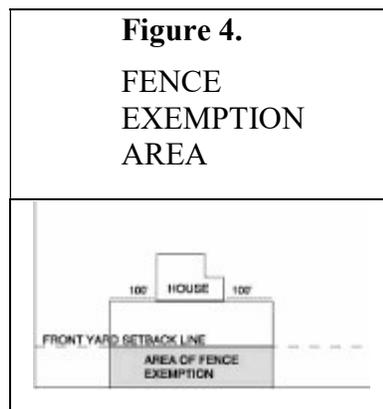
Distribution Main: According to the information presented in Exhibit A.11, the adjacent property to the south of the Lusted Hill Treatment Facility site (1S4E22BA-00200) has structures and developed areas within 200 feet of the common property line. Although all project ground disturbance and surface development commence within 300 feet of that shared property line, the Lusted Road Distribution Main extends beyond tax lot 1S4E22BA-00200 through tax lot 1S4E22BA-00100 onto tax lot 1S4E15C-00801. The installation of the Distribution Main connection on 1S4E15C-00801 is not within 300 feet of the western side property line where adjacent improvements exist.

*This standard is not met.”*

**Hearings Officer:** I agree with staff that the Application meets the standard under section (4) above for the raw water pipelines. Staff found the standard is not met for the distribution main because of the lot configurations. As noted above, the applicant prepared a Wildlife Conservation Plan and related findings for the distribution main to respond to the applicable criteria in MCC 39.5860(C).”

**(6)“Fencing within a required setback from a public road shall meet the following criteria:**

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
- (c) Cyclone, woven wire, and chain link fences are prohibited.**
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development. (See Figure 4 below.)**



- (f) Fencing standards do not apply where needed for security of utility facilities.**

**Staff:**

Raw Water Pipelines: No fencing is proposed as part of the project.

*This standard is met.*

Distribution Main: The Lusted Hill Treatment Facility site is secured by fencing. The fencing is exempt from these standards. No other fencing is proposed at this time. Based on information presented in Exhibit A.11, no fencing is proposed in the jurisdictional area.

*This standard is met.*

**(7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.**

**Staff:**

Raw Water Pipeline: After the grade is restored, the disturbed area will be reseeded to existing conditions (Exhibit A.195). Staff is uncertain what plant materials will be used in this area. A condition of approval is recommended that the applicant utilize a low growing native grass on tax lot 1S4E23C-00800. On Exhibit A.194, Sheet LU-601, the plan indicates native shrub plantings and seeded ground cover.

*This standard can be met.*

Distribution Main: None of the nuisance plant species listed in MCC 39.5580 Table 1 are proposed to be planted within any on-site SEC-h zones, as documented in Exhibit A.194, Sheet LU-602 and existing Water Bureau management of nuisance plant species will continue within the facility grounds per the narrative in Exhibit 2.D. A condition of approval requires that no nuisance plants listed in MCC 39.5580 Table 1 be planted.

*As conditioned, this criterion is met.”*

**Hearings Officer:** I agree with Staff that the criteria in subsections (6) fencing, and (7) nuisance plants, as conditioned, can be met.

**“(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.**

**(1) The applicant cannot meet the development standards of subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or ...**

**Staff:**

Raw Water Pipelines: At the RW pipeline, an SEC-h resource lies in the path of the only available property access from the existing raw water pipeline to the Water Filtration Facility site. The project does not meet the Development Standards (B)(2) and (B)(3). Development Standard (B)(2) cannot be met and the project be achieved as the RW Pipeline is a linear project extending over three properties. Development Standard (B)(3) requires that the access road/driveway and service corridor not exceed 500 feet in length. With the PWB boring approximately 1,280+/- feet of RW Pipelines, it seems that they could have extended the boring an additional 535 feet so that the access drive would not have needed to exceed 500 feet in length. The Hearings Officer will need to determine if the proposed Wildlife Conservation Plan results in the minimum departure from the standards in order to allow the use. The Wildlife Conservation Plan (WCP) is located in Exhibits A.67.

The WCP does not discuss the disturbed SEC-h habitat for the connection of the RW Pipelines to the existing pipeline as shown in Exhibit A.195 on tax lot 1S4E23C-00800. Three trees will be removed from this SEC-h overlay area. To mitigate this encroachment, trees could be added along the

perimeter of the SEC-h overlay on tax lot 1S4E23C -01500 and/or 1S4E23C-02200. A condition of approval has been recommended to mitigate for the encroachment not covered by the WCP.

If the Hearings Officer determines that (C)(1) is not met, the WCP will need to meet (C)(2) and (C)(3) or (C)(5).”

**Hearings Officer:** For the Raw Water Pipeline I adopt as my finding Applicant’s Final Rebuttal page 245 and find that this is the “minimum departure from the standards to allow the use”.

“Dodge Park Boulevard is within the SEC-h zone and building a new access road that meets the standard would require substantial clearing of the SEC-h forested area shown in Exhibit A.194. The Water Bureau believes that this standard was not intended to force major clearing through protected SEC-h forested areas when an existing access drive located entirely outside the SEC zone is available. Further, the Water Bureau believes it is unreasonable to require (as the Staff Report suggests) an additional 535 feet of pipeline boring, at significant public expense, to “shorten” an access road that has no impact on protected SEC-h resources.”

As found in (Exhibit A.163, page 9), I find that improvements at tax lot 1S4E23C-00800 meet the exception from SEC review provided in 39.5515(A)(8)(B) as there will no ground disturbance on that lot.

“Distribution Main: For the Lusted Road Distribution Main, an SEC-h resource occurs between SE Cottrell Road and the existing water main to which it must connect. The PWB has indicated that the project does not meet the development standards of subsection (B)(2), (B)(3), and (B)(5) due to the unique physical characteristics of the site as described in Exhibit A.11. The Wildlife Conservation Plan is located in Exhibits A.69.

The Distribution Main could continue in the SE Cottrell Road right-of-way to the intersection of SE Lusted Road and then travel east within the SE Lusted Rd right-of-way to tax lot 1S4E22BC00100 to then connect with the pipeline on 1S4E15C-00801. Encroachment into the SEC-h overlay while in the public right-of-way is exempt pursuant to MCC 39.5515(A)(24). The overall length of the project within the SEC-h overlay would be reduced from 1,353+/- ft to approximately 470 feet. By taking this route, (B)(3) could be met as the service corridor would also be reduced to 470 feet. Technically, (B)(2) could be met as tax lot 1S4E22BC-00200 is adjacent to SE Cottrell Road and SE Lusted Road. Based upon this discussion, the proposed project does not result in the minimum departure from the standards and hence the project must comply with (C)(2) below.”

**Hearings Officer:** For the Distribution Main, I agree with Applicant that MCC 39.5860(B)(3) only applies within the SEC-h zone and that a good portion of the driveway is outside of that zone. I find that the proposed design does avoid disturbance to this zone. I adopt Applicant’s Final Rebuttal at page 245-246 in support of this finding.

There appears to be no reason or need for additional mitigation measures as the project:

“1) completely avoids any tree removal, 2) keeps all disturbance within areas of existing disturbance (i.e., paved driveway and existing utility corridor), 3) keeps all disturbance within existing cleared areas, and 4) uses trenchless construction methods to avoid habitat impacts and minimize disturbance within the geologic hazard zone.” Applicant’s Final Rebuttal page 247.

For the reasons above, I find that requirements under (C)(1) are met as the proposal is the “minimum departure.” If a reviewing court disagrees, then I find that the Applicant has proposed the necessary mitigation in Exhibit I.97.

**(2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).**

**Staff:** The Wildlife Conservation Plan does not propose any mitigation for the encroachment into the SEC-h overlay zone. (C)(2) requires alternative conservation measures that exceed the standards of subsection (B) which the County understands to mean mitigation. The PWB shows in Figure 4 of Exhibit A.69 plantings that were done for a prior mitigation plan. These plantings are not applicable for mitigation to this project. They were mitigation for work done for encroachment into the SEC-h under a prior land use application. The Wildlife Conservation Plan (Plan) (Exhibit A.69) addresses the standards under (C)(3). The Plan proposes no alternative conservation measures and no mitigation measures. The Plan does not demonstrate compliance with (C)(2) above.

The Lusted Hill Treatment Plant property has approximately 0.40 of an acre near the corner of SE Cottrell and SE Lusted Roads outside the SEC-h overlay zone that may be suitable for use as a mitigation area. The Water Filtration Facility site has areas adjacent to the SEC-h overlay zone that could potentially be used for mitigation area. These areas outside of the SEC-h overlay would require deed restriction be recorded and a plan developed utilizing (C)(5) option 2.

*At present, this criterion has not been met”.*

**Hearings Officer:** As described above, I find that the proposal meets the standard in subsection (C)(1) and that this criterion is not applicable. If a reviewing court finds it applicable, the Applicant can, as conditioned, meet this criterion as demonstrated in Exhibit 1.97.

**(3) “Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:**

**(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**

**Staff:**

Raw Water Pipelines: The applicant’s exhibits show that conservation measures have been included to reduce the proposed impacts to the forested areas. The project proposes to avoid all impacts to forested areas within the SEC-h zone by trenchless boring of the RW pipelines.

*This criterion is met.*

Distribution Main: The Distribution Main will be installed through the parking lot to the existing pipeline corridor that was deforested under land use permit T3-2019-11784. The “Retrieval Portal” construction area on tax lot 1S4E15C-00801 appears to show that it will encroach into the existing forested area (Exhibit A.194, Sheet LU-602). The General Sheet Notes on Sheet LU-602 indicates “No proposed tree removal...”

*Provided no trees are removed in the forested area, this criterion is met.*

**Hearings Officer:** I found that the Application complies with (C)(1) above, as such this criterion is not applicable. If it is applicable, I agree with Staff that the criterion is met. I adopt Applicant’s Final Rebuttal Page 248 clarifying that there will be no tree removal from this area.

**(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

**Staff:**

Raw Water Pipelines: The applicant proposes no clearing, as the pipelines will be tunneled under the SEC-h areas.

*This criterion is met.*

Distribution Main: The Distribution Main will be installed through the parking lot in the SEC-h overlay to the existing pipeline corridor that was deforested under land use permit T3-2019-11784.

**(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

**Staff:**

Raw Water Pipelines: According to the applicant's narrative in Exhibit A.11 and Exhibit A.194, Sheet LU-601, there is no existing fencing, and no fencing is proposed within the SEC-h in the project area.

*This criterion is met.*

Distribution Main: The Lusted Hill Treatment Facility has a security fence around the perimeter of the facility itself. No fencing exists within the forested area and none are proposed (Exhibit A.11 and Exhibit A.194, Sheet, LU-602).

**(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**

**Staff:**

Raw Water Pipelines: According to the applicant's narrative in Exhibit A.11 and Exhibit A.194, Sheet LU-601, the PWB proposes no clearing for the installation of the RW Pipelines on tax lots 1S4E23C -01500 and 1S4E23C -02200, as the pipelines will be tunneled under the SEC-h area.

On tax lot 1S4E23C -00800, three trees will need to be removed for the connection of the RW Pipelines to the existing pipeline (Exhibit A.195). This portion of the project is not discussed in the Wildlife Conservation Plan or narrative. To mitigate for the removal of these trees, six trees should be added to tax lot 1S4E23C-01500 and/or 1S4E23C-02200 within the SEC-h overlay where there is no tree cover. Staff has included a graphic below showing where the trees could be added. Staff is not recommending planting the trees back on tax lot 1S4E23C-00800 as it is only 10-ft wide and immediately adjacent to SE Lusted Road and the trees would not provide any significant wildlife cover. A condition of approval has been recommended that six trees be planted in the SEC-h overlay to mitigate for the loss of trees from 1S4E23C-00800.



*As conditioned, this criterion is met.*

Distribution Main: According to the applicant's narrative in Exhibit A.11, page 28, no newly cleared areas are proposed within the SEC-h resource area.

**(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

**Staff:**

Raw Water Pipelines: According to the applicant’s narrative in Exhibit A.11 and as shown on Exhibit A.194, there are no stream riparian areas within the SEC-h in the project area. There are two ponds outside of the SEC-h overlay zone on tax lot 1S4E23C-01400 that the access road will cross between (Exhibit A.214, Sheet LU-200). To the east and south of the access road, the PWB will be restoring the area with a forest- shrub mix with a native understory seeding (Exhibit A.229). To the west and south of the access road, native seeding mix will be used. For installation of the two RW Pipelines between the ponds, PWB have indicated they will bore the pipes (Exhibit A.214, Sheet LU-200).

*This criterion is met.*

Distribution Main: According to the applicant’s narrative in Exhibit A.11 and as shown on Exhibit A.194, there are no stream riparian areas within the SEC-h in the project area.

*This criterion is met.”*

**Hearings Officer:** I found that the Application complies with (C)(1) above, as such these criteria are not applicable. If it is applicable, I agree with Staff that these criteria are met and that as conditioned, the Application complies with section (3)(b), (c), (d) and (e) above for the raw water pipeline and distribution main and adopt the Staff report as my findings. I find that Staff omission of finding that distribution main also meets the criteria is merely a clerical error.

**(4) “For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:**

\* \* \*

**Staff:** (C)(4) is for additions to single family dwellings. The subject proposal does not propose an addition to a single-family dwelling.

*This criterion does not apply.*

**(5)Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:**

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**
- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**
- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).**
- (d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:**
  - 1. Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the**

development site. Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

**Tree Replacement Table:**

<b>Size of tree to be removed (inches in diameter)</b>	<b>Number of trees and shrubs to be planted</b>
<b>6 to 12</b>	<b>2 trees and 3 shrubs</b>
<b>13 to 18</b>	<b>3 trees and 6 shrubs</b>
<b>19 to 24</b>	<b>5 trees and 12 shrubs</b>
<b>25 to 30</b>	<b>7 trees and 18 shrubs</b>
<b>over 30</b>	<b>10 trees and 30 shrubs</b>

2. **Mitigation Option 2.** In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

(e) **Location of mitigation area.** All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

(f) **Prior to development,** all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(g) **Trees shall not be used as anchors for stabilizing construction equipment.**

- (h) Native soils disturbed during development shall be conserved on the property.
- (i) An erosion and sediment control plan shall be prepared in compliance with the ground disturbing activity standards set forth in MCC 39.6200 through MCC 39.6235.
- (j) Plant size. Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.
- (k) Plant spacing. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.
- (l) Plant diversity. Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
- (m) Nuisance plants. Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.
- (n) Planting schedule. The planting date shall occur within one year following the approval of the application.
- (o) Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

**Staff:** The PWB is utilizing (C)(3) for both of its wildlife conservation plans (Exhibits A.67 and A.69). PWB does not need to comply with (C)(5) if the two plans comply with either (C)(1) and (C)(3) or (C)(2) and (C)(3). At present, Land Use Planning finds that the Distribution Main Plan has not complied with (C)(2) as no alternative conservation measures (mitigation) have been proposed. If the Hearing Officer agrees, the PWB would need to revise the Distribution Main’s Plan to meet (C)(5), option 2 in order to comply with (C)(2).”

**Hearings Officer:** I found that the Application complies with (C)(1) above, as such these criteria is not applicable. If it is applicable, the Applicant has provided mitigation required above to meet these criteria. I adopt Applicant’s Final Rebuttal page 249 to support this finding.

**“(6) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.**

**Staff:** The application does not include PAM resources and is not within a PAM overlay.

*This criterion does not apply.*

**(D) Optional Development Impact Area (DIA).** For the purpose of clustering home sites together with related development within the SEC-h overlay, an applicant may choose to designate an area around the home site for future related development and site clearing. For the purposes of establishing the appropriate mitigation for development within the DIA, existing vegetation within the DIA is presumed to be ultimately removed or cleared in the course of any future

development within the DIA. Establishment of a DIA is subject to all of the applicable provisions in this section and the following:

\* \* \*

**Staff:** The proposal does not include homesites. *These criteria do not apply.*”

**Hearing Officer:** I agree that that the criteria in (6) and (D) do not apply.

**“15.0 Geologic Hazard Approval Criteria:”**

**Hearings Officer:** There is little debate whether the Application complies with this criterion. Thus, as my findings I adopt the Staff report pages 118-128 and the Applicant’s Final Rebuttal pages 249-255 and the exhibits cited therein.

**“16.0 Comprehensive Plan Policies:**

Applicant’s narrative starts on page 89 of Exhibit A.4. Please refer to their response, accordingly.

**Land Use**

***Other Policies***

**Policy 2.50 As part of land use permit approval, impose conditions of approval that mitigate off-site effects of the approved use when necessary to:**

- 1. Protect the public from the potentially deleterious effects of the proposed use; or**
- 2. Fulfill the need for public service demands created by the proposed use.**

**Staff:** If the Hearings Officer determines that the proposed Water Filtration Facility and its related Pipelines create off-site effects that need mitigation such as pave and widen a failing road that construction vehicles will utilize to transport materials to and from the various construction site, this Comprehensive Plan Policy may be applied as it is an approval criterion as listed in MCC 39.7505(G).”

**Hearings Officer:** I find that the Application will create off-site impacts and that I will impose conditions that will mitigate these impacts.

**“Farm Land**

***Multiple Use Agricultural Land***

**County policies for these areas promote agricultural activities and minimize conflicts between farm and non-farm uses but are less stringent than policies in Exclusive Farm Use zones.**

**Policy 3.14 Restrict uses of agricultural land to those that are compatible with exclusive farm use areas in recognition of the necessity to protect adjacent exclusive farm use areas. Policy 3.15 Protect farm land from adverse impacts of residential and other non-farm uses.**

**Staff:** Policies 3.14 and 3.15 are supportive of the Community Service approval criteria MCC 39.7515(A) and (C). They are not just directions to Land Use Planning but to the applicant that the proposed use(s) must be compatible with agricultural land uses. Arguments by an applicant that protection of agricultural lands in the MUA-20 zone do not need to be to the same level as those in EFU zoned areas is inconsistent with the protections provided to MUA-20 agricultural lands. Community Service or other non-farm uses must protect farm land and any existing farm uses from adverse impacts caused by the proposed development and use in order to protect adjacent EFU lands. The Hearings Officer will need to find that the proposed development will not create adverse impacts to surrounding agricultural uses or mitigate those impacts so that they are no longer adverse.”

**Hearings Officer:** As stated above, although this plan language regarding pipelines in the ROW may conflict with MCC 39.7515(A), farm impact test (being more restrictive than EFU), I have applied the plain meaning of the Code and will let the County resolve the conflict. The findings above also address this criterion. I interpret the MCC 39.7515(A) imposing the farm impact test as fully implementing this comprehensive plan policy. No additional analysis is required. As I found the Application, as conditioned or mitigated, in compliance with MCC 39.7515(A), I find that it is in compliance with these plan strategies.

As to Strategy 3.15-1 and 3.15-2 regarding covenants and deeds restrictions, I find that those are not directly applicable as they are directions to staff. I adopt Applicant's Final Rebuttal on page 217-218 on this issue. I adopt page 218 that Policy 3.16 does not apply to the Application as it is directed solely to "businesses" and the PWB is not a business. I also adopt the Staff Report August 7, 2023, page 3, where it makes the same finding.

### **"Natural Hazards"**

#### ***Earthquake Hazards***

#### **Policy 7.3 Direct development away from areas with hazards associated with potential liquefaction resulting from major earthquakes.**

**Staff:** The proposed Water Filtration Facility, Pipelines and Intertie Sites are located in an area with a Liquefaction Probability of 0-5 percent (Exhibit B.14).

*Policy Met.*

#### **Policy 7.4 Protect against seismic hazards to structures and ground areas susceptible to earthquake damage.**

**Staff:** The proposed Water Filtration Facility, Pipelines and Intertie Sites are located in an area with a Modified Mercalli Intensity Scale/Damage Potential of Light from a Magnitude 9 Cascadia Earthquake (Exhibit B.15).

*Policy Met."*

**Hearings Officer:** I find that these policies are met. I also adopt Applicant's Final Rebuttal pages 219-220 concerning policies 5.2 and 5.7. I agree that those policies do not apply outside of mapped Goal 5 SEC zones.

### **"Public Facilities"**

#### ***General Policies***

#### **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.**

**Staff:** Both Pleasant Home Water District and Lusted Water District obtain water currently from the Portland Water Bureau's Bull Run system. The proposed Water Filtration Facility and its related Pipelines and other improvements will continue to provide water to both these districts to serve the West of Sandy River rural area. Provided the Hearings Officer approves the various Community Service Conditional Use permits, the above Policy will be met.

**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.**

**Staff:** The proposed project does not include the development of a new electrical substation.

The Water Filtration Facility will serve the Pleasant Home Water District and the Lusted Water District within the West of Sandy River area. The proposed use is not solely serving uses within the urban growth boundary.

*Policy met.*

**Policy 11.11 For development that will be served by a power utility company, the utility company must be willing and able to provide the power needs of the development.**

***Water Supply and Wastewater Treatment Systems***

**Policy 11.12 A water supply system for new development shall be by either of the following methods:**

- 1. Connection to a public water system having adequate capacity to serve the development and all other system customers.**
- 2. A private water system that produces safe drinking water with sufficient volume and pressure to meet applicable Building Code and Fire Protection Code.**

**Staff:** Prior to the construction of the Water Filtration Facility at tax lots 1S4E22D-00400 & 1S4E22D-00100, Pleasant Home Water District has agreed to provide water to the site (Exhibit A.128). Once the Water Filtration Facility is completed, Portland Water Bureau will become the water purveyor for the site (Exhibit A.126 and A.220). The Intertie Site will be served by the Pleasant Home Water District (Exhibit A.127).

*Policy met.*

**Policy 11.13 Wastewater disposal for new development shall be by any of the following methods:**

- 1. Connection to a public sewer system having adequate capacity to serve the development and all other system customers**
- 2. A private system that meets Oregon Department of Environmental Quality regulations**

**Staff:** The Water Filtration Facility will be connected to an on-site sewage disposal system (Exhibit A.124). The location for the system can be seen on Exhibit A.212, Sheet LU-302 and is labeled #4 and #5 and is east of the main parking area.

*Policy met.*

***Police, Fire and Emergency Response Facilities***

**Policy 11.17 As appropriate, include school districts, police and fire protection, and emergency response service providers in the land use process by requiring review of land use applications from these agencies regarding the agency's ability to provide the acceptable level of service with respect to the land use proposal.**

**Staff:** Fire District #10 has provided the service provider form at Exhibit A.130 and comments as Exhibit D.1. Multnomah County Sheriff has offered Will Serve forms for the Water Filtration Facility and the Intertie Site (Exhibit A.108 and A.110). The Gresham Barlow School District has provided written comments at Exhibits D.2 and D.3. Gresham Fire District has provided a written comment (Exhibit D.16).

*Policy met.*

**Hearings Officer:** I find the comprehensive plan policies listed above are met by the Application and adopt the findings above. I adopt staff's interpretation quoted below for policy 11.0 found in its August 7, 2023, page 4, memo to the Hearings Officer.

“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.”

I also adopt staff’s interpretation quoted below for policy 11.3 found in its August 7, 2023, page 4, memo to the Hearings Officer.

“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.”

The Staff Report does not directly address Historic and Cultural Resources but does so in a follow-up memorandum at Exhibit J.45.

“Policy 6.2 Protect cultural areas and archeological resources and prevent conflicting uses from disrupting the educational and scientific value of known sites.

Strategy 6.2-1: Maintain information on file regarding the location of known archeological sites, to the extent permissible by law. Although not made available to the general public, this information will be used to ensure the sites are not degraded through incompatible land use actions.

Strategy 6.2-2: Coordinate with the State Historic Preservation Office regarding the identification and recognition of significant archeological resources.

Strategy 6.2-3: Encourage landowners to notify state authorities upon discovering artifacts or other evidence of past cultures on their property

Policy 6.5 Where development is proposed on areas of cultural significance, require evaluation of alternative sites or designs that reduce or eliminate impacts to the resource.”

**Hearings Officer:** I adopt as my finding the Applicant’s Final Rebuttal for plan policies 6.2; 6.21, 6.22, 6.23 and 6.5 at pages 219-224. I find that the Applicant’s expert, Heritage Research Associate’s testimony is more convincing. I agree with Applicant that Policy 6.2 and its Strategies are not applicable as it directs the County to take action to protect resources from conflicting uses. Even if it was applicable, it can be satisfied through conditions. Policy 6.5 is also planning direction and even if it was applicable the project site is not identified as an “area of cultural significance by the County, State of federal government. Also, if these policies could be applicable, I adopt conditions. The

Applicant reviewed the County's proposed conditions and made modifications to them. I adopt those proposed modification at page 224. I find that as conditioned, these policies are met.

## **“17.0 Dark Sky Lighting Standards**

### **17.1 § 39.6850 DARK SKY LIGHTING STANDARDS.**

**(A) The purpose of the Dark Sky Lighting Standards in this Section is to protect and promote public health, safety and welfare by preserving the use of exterior lighting for security and the nighttime use and enjoyment of property while minimizing the obtrusive aspects of exterior lighting uses that degrade the nighttime visual environment and negatively impact wildlife and human health.**

**(B) The following exterior lighting is exempt from the requirements of paragraph (C) of this section:**

**(1) Lighting lawfully installed prior to October 22, 2016, provided that the building enlargement threshold in paragraph (C) of this section is not exceeded.**

**Staff:** No lighting on the site was installed prior to October 22, 2016. *This exemption is not applicable.*

**(2) Lighting used for safe pedestrian passage, installed at ground level (such as along walkways and stairs), provided that individual lights produce no more than 30 lumens.**

**Staff:** The submittal did not document pedestrian lighting specifically. While lighting may meet this exemption, the exemption was not requested in the submittal.

**(3) Lighting that shines for not more than 90 nights in any calendar year provided that individual lights produce no more than 70 lumens.**

**(4) Lighting which shines for not more than 60 nights in any calendar year associated with discrete farming practices as defined in ORS 30.930 and agricultural use as defined in OAR 603-095-0010, except that permanent lighting on buildings, structures or poles associated with farm practices and agricultural use is subject to the requirements of this section. For purposes of this exemption, “discrete farming practices” does not include farm stand or agri-tourism events or activities.**

**(5) Lighting which shines for not more than 60 nights in any calendar year associated with discrete forest practices as defined by ORS chapter 527 (The Oregon Forest Practices Act), except that permanent lighting on buildings, structures or poles associated with forest practices is subject to the requirements of this section.**

**(6) Lighting which shines for not more than 60 nights in any calendar year associated with theatrical, television, and performance activities. For purposes of this exemption, theatrical, television, and performance activities do not include farm stand or agritourism events or activities.**

**(7) Lighting in support of work necessary to protect, repair, maintain, or replace existing structures, utility facilities, service connections, roadways, driveways, accessory uses and exterior improvements in response to emergencies pursuant to the provisions of MCC 39.6900, provided that after the emergency has passed, all lighting to remain is subject to the requirements of this section.**

**(8) Lighting used by a public agency in service of a temporary public need, when such lighting cannot both serve the public need and comply with the standards in paragraph (C) of this section.**

**(9) Lighting required by a federal, state, or local law or rule, when such lighting cannot comply with both the law or rule and the standards in paragraph (C) of this section.**

**(10) Lighting used in support of public agency search and rescue and recovery operations.**

**(11) Traffic control devices in compliance with the Manual on Uniform Traffic Control Devices, when such lighting cannot both serve the public need and comply with the standards in paragraph (C) of this section.**

**(12) Lighting necessary to meet federal, state or local historic preservation standards when such lighting cannot both meet historic preservation standards and comply with the standards in paragraph (C) of this section.**

**(13) Underwater lighting.**

**Staff:** Submerged lights will be provided for the process monitoring. These lights are exempt from the standards.

**(14) Lighting of national, state, and local recognized jurisdiction flags pursuant to the United States Flag Code or laws regulating the proper display of jurisdiction flags.**

**Staff:** None of the proposed lighting meets exemptions MCC 39.6850 (B)(3) through (12) and (14). *These exemptions are not applicable.*

**(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.**

**(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding. Shielding must be permanently attached.**

**(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.**

**Staff:** Exterior lighting is provided at the Finished Water Intertie and at the Filtration Facility. The applicant submitted an Exterior Site Lighting Analysis for both the Intertie building and Filtration Facility (Exhibit A.63 and A.47, respectively) documenting that exterior lights do not trespass beyond the site locations. According to these documents, all fixtures have full cutoff beam distributions with zero up-light and all light will be contained on the site with models demonstrating 0 foot-candle light trespass along all property lines.

As stated by the applicant in Exhibit A.9, page 19, “proposed exterior lighting will be fully shielded and directed downwards.” Type M1 lights will be mounted to the side of the electrical building and will be used in the evenings. Type S1 pole mounted lights will be used for seldomly-occurring maintenance activities performed at night. Both Type M1 and Type S1 will be on switches allowing for independent operation.

As shown on Exhibit A.212, Sheet LU-403 and Figure 35 in the applicant’s Exhibit A.5, the downlighting on the monument entry sign will be incorporated into the concrete column and the directional signs may be downlit. A condition of approval is recommended that the proposed lighting meet MCC 39.6850 (C) when installed.

*As conditioned, these standards are met.”*

**Hearings Officer:** I adopt the findings above to demonstrate that the Application, as conditioned, meets the criteria. I also adopt Applicant’s Final Rebuttal page 255 to respond to staff comment on (14) above:

“Pedestrian lighting is documented in the application and meets the standards of MCC 39.6850(C), so the referenced exemption is not necessary. Exhibit A.212.kk provides the lighting schedule showing that all of the pedestrian fixtures (ZPxx and ZEPx series) have BUG ratings showing “U0” (no uplight) and have fixed mounting. These features meet the standard of MCC 39.6850(C)(1). The application Exhibit A.4 describes how all lighting at the site meets standard MCC 39.6850(C)(2). Exhibit J.70 further explains lighting for the facility.”

#### **“18.0 TRANSPORTATION PLANNING**

**Staff:** Multnomah County Transportation Planning and Development has reviewed the Portland Water Bureau Water Filtration Facility, raw and finished water pipes and communication tower. Their detailed analysis is contained in the Transportation Planning Memorandum (Exhibit B.16). The recommended conditions of approval have been included above under the subheading Transportation Planning.”

**Hearings Officer:** I agree with Multnomah County Transportation Planning analysis of the code and plan that as conditioned; the Application can be approved. I adopt as findings the Memorandum at Exhibit B.16 and J.44. I also adopt Applicant’s Final Rebuttal and its finding that none of the policies cited by RFPD10 (Policy1,3,12, and 22) are directly applicable to the Application. Pages 228-230.

#### **Mitigation of Temporary Construction Impacts:**

Applicant’s Final Rebuttal goes to great length to discuss its efforts to mitigate the impacts from the construction of the project. I found that construction impacts are not to be considered for this Application. However, if they are to be considered, I adopt pages 255-273 of the Applicant’s Final Rebuttal demonstrating that as conditioned, these impacts can be mitigated to a level where they comply with the code and plan. I adopt these conditions of approval.

#### **19.0 EXHIBITS**

The September 28, 2023, PWB Exhibit List is attached.

## Conditions of Approval:

**Hearings Officer:** Staff have proposed many conditions of approval. The Applicant has also proposed conditions or approval and has proposed modifications of the staff conditions. As an initial matter, I find that these conditions are not an improper deferral of compliance with standards. No discretionary determinations are deferred. I find that all criteria can be met either outright or met with the imposition of the feasible conditions listed below. I find that there is substantial evidence in the record that these conditions are feasible. I adopt Applicant's Final Rebuttal pages 39-46 as my findings, particularly the finding that the conditions for Transportation Demand Management and Traffic Control are feasible and not an improper deferral.

### A. Conditions from the Staff Report

1. Permit Expiration – The Community Service Conditional Use Permit and related Type II permits for the Water Filtration Facility shall expire as follows:
  - a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
    - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of at least one of the approved structures of the Water Filtration Facility. Construction entails assembling components of a structure.
    - ii. For purposes of Condition 1.a, notification of commencement of construction shall be given to the Multnomah County Land Use Planning Division a minimum of seven (7) days prior to the date of commencement. Work may commence once notice is completed. Written notification shall reference case file #T3-2022-16220 and be sent to [land.use.planning@multco.us](mailto:land.use.planning@multco.us).
  - b. Within four (4) years of the date of commencement of construction when all buildings/structures have not been completed. [MCC 39.1185(B)]
    - i. For the purposes of 1.b, completion of buildings/structures shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
    - ii. For purposes of Condition 1.b.i, the Portland Water Bureau shall provide photographic evidence and building permit status in support of completion of exterior surfaces of the structures and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to [land.use.planning@multco.us](mailto:land.use.planning@multco.us) and shall reference case file #T3-2022-16220. [MCC 39.1185]
2. Permit Expiration – The Community Service Conditional Use Permit and related Type II permits for the Communication Tower and its related physical improvements shall expire as follows:
  - a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
    - i. For the purposes of 2.a, commencement of construction shall mean actual construction of the foundation or frame of at least one of the approved structures of the Communication Tower (tower or accessory structure). Construction entails assembling components of a structure.
  - b. For purposes of Condition 2.a, notification of commencement of construction shall be given to the Multnomah County Land Use Planning Division a minimum of seven (7) days prior to the date of commencement. Work may commence once notice is completed. Written notification shall reference case file #T3-2022-16220 and be sent to [land.use.planning@multco.us](mailto:land.use.planning@multco.us).

- c. Within four (4) years of the date of commencement of construction when all buildings/structures have not been completed. [MCC 39.1185(B)]
  - i. For the purposes of 2.c. completion of buildings/structures shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
  - ii. For purposes of Condition 2.c.i, the Portland Water Bureau shall provide photographic evidence and building permit status in support of completion of exterior surfaces of the structures and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to [land.use.planning@multco.us](mailto:land.use.planning@multco.us) and shall reference case file #T3-2022-16220. [MCC 39.1185]

3. Permit Expiration – The Community Service Conditional Use Permit and related Type II permits for the Various Pipelines shall expire as follows:

- a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
  - i. For the purposes of 3.a, commencement of construction shall mean actual excavation of trenches for at least one segment of an approved pipeline.
  - ii. For purposes of Condition 3.a, notification of commencement of construction shall be given to the Multnomah County Land Use Planning Division a minimum of seven (7) days prior to the date of commencement. Work may commence once notice is completed. Written notification shall reference case file #T3-2022-16220 and be sent to [land.use.planning@multco.us](mailto:land.use.planning@multco.us).
- b. Within four (4) years of the date of commencement of construction when all pipelines have not been completed. [MCC 39.1185(B)]
  - i. For the purposes of 3.b. completion of the pipelines shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
  - ii. For purposes of Condition 3.b.i, the Portland Water Bureau shall provide photographic evidence and building permit status in support of completion of exterior surfaces of the pipelines and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to [land.use.planning@multco.us](mailto:land.use.planning@multco.us) and shall reference case file #T3-2022-16220. [MCC 39.1185]

Note: The Portland Water Bureau may request to extend the timeframe within which these permits are valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

- 4. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 39.1170(B)]
- 5. Prior to commencement of any ground disturbing activities or construction on any private property not owned by the City of Portland, provide written documentation that the necessary easements over the property have been obtained or that the property owners have granted approval for the work to commence on the property.
- 6. Prior to commencement of any ground disturbing activities, the Portland Water Bureau shall demonstrate that they have obtained any necessary permits from the Oregon Department of Environmental Quality required for these activities. [MCC 39.7515(A)]

7. Prior to commencement of any ground disturbing activities at any work site an Erosion and Sediment Control permit from Multnomah County for that work, shall be issued. [MCC 39.6225 & MCC 39.5090] [accepted Applicant's edits]
8. Prior to commencement of any portion of the approved projects, a Final Design Review Plan shall be submitted showing the following modifications: [(MCC 39.8040(A)(1) & (2)].
  - a. The location of the proposed cabinet for the Raw Water Pipeline (Exhibit A.214, Sheet LU-200) in the Rural Residential zone adjacent to the Lusted Road right-of-way. The proposed cabinet shall meet the applicable Yard requirements of MCC 39.4375(C). In addition, the accessory building located within the 10-ft side yard on Sheet LU-200 shall be labeled to be demolished or moved to meet the 10-ft yard requirement.
  - b. The proposed landscaping boulders at the Water Filtration Facility shall be shown on Sheets LU-200 and LU-305.
  - c. The Facility Circulation Map (LU-305), Proposed Conditions Site Plan (LU-302), Facility Enlargement 1 & 2 Plans (LU-400 & LU-401) in Exhibit A.212 shall be revised to show the other three loading zones that are shown in the Figure 39 of Exhibit A.5 narrative (MCC 39.6565(C) & 39.6595(G)).
  - d. The drawings for the Water Filtration Facility site (Exhibit A.212) shall be amended consistent with the plans provided during the land use review to add curbing to the perimeter of all parking, loading and vehicle maneuvering areas [MCC 39.6570(B)]. Additionally, details of the various designs of the parking spaces, and arrows designating travel direction shall be added to the drawings for all drive aisles indicating one or two-way traffic [MCC 39.6570(C)]. [Accepted Applicant's Edits]
  - e. The drawings for the Water Filtration Facility site (Exhibit A.212) shall be amended to show the access drive entering the subject property from the SE Carpenter Lane right- of-way shall be perpendicular as it crosses the 30-foot Front Yard [MCC 39.6580(A)].
  - f. The plans for the two directional signs shown on LU-403, Exhibit A.212 shall be modified to come into compliance with the requirements listed in MCC 39.6805 [MCC 39.6745(D)].
  - g. The property owner shall either verify that no parking area signs are proposed in the various parking areas of the Water Filtration Facility parking lot, or if proposed that all parking area signs comply with the provisions of MCC 39.6780(G)(2). The location of any signs shall be shown on the Facility Circulation Map (LU-305), Proposed Conditions Site Plan (LU-302), Facility Enlargement 1 & 2 Plans (LU-400 & LU-401) in Exhibit A.212. [MCC 39.6805]
  - h. Note the vertical and horizontal vision clearance area (45-foot horizontal triangle and 3 feet vertical to 10 feet above grade) on the landscape plans.
  - i. Demonstrate that the proposed trees along the north edge of the Intertie Site on SE Lusted Road, either due to their placement or due to their expected height at maturity, will not interfere with overhead utility lines. [MCC 39.8045 (C)(6)]
  - j. The ground disturbance boundaries shown on Exhibit A.195 shall be added to Exhibit A.214, Sheet LU-200. In addition, the disturbed area on tax lot 1S4E23C-00800 shall be revegetated with a low-growing native grass. A note shall be added to Sheet LU-200 of the type of native grass seed to be used. [MCC 39.5860(B)(7)]

9. Prior to submitting building plans for Zoning Plan Review, the property owners or their representative shall:
  - a. Acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. The signed acknowledgement shall be sent to Lisa Estrin at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us). [MCC 39.1170(A) & (B)]
  - b. Modify the plans to comply with the applicable conditions of approval and the Hearings Officer's Decision. No modifications may occur from the approved plans unless the Hearings Officer has granted those changes through the hearings process.
  - c. Once the plans are approved through Zoning Plan Review, the building plans may be submitted to the City of Gresham for building plan check.
10. Prior to and during construction, the property owner or their representative shall ensure that:
  - a. All trees and shrubs that are not authorized to be removed are protected during construction. The Water Bureau shall preserve and protect the one existing small grove of Douglas-fir, bigleaf maple, and walnut trees near the Pleasant Home Water District easement and SE Carpenter Lane both during construction and on an on-going basis [MCC 39.8040(A)(4)].
11. Prior to issuance of the Certification of Occupancy, the Portland Water Bureau or their representative shall:
  - a. Complete the lot consolidation of the two existing parcels at the water filtration facility site into a single 95+/- parcel by recording all necessary legal documents as outlined in T1-2023-16600 when it is approved. [MCC 39.4335]
  - b. Mark all required and designated parking spaces shown on the approved plans (Exhibit A.212) as required by MCC 39.6515.
  - c. All required parking and loading areas shall be improved and placed in condition for use before the Building Department grants temporary or permanent Certificate of Occupancy for the operation of the Water Filtration Facility. [MCC 39.6530(B)]
  - d. [See below under Exhibit I.45]
  - e. Obtain approval from Clackamas County to utilize the proposed Emergency Access Road to SE Bluff Road, as proposed, before the Building Department grants temporary or permanent Certificate of Occupancy for the operation of the Water Filtration Facility.
    - i. If access is not granted, the Portland Water Bureau shall redesign their Emergency Access Road to comply with the Oregon Fire Code and any other applicable regulations, and apply to amend the Community Service Conditional Use Permit for the Water Filtration Facility. [MCC 39.7505(A)]
12. The Portland Water Bureau or operator of the various facilities, on an ongoing basis, shall comply with the following conditions:
  - a. [See below under Exhibit I.45]
  - b. The Portland Water Bureau shall restore to its pre-construction condition, the extent possible, any agricultural land and associated improvements on EFU zoned private property that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the pipeline. [MCC 39.4225 and ORS 215.275(4)]
  - c. The roughly 4,000 square feet of asphalt surface at the Intertie Site between the Valve and Meter Vault and the Electrical Building shall be maintained as available for vehicle maneuvering and parking and shall not be used for outdoor storage (MCC 39.4340).

- d. Testing of emergency generators and fire pumps shall only be conducted between the hours of 7am to 10pm [MCC 39.7515(A)].
  - e. All external lighting shall comply with the County's Dark Sky Lighting Standards of MCC 39.6850 [MCC 39.6850 & 39.7515(A)]. Placement of lighting shall avoid shining it directly into an undeveloped Significant Environmental Concern for water resource or wildlife habitat area. [MCC 39.5560(B)]
  - f. The accessory building for the communication tower (Exhibit A.183) shall remain unoccupied and only be used to house equipment required for the tower operations (MCC 39.7565(H)).
  - g. All planted areas must be continuously maintained, including provisions for watering planting areas where such care is required. The small grove of Douglas-fir, bigleaf maple, and walnut trees near the Pleasant Home Water District easement and SE Carpenter Lane (Exhibit A.212, Sheet LU-301) shall be protected and maintained on- going basis. Any required landscaping that becomes diseased, dies or is removed, shall be replanted within the next planting season with a similar species and a suitable size after discussion with and determination by the Planning Director [MCC 39.8040(A)(4) and MCC 39.8045(C)(4) & (5)].
  - h. Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration [MCC 39.6520(A)]. No storage of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space [MCC 39.6520(B)]. A required loading space shall be available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space [MCC 39.6520(C)]. Loading areas shall not be used for any purpose other than loading or unloading and is unlawful to store or accumulate equipment, material or goods in a loading space in a manner which would render such loading space temporarily or permanently incapable of immediate use for loading operations [MCC 39.6520(D) & (E)].
  - i. No nuisance plants listed in MCC 39.5580 Table 1 shall be planted on any of the subject properties with SEC-h or SEC-wr overlays within the control of the Portland Water Bureau. The Portland Water Bureau owners shall remove the nuisance plants listed in Table 1 from the cleared areas of the properties and replant with native grasses, ground covers or other approved plantings. The property owners shall maintain the cleared area free of these nuisance plants [MCC 39.5750 (F), MCC 39.5580, MCC 39.5860(B)(7)]
13. This permit does not authorize public tours or other public gatherings (educational or otherwise) on the Water Treatment Facility Site without first obtaining a Community Service Conditional Use Permit for an Accessory Use to a Community Service Use. [MCC 39.7505(A) & MCC 39.5690(F)].
14. The property owner shall complete a noise study within six-months of the Water Filtration Facility becoming fully operational in order to verify noise at property lines does not exceed 50 dBA at all times during normal operations and does not exceed 60 dBA during testing of emergency equipment. The study shall be conducted by a Professional engineer and the results documented in a written report that shall be available for public inspection. The property owner shall notify Multnomah County Land Use Planning if the study determines any of the noise thresholds have been exceeded and what modifications to the Facility are proposed to bring it into compliance.
- a. The noise study and proposed modifications if any shall be submitted to Multnomah County Land Use Planning within 45 days of the six-month anniversary of the Water Filtration Facility becoming fully operational. [MCC 39.7515(A)]
  - b. Any modifications to the Water Filtration Facility found to be necessary to mitigate noise, as agreed by Multnomah County Land Use Planning and Portland Water Bureau, shall be completed within six months of the noise study's completion.

- c. After any modifications, a new noise study will be completed within a time period agreed upon by Multnomah County Land Use Planning and the Portland Water Bureau to verify that the modifications were successful.

15. Within six-months of the Water Filtration Facility becoming fully operational, the property owner shall submit a written report to Multnomah County Land Use Planning demonstrating the transmission tower is in compliance with the radiation standards of MCC 39.7575. The report shall demonstrate that the instrument or instruments used were calibrated within the manufacturer's suggested periodic calibration interval; that the calibration is by methods traceable to the National Bureau of Standards; include a statement that the measurements were made in accordance with good engineering practice; and a statement or statements as to the accuracy of the results of the measurements [MCC 39.7575(A)(4)].

16. Any alteration made to the transmission tower after construction resulting in a substantial increase in the non-ionizing electromagnetic radiation (NIER) or radiation pattern of the NIER source shall require a modification of the Community Service Permit [MCC 39.7575(C)].

- a. Pursuant to MCC 39.6200 et. seq., obtain and comply with all required permits for erosion and sediment control during and after construction, including, as applicable, the installation of erosion and sediment control best management practices (BMPs) based on an erosion and sediment control plan prepared and stamped by either a Certified Professional in Erosion and Sediment Control, Certified Professional in Stormwater Quality, Oregon Registered Professional Engineer, Oregon Registered Landscape Architect, or Oregon Certified Engineering Geologist. The erosion and sediment control plan shall effectively stabilize the site such that no disturbed ground is visible, and so no visible or measurable erosion or sedimentation occurs.

17 The Wildlife Conservation Plan (WCP) for the Raw Water Pipeline shall be amended to add six native trees on tax lot 1S4E23C-01500 and/or 1S4E23C-02200 as shown on in the graphic on page 111 in the staff report within the SEC-h overlay to mitigate for the removal of trees on tax lot 1S4E23C-00800 and not cover by the WCP. [MCC 39.5860(C)]

## **B. Exhibit I.45 Land Use Planning Post Hearing Memo to Hearings Officer**

Condition 12.a:

### **Water Bureau's Requested Condition 12.a:**

If the Water Bureau provides the septic system identified in the application, the water filtration facility shall have a maximum of 10 full-time employees per day and no more than 30 visitors per day.

If the Water Bureau provides an alternative treatment technology system, the water filtration facility shall have a maximum of 26 full-time employees, with a maximum of 10 on the largest shift, and no more than 30 visitors per day. The alternative treatment technology system must be sized to handle the increased number of employees and visitors and the drain field must be the same size or smaller and in the same location as the drain field identified on Exhibit A.212.3e, 00-LU-303. If the County Sanitarian finds that the site with the alternative treatment technology system provided cannot handle the larger number of employees and visitors, the Sanitarian may limit the maximum number of full-time employees and the maximum number of visitors allowed at 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 accommodate the amount of effluent that would be generated.

Under either type of septic system, wastes, 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.

## **C. Cultural Resources**

- (1) Prior to beginning ground disturbing activities at the project site, the Water Bureau will provide to the Planning Director a final Archeological Monitoring Plan for Construction of the Portland Water Bureau Bull Run Filtration Project (Archeological Monitoring Plan) that is generally consistent with Exhibit I.98 and includes any changes required by the Oregon State Historic Preservation Office. The Water Bureau will implement and comply with the Archeological Monitoring Plan at the commencement of ground disturbing activities at the project site. The Archeological Monitoring Plan may be reviewed and updated if needed to adjust for findings at the project site during the construction period. If updated, the revised version of the plan will be provided to the Planning Director.
- (2) Prior to beginning ground disturbing activities at the project site, the Water Bureau will provide to the Planning Director a final Inadvertent Discovery Plan for Cultural Resources that is generally consistent with Exhibit A.71 and includes any changes required by the Oregon State Historic Preservation Office. If after commencement of ground disturbing activities and/or construction improvements, the Water Bureau or its consultants encounter cultural materials, the Water Bureau will implement and comply with the Inadvertent Discovery Plan.
- (3) If cultural resources are encountered during construction, the results of evaluations and/or consultations required by the Inadvertent Discovery Plan for Cultural Resources will be provided to the Planning Director. Following evaluation, the Water Bureau will apply for an SEC permit for additional excavation or removal if required for compliance with MCC 39.5510(B).

#### **D. County Transportation Proposed Conditions (Full Set In Exhibit J.44)**

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 Water Bureau has not entered into a Project Agreement or Construction Permit(s) within 12 months, a new review and new determination shall be required.
2. Water Bureau is required to permanently close the western access to SE Carpenter Ln, which is shown as 'existing access road with easement' on plan set Exhibit A.212. This second access from the subject property (R994220980) exceeds the one access per property standard (MCRR 4.200) and no Road Rules Variance application (MCRR 16.000) was sought by the Water Bureau.
3. Complete and record right of way (ROW) dedications to meet the share of the 60 feet ROW width standard for Rural Local roads (MCRR 6.100A; MCDCM Table 2.2.5):
  - a. 15 feet on the northern (SE Carpenter Ln) frontage of the subject property for the Filtration site (ref R994220980);
  - b. 15 feet on the southern frontage of 35227 SE Carpenter Ln (R994220850);
  - c. The above dedications can be included in any re-plat of the property or by contacting Pat Hinds, County ROW Specialist, Pat Hinds (patrick.j.hinds@multco.us), to complete the ROW dedication process.
4. Pursuant to MCRR 6.100D, Water Bureau is required to comply with, and submit to County Transportation for review and approval prior to commencing construction, a revised Transportation Demand Management (TDM) Plan-which, at a minimum, must:
  - a. Address construction truck and commuter traffic management based on access to the filtration facility construction site via SE Carpenter Ln.
  - b. Incorporate the revised peak hour capacity limit for SE Carpenter Ln of 296 vehicles (which maintains LOS 'C'), as detailed in the Water Bureau's One-Access Analysis (Exhibit 1.86).

- c. Water Bureau will use tube trip counters at SE Carpenter Ln and SE Cottrell Rd intersection to take counts of trips to ensure the LOS C threshold (see b above) is met.
    - i. Water Bureau must also collect trip numbers to account for peak hour turning capacity monitoring in addition to total trips in order to allow for LOS monitoring based on real conditions not just the forecasted model (Exhibit I.86)
  - d. Identify TDM strategies and how they can quantifiably reduce trip demand at the Peak Hr(s) at the SE Carpenter Ln/SE Cottrell Rd intersection. TDM Strategies will:
    - i. Specify the priority of strategy implementation, based on the expected management of traffic demand.
    - ii. Specify when and how the strategy can be combined with other strategies to help mitigate traffic demand, as appropriate.
    - iii. In the event of selecting and implementing shuttle buses as a TDM strategy, Water Bureau must:
      - 1. Specify criteria for selection of shuttle bus pickup and drop-off locations.
      - 2. Ensure that pickup location(s) are on private property and do not involve parking vehicles on public streets, that the locations have sufficient parking capacity for the number of commuter vehicles that would need to be reduced at peak construction to meet the revised peak hour capacity limit, and that the locations are outside of the project study area set out in Exhibit A.31.
      - 3. Demonstrate that all necessary contracts, agreements, permits for commuter vehicle parking can be obtained prior to selection as a TDM strategy.
  - e. Based on long term and one-month forecasting, take a proactive approach to ensure an appropriate TDM strategy is in place and available 2 weeks before they are anticipated to be needed, and implemented in time, to reduce traffic volume to LOS C (see b above).
  - f. Water Bureau will provide regular monthly reports to County Transportation demonstrating that Peak Hour trips and Peak Hour turn capacity at the SE Carpenter Ln/SE Cottrell Rd intersection remains within LOS C and the threshold set out in criterion b above.
    - i. Report will show how the TDM strategies implemented have reduced demand from the actual trip counts and forecasted demand.
    - ii. Reports will be required for as long as Peak Hr intersection demand remains at levels above LOS C (see b above).
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 as updated in Exhibits A. 205 thru A.208 and in Exhibit J.89 (MCRR 6.100B; MCRR 8.000)
    - i. Water Bureau 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 east of SE Cottrell Rd to east of SE Altman Rd.
    - ii. SE Altman Rd from SE Lusted Rd to SE Oxbow Dr.

- iii. SE Cottrell Rd from SE Dodge Park Blvd to SE Lusted Rd. SE Lusted Rd from the Intertie Site to SE Altman Rd.
  - iv. SE Lusted Rd just north of Clackamas County line/adjacent to SE corner and existing driveway of 36910 SE Lusted Rd.
- c. All roads requiring preliminary or ongoing maintenance due to projected use:
- i. SE Altman Rd from SE Oxbow Dr to Dodge Park Blvd.
  - ii. SE Cottrell Rd from SE Lusted Rd to SE Dodge Park Blvd.
  - iii. SE Lusted Rd from SE Pleasant Home Rd to SE Cottrell Rd.
  - iv. SE Hosner Rd from SE Lusted Road to SE Oxbow Dr.
6. Pursuant to MCRR 6.100 and MCRR 8.100 road improvements will be required to ensure that the transportation network maintains a condition that is safe, does not create a safety hazard for the traveling public, nor creates an on-going maintenance problem, for the roads listed in Condition 5.c. Accordingly, the Water Bureau is required to enter into a Project Agreement (pursuant to MCRR 9.500), that requires the Water Bureau to perform the following work at the following times:
- a. For SE Hosner Rd from SE Lusted Rd to SE Oxbow Dr: Full depth reclamation, or other approved pavement replacement methods, prior to use as primary or detour through truck haul route.
  - b. For SE Altman Rd from Multnomah County Line to SE Lusted Rd: Full depth reclamation, or other approved pavement replacement methods, prior to use as primary or detour through truck haul route.
  - c. For SE Lusted Rd from SE Cottrell Rd to SE Hosner Rd: Full depth reclamation, or other approved pavement replacement methods, prior to use as primary or detour through truck haul route.
  - d. For SE Lusted Rd from the Beaver Creek culvert to SE Hosner: Full depth reclamation, or other approved pavement replacement methods, prior to use as primary or detour through truck haul route.
  - e. For SE Lusted Rd from SE Altman to the Beaver Creek culvert: At any time when using as a primary or detour through truck haul route, maintain in a serviceable condition. After completion of installation of pipelines in this section of road, replace roadway surface.
  - f. For SE Altman from SE Lusted Road to SE Oxbow Drive: At any time when using as a primary or detour through truck haul route, maintain in a serviceable condition. After completion of installation of pipelines in this section of road, replace roadway surface.
  - g. For SE Cottrell Rd from SE Lusted Road to SE Dodge Park Blvd: At any time when using as a primary or detour through truck haul route, maintain in a serviceable condition. After completion of installation of pipelines in this section of road, replace roadway surface.
  - h. For SE Dodge Park Blvd. from east of SE Cottrell Rd to west of SE Altman Rd (where pipeline work will occur): At any time when using as a primary or detour through truck haul route, maintain in a serviceable condition. After completion of installation of pipelines in this section of road, replace roadway surface.
  - i. If not already accomplished through the work described in a. - h. above, for any roads used as a primary or detour through truck haul route, the Water Bureau will: (a) maintain the route in a serviceable condition at any time when being used as a primary or detour through truck haul route; and (b) at the end of Water Bureau's use of the route, return the road used as a primary or detour through truck haul route to as good or better condition (PCI) than it was in on the date of the County's most recent PCI score prior to the Water Bureau's use.

A “**primary or detour through truck haul route**” is one identified in the Construction TIA in Exhibit A.230 as modified by the One-Access Analysis in Exhibit I.84, and any additional truck route incidentally used by the project, which incidental use must follow county designated freight routes. However, a "primary or detour through truck haul route" is not one that is being used to directly access a construction site, such as when pipelines are being installed in Lusted and Altman Roads or for improvements to the roadway itself.

“**Serviceable condition**” means the roadway is safely usable for the purpose for which it was constructed (i.e., potholes are repaired timely, striping can be seen, etc.).

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](mailto:row.permits@multco.us) for review and approval by the 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 (MCRR 13.200.A). Any deviation to the approved TCP during construction shall require a resubmittal of the TCP for approval.
  - b. Except for those roads where specific work will be required by the Project Agreement described in Condition 6, 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 Water Bureau 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.
  - c. [See below for additional subsections proposed for this Condition 7]
8. Pursuant to MCRR 15.000 and ORS 810.040, the Water Bureau is required to obtain Over Dimension Permits for all truck movements through Multnomah County which exceed the legal limit and weight specified by Oregon Department of Transportation (ODOT): <https://www.oregon.gov/odot/mct/pages/over-dimension.aspx>.
  - a. Pursuant to MCRR 15.200 and 15.300, the County may restrict truck movements as authorized under State and Federal law on all roads established as arterials and collectors, and also restrict through truck movements on other road classifications, bridges, culverts, overpasses and underpasses, which may not accommodate larger vehicles.
  - b. County restrictions within the project vicinity include, but are not limited to:
    - i. No through trucks on SE Carpenter Ln from SE 327<sup>th</sup> Ave to the Filtration Plant site.
    - ii. No through trucks on SE Miller Rd from SE Bluff Rd to SE 327<sup>th</sup> Ave.
    - iii. No through trucks on SE Homan Rd.
    - iv. No through trucks on SE Oxbow Parkway.
    - v. No through trucks on SE Stone Rd and SE Short Rd between US26 and SE Dodge Park Blvd.
    - vi. Buxton Rd and S Troutdale Rd are limited to trucks 40ft overall length.
9. Water Bureau is required to submit and obtain an Access/ Encroachment Permit for the following accesses pursuant to MCRR 18.250:
  - a. Filtration plant site: Exhibit A.211, A.212 00-LU-302 sheet 4 of 18 proposed condition site plan showing a new reconfigured access onto SE Carpenter Ln, after the 100% plans have been approved by the County as part of the Construction Permit.

- i. Revised site plan must be submitted showing permanent closure of the as existing access road with easement', consistent with Condition 2 above.
- ii. Revised site plan must show the main site access as perpendicular to SE Carpenter Ln (between 75-90 degrees) where it connects to the paved roadway to ensure consistency Land Use code MCC 39.6580.

b. Intertie site (R994210630):

- i. Water Bureau is required to provide a site plan showing all four subject property accesses (three to SE Lusted Rd and one to SE Dodge Park Blvd), pursuant to approved Land Use Decision and Transportation Planning Review (EP-20165112/T2-2016-5020) and MCRR 4.700 (Existing Non-Conforming Access).
- ii. Water Bureau must provide a copy of easements for PWB access from the subject property to SE Lusted Rd and SE Dodge Park Blvd.
- iii. Access to the Intertie Facility at 33304 SE Lusted Rd (R994210630) shall be limited to the existing northeast driveway access onto SE Lusted Rd.
- iv. Post-construction maintenance access to the Pipelines on the property shall use the northeast access as noted in 9(b)iii above. Post-construction maintenance access via SE Dodge Park Blvd is prohibited for PWB use.

[Note that the easements for the intertie property (Ekstrom) were modified after the hearing in response to these conditions of approval. This is discussed in Exhibit I.80 (Globalwise 1stORP Response), page 41, and the easement areas themselves are provided in Exhibit I.86 (Permanent) and I.89.]

- v. The northeast access to SE Lusted Rd, serving the principal access to the Intertie facility, must have a paved apron 20 feet deep from the existing roadway towards the property line consistent with ODOT standard drawing RD715, to prevent erosion of the existing roadway surface on SE Lusted Road in accordance with MCDCM 2.1.1(4).
- vi. Application forms, and guidance, can be found on the County Transportation website at the following webpage: <https://www.multco.us/roads/road-andbridge-permit-applications>. Applications should be submitted to [row.permits@multco.us](mailto:row.permits@multco.us)

10. Provide revised drawings and documentation that demonstrate the stormwater details of the following plans, reports and details obtain County Engineer 100% design approval (MCRR 26.000):

- a. SE Carpenter Ln, from SE Cottrell Rd to Filtration Plant site, and SE Cottrell Rd, from the intersection with SE Carpenter Ln to SE Dodge Park Blvd (Exhibits A.206-A.208).
- b. Ensure the discharge from the culvert from the Intertie site under SE Lusted Rd into Beaver Creek will not increase stormwater discharge volume at the outfall or downstream. Though the peak rates are comparable between the pre and the post development, the released discharge is a much greater volume. Ensure that the volume released does not create undue concentration of outflows that may affect downstream properties starting at the release point of any facility such as pipe, culvert and ditch.
- c. County Engineer requires review and approval of any changes to on-site impervious surface areas greater than 500 sq. ft and any proposed stormwater discharge or facilities in the ROW for compliance with MCDCM standards [MCRR 26.000].

## **E. Additional Water Bureau Proposed Conditions**

1. During construction, the Water Bureau or its representative shall:

- c. Provide an ADA-compliant paved pedestrian route on Carpenter Lane east of Cottrell Road to the site access. The route will be delineated with pedestrian channelization devices when adjacent to the driving lanes with openings for property access. The paved pedestrian route will be installed prior to beginning off-hauling of excavated materials from the filtration facility site. After the temporary certificate of occupancy for the filtration facility is issued, the paved area will be removed and returned to County standards.
- d. Post driver feedback radar speed signs in each direction on Carpenter Lane.
- e. Post on-site signs that notify truck drivers and commuters that they are required to yield to farm traffic, horses, school buses, bicyclists, and pedestrians.
- f. Mark primary and detour haul routes with arrow signs for truck drivers for the project to follow.
- g. Water Bureau is required to post speed limits on Carpenter Lane east of Cottrell, along with driver speed feedback signs.
- h. When construction impacts the public right-of-way in front of a business, post “business open” signs typical of roadway construction projects in any area where road construction and/or pipeline installation is occurring and where business would anticipate visitors.

[Driver Education and Visor Cards]

- i. Require all truck drivers to display visor cards mapping the allowed haul routes, indicating that staying on the haul routes is required, and reminding drivers that they are required to yield to farm traffic, horses, school buses, bicyclists, and pedestrians.
- j. Require truck drivers for the project to attend a safe driver training that includes, without limitation: (a) safety related to farm vehicles and slow moving vehicles such as tractors that are on the roads; (b) the requirement to yield to farm traffic, school buses, bicyclists, and pedestrians; (c) the requirement to comply at all time with speed limits; and (d) allowed haul routes. Water Bureau shall require truck drivers to follow this training at all times. “Allowed haul routes” includes both the concept of which specific routes are allowed and routes that are not allowed, including Carpenter Lane west of Cottrell and routes that are not allowed in order to avoid schools as explained in Applicant’s Proposed Condition 1.p.
- k. Perform random “spot checks” of key intersections in the study area to confirm truck drivers are staying on the designated haul routes, staying off of Carpenter Lane west of Cottrell, and complying with rules regarding avoidance of schools.
- l. Implement an accountability plan to penalize trucks if they are seen off the route or in prohibited areas. This can include being removed from the job for multiple violations.

[Carpenter West of Cottrell]

- m. Provide “local access only” signage restricting access to Carpenter Lane west of Cottrell Road, as well as including the prohibition on use in the safe driver training.

[Vegetation at Intersections]

- n. Remove vegetation in the public right of way in sight distance triangles at study area intersections along primary and detour haul routes.
- o. Remove vegetation in the public right of way obscuring intersection regulatory signage (e.g. stop, yield, do not enter, no right turn, lane use control, etc.) at study area intersections along primary and detour haul routes.
- p. Continue as needed to provide project communications (e-newsletters, webpage updates, etc.), and an onsite Water Bureau liaison during work activities.

- q. Provide road closure updates through ODOT’s TripCheck system.
- r. Instruct filtration project construction drivers to avoid specific road segments that have direct access to identified schools. The specific school, streets, types of construction traffic, and hours to be avoided are listed in the table below. These constraints apply only on days when school is in session.

District	School	Street	Extent	Construction Traffic Type	Avoidance Hours*
Oregon Trail	Oregon Trail Academy	SE Proctor Rd	SE Bluff Rd to SE Dodge Park Blvd	All	All
		SE Bluff Rd	Just east of SE 352 <sup>nd</sup> Ave to SE Bear Creek Ln	Trucks and craft labor commuters	7:15 to 8:15 am 2:15 to 3:15 pm
	Kelso Elementary	SE Kelso Rd	SE Orient Dr to SE Eklund Ave	All	All
Gresham-Barlow	Sam Barlow High	SE Lusted Rd	SE 282 <sup>nd</sup> Ave to SE 302 <sup>nd</sup> Ave	Trucks Craft labor commuters	All 7:05 to 9:05 am 2:00 to 3:00 pm
		SE 302 <sup>nd</sup> Ave	SE Lusted Rd to SE Chase Rd	Trucks Craft labor commuters	All 7:05 to 9:05 am 2:00 to 3:00 pm
	East Orient Elementary	SE 302 <sup>nd</sup> Ave	SE Dodge Park Blvd to SE Bluff Rd	All	All
	West Orient Middle	SE Short Rd	SE Dodge Park Blvd to SE Orient Dr	All	All
		SE Orient Dr/SE Bluff Rd	SE Short Rd to SE 302 <sup>nd</sup> Ave	Trucks Craft labor commuters	All 8:35 to 10:35 am 3:05 to 4:05 pm
	Kelly Creek Elementary	SE Baker Way/SE 24 <sup>th</sup> St	SE Williams Dr to SE Chase Rd	All	All

\*Avoidance hours are based on 30 minutes before and after school start and end times shown on district websites at the time of this decision. Two-hour morning avoidance periods are included for those schools that have regularly scheduled late starts on certain days. The Applicant will update avoidance hours annually prior to the start of each school year, or more frequently if notified by the districts, to reflect any changes made by the districts to start and/or end times. Any resulting updates will be consistent with the 30-minute periods described above.

2. The Water Bureau may not include Carpenter Lane west of Cottrell as a detour option in traffic control plans for signage during construction.
3. Prior to issuance of Certificate of Occupancy, the Portland Water Bureau shall submit to the County and Gresham Fire and Emergency Services a final Hazardous Materials Management Plan (HMMP) that is in substantial compliance with the format and contents of the plan at Exhibit I.59 and in compliance with the International Building Code (IBC) and the International Fire Code (IFC).
  - a) The Portland Water Bureau will comply with the HMMP during facility operation.
  - b) The Portland Water Bureau will review and update the HMMP annually, or more frequently as needed to document on-site material or procedural changes.
  - c) All updated HMMPs will be provided to the County and Gresham Fire and Emergency Services. Use of chlorine gas at the filtration facility is prohibited. The Water Bureau will not apply pesticides or herbicides to any vegetation located on the filtration facility site or the intertie site.

**Stormwater:**

- b. The Water Bureau will construct and implement a filtration facility stormwater treatment and management system that is in substantial compliance with the system identified in the Filtration Facility Stormwater Drainage Report, Exhibit A.73. At least annually, and more frequently as needed

for proper function of the system, the applicant will inspect and maintain each element of the stormwater treatment and management system to ensure it continues to function properly.

The Water Bureau will construct and implement an intertie stormwater treatment and management system that is in substantial compliance with the system identified in the Finished Water Site Intertie Stormwater Drainage Report, Exhibit A.75. At least annually, and more frequently as needed for proper function of the system, the applicant will inspect and maintain each element of the stormwater treatment and management system to ensure it continues to function properly.

Water Bureau will comply with all Oregon and federal laws that regulate wetlands. If wetland permits are required under either Oregon or federal laws, the applicant shall provide the County a copy of permit(s) prior to engaging in any removal or fill activity within a jurisdictional wetland.

Water Bureau shall implement the “Agricultural Soil Restoration Plan” as described in Exhibit A.35, and further described in Exhibit I.81 and Exhibit J.77.

After construction, Water Bureau shall allow continued use of cropland area in the permanent pipeline easements where possible considering necessary protections of the pipelines.

Water Bureau shall design and construct the roads in the easement areas with appropriate grades along the road edges in order to allow all farm-related vehicle and pedestrian uses necessary and convenient for accepted farm practices.

After construction, Water Bureau shall provide written consent to each Grantee under each pipeline or road easement to utilize the roads in the “easement area” (as defined in the easement) for farm equipment, defined as all farm-related vehicle and pedestrian uses necessary and convenient for accepted farm practices.

For the emergency access road in Clackamas County, subject to any required landowner approval, the written consent shall extend to established crossing areas between the Grantee’s property and adjacent fields.

Water Bureau shall maintain the roads in the easements, including the repair of road damage caused by accepted farm practices, to the extent determined by the Water Bureau to be needed for access to Water Bureau facilities, except for the emergency access road which shall be maintained to meet emergency access standards.

Applicant shall implement Dust Control Plans consistent with the descriptions at Exhibit H3, Attachment 8, and Exhibit I.80, pages 5-6.

Applicant shall implement a Noise Pollution Control Plan (NPCP) during construction consistent with the description at Exhibit I.80, page 8. The NPCP shall require use of a sound level meter to check for sound level verification.

In the event the applicant conducts a planned, permit required confined space entry, the applicant will ensure certified rescue personnel are on site to support the work.

Applicant will require the contractor to use noise mitigation strategies in order to ensure that the nighttime noise level during construction meets the County's noise ordinance nighttime standard (notwithstanding any exemption for construction). Noise control will be periodically verified with a sound level meter to confirm nighttime noise ordinance standards are met.

Following all pipeline construction and road improvement activities, the Water Bureau or their representative shall provide a survey to the County confirming the size, location and species of all trees removed during pipeline construction and road improvement work. If the total number of trees removed outside of an SEC zone exceeds 363, the additional tree removal is only approved if each additional tree is replaced at a ratio of 1.5 to 1 on the filtration facility site. Additional tree removal outside of the right-of-way or project easement areas is prohibited.

Prior to issuance of the Certificate of Occupancy, Property owner shall implement the plantings identified in the Mitigation Plan at Exhibit I.96, Attachment A and plant any additional replacement trees identified in Condition 18.

### 1. Additions to County Transportation Condition 7

The TCP must include an emergency coordination section that at minimum includes the following

- iv. Satisfy the minimum requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways;
- v. Provide construction update reports to emergency responders that include, at a minimum, the following information:
  - O. Dates and times of closure/partial closure
  - P. Name of contractor and emergency contacts (required on-site contact)
  - Q. Purpose of closure
  - R. Location of closure and number of lanes
  - S. Work hours and times of road closures
  - T. Traffic control layout plan
  - U. Legend
    - North arrow
    - Street names within a certain distance of the site
    - Physical features such as medians, shoulders, etc.
    - Identified method for passage of emergency response vehicles (including temporary conditions/detour plan)
    - Location of significant construction items such as dumpsters and heavy equipment
- vi. The construction update reports must be provided at least weekly unless an alternative frequency is requested by an emergency responder.

The TCP must provide for access through construction zones as follows:

- vii. Where no detour is available, such as to access Lusted Flats via Dodge Park Boulevard or to access the only access to a farm field, the applicant shall (1) ensure that work zones allowing a single lane of traffic to pass are wide enough to accommodate farm traffic up to 16 feet wide; and (2) flag farm traffic, service providers, and local residents (within the closure) through otherwise closed work zones.
- viii. The Water Bureau shall (1) ensure that work zones allowing a single lane of traffic to pass are wide enough to accommodate emergency vehicles; and (2) flag emergency vehicles through otherwise closed work zones. Access for emergency vehicles shall be provided at all times.
- ix. The Water Bureau shall require the contractor to take measures to ensure they can accommodate this traffic through a work zone regardless of the stage of construction. For example, if pipeline construction obstructs a road that cannot be detoured around, the contractor will have on-hand the materials needed to plate the excavation or otherwise allow this traffic to proceed through the work zone.

Water Bureau shall comply with the following constraints for pipeline construction.

x. No work shall be performed simultaneously on two County roads at the same time with the exception that:

C. S.E. Dodge Park Boulevard and Altman Road work is allowed to be performed concurrently; and

D. S.E. Lusted Road (between Finished Water Intertie and S.E. Altman Road) and S.E. Cottrell Road work is allowed to be performed concurrently.

xi. The segment of Dodge Park Blvd east of the intersection of S.E. Cottrell Road and S.E. Dodge Park Boulevard can only be constructed during the time frame of August through October.

xii. The intersection of S.E. Cottrell Road/S.E. Dodge Park Boulevard can only be closed in the month of October. xv. The closing of S.E. Dodge Park Boulevard to cross the road onto the private property at the west end of the Finished Water Pipes can only be closed in the month of October.

xiii. S.E. Cottrell Road cannot be closed or limited to traffic while work is being accomplished on S.E. Dodge Park Boulevard limiting traffic.

xiv. Pipeline installation across the private property is recommended to only be conducted during the summertime (non-wet periods).

xv. A minimum single lane of traffic flow is required at all times along S.E. Dodge Park Boulevard while work is being accomplished, and the traffic limitations shall only be restricted by the rolling lane closure (with the exception of the closures noted in iii. and iv., but only in compliance with those two constraints).

xvi. Closure of S.E. Lusted Road between the Finished Water Intertie to S.E. Altman Road is allowed with the following limitations:

c. [Intentionally Omitted, incorporated into Condition 7.c above.]

d. A farm direct and u-pick peach orchard located approximately 900 feet east of S.E. Altman Road shall be provided with unimpeded access for their customers during the month of August.

xvii. The completion of the C4FWP pipeline from the stop sign on S.E. Altman Road at S.E. Oxbow Drive to S.E. Oxbow Drive for connection to the existing Conduit 4 can only occur during the months of June/July or October/mid-November to not impede farmers' shipping traffic at other periods of the year.

xviii. The finished water S.E. Lusted Road closure cannot be done simultaneously with the closure of S.E. Altman Road.

xix. The C4FWP pipeline in Oxbow Drive and connection in Oxbow Drive cannot be constructed simultaneous with the work on finished water pipes in S.E. Lusted Road.

Pipeline construction must additionally comply with the following:

xx. S.E. Altman Rd between S.E. Lusted Rd and S.E. Pipeline Rd will be allowed full closure for pipeline installation but access must be maintained for (1) farm traffic, service providers, and local residents (within the closure) who have no detour alternative and for (2) emergency vehicles.

xxi. S.E. Altman Rd from S.E. Pipeline Rd to the stop sign at the intersection of S.E. Altman Rd/SE Oxbow Drive can be fully closed for the duration of the pipeline installation, but access must be maintained for (1) farm traffic, service providers, and local residents (within the closure) who have no detour alternative and for (2) emergency vehicles.

xxii. For the pipeline connection work on S.E. Lusted Rd at the Multnomah Connection to each of the existing conduits, daytime road closure is allowed but access for (1) farm traffic,

service providers, and local residents (within the closure) who have no detour alternative and for (2) emergency vehicles, must be maintained through the construction zone. Outside of construction work hours, single lane access through the construction zone shall be provided by either flagging or signalization.

- xxiii. The Water Bureau shall include in the Traffic Control Plan an accommodation to ensure that driveway access to R&H Nursery's loading dock on Carpenter Lane is not unreasonably delayed, in the form of stop control, flagger, or other measures that would create a gap in traffic to allow R&H nursery traffic to exit the site promptly when needed.

**End**

**T3-2022-16220 Exhibit List**

<b>Exhibit #</b>	<b># of Pages</b>	<b>Description of Exhibit</b>	<b>Date Received / Submitted</b>
A.1	3	PWB Permit Application Forms	10/12/22
A.2	35	Land Use Applications Introduction	10/12/22
A.3	25	1. Filtration Facility Site Overview	10/12/22
A.4	111	1.A Filtration Facility Conditional Use Application Narrative	10/12/22
A.5	50	1.B Filtration Facility Design Review Application Narrative	10/12/22
A.6	27	1.C Communications Tower Conditional Use and Design Review Application Narrative ( <i>Revised, see Exhibit A.217</i> )	10/12/22
A.7	41	2. Pipeline Overview	10/12/22
A.8	35	2.A Pipelines Conditional Use Application Narrative	10/12/22
A.9	23	2.B Pipelines Design Review Application Narrative	10/12/22
A.10	11	2.C Pipeline EFU Review Application Narrative	10/12/22
A.11	32	2.D Pipeline SEC Review Application Narrative	10/12/22
A.12	1	A.1a Flysheet	10/12/22
A.13	40	A.1a Site Plans ( <i>Revised, See Exhibit A.212</i> )	10/12/22
A.14	1	A.1b Flysheet	10/12/22
A.15	54	A.1b Architectural Plans	10/12/22
A.16	1	A.1c Flysheet	10/12/22
A.17	8	A.1c Civil Engineering Plans	10/12/22
A.18	1	A.2a Flysheet	10/12/22
A.19	25	A.2a Site Plans ( <i>Revised, see Exhibit A.214</i> )	10/12/22
A.20	1	A.2b Flysheet	10/12/22
A.21	7	A.2b Architectural Plans	10/12/22
A.22	1	A.2c Flysheet	10/12/22
A.23	5	A.2c Civil Engineering Plans	10/12/22
A.24	1	A.3 Flysheet	10/12/22
A.25	7	A.3 Significant Environment Concern Overlay Drawings	10/12/22
A.26	1	B.1 Flysheet	10/12/22
A.27	9	B.1 Bull Run Treatment Projects Outreach History	10/12/22

A.28	1	B.2 Flysheet	10/12/22
A.29	27	B.2 Bull Run Filtration Site Advisory Group Summary	10/12/22
A.30	1	C.1 Flysheet	10/12/22
A.31	171	C.1 Bull Run Filtration Project Traffic Impact Analysis	10/12/22
A.32	1	D.1 Flysheet	10/12/22
A.33	165	D.1 Agricultural Compatibility Study	10/12/22
A.34	1	D.2 Flysheet	10/12/22
A.35	24	D.2 Agricultural Soil Restoration Study	10/12/22
A.36	1	D.3 Flysheet	10/12/22
A.37	30	D.3 Forestry Compatibility Study	10/12/22
A.38	1	D.4 Flysheet	10/12/22
A.39	70	D.4 Pesticides Report	10/12/22
A.40	1	D.5 Flysheet	10/12/22
A.41	23	D.5 Potential Impacts of Pesticide Use on Finished Water Quality	10/12/22
A.42	1	D.6 Flysheet	10/12/22
A.43	2	D.6 Lusted Hill Treatment Facility Recorded Farm and Forest Deed Restriction	10/12/22
A.44	1	E.1 Flysheet	10/12/22
A.45	22	E.1 Oregon Water Treatment Plant Operations	10/12/22
A.46	1	E.2 Flysheet	10/12/22
A.47	88	E.2 Land Use Permitting Lighting Report	10/12/22
A.48	1	E.3 Flysheet	10/12/22
A.49	18	E.3 Bull Run Filtration Facility Exterior Noise Analysis	10/12/22
A.50	1	E.4 Flysheet	10/12/22
A.51	4	E.4 Potential Local Impacts of Facility Operation	10/12/22
A.52	1	E.5 Flysheet	10/12/22
A.53	8	E.5 Filtration Facility Odor Considerations	10/12/22
A.54	1	E.6 Flysheet	10/12/22
A.55	41	E.6 Hazardous Materials Management Plan	10/12/22
A.56	1	E.7 Flysheet	10/12/22
A.57	3	E.7 Potential Discharges to Johnson Creek	10/12/22

A.58	1	E.8a Flysheet	10/12/22
A.59	2	E.8a Oregon Department of Fish and Wildlife Communication	10/12/22
A.60	1	E.8b Flysheet	10/12/22
A.61	1	E.8b Oregon Department of Fish and Wildlife Deer & Elk Habitat Map	10/12/22
A.62	1	F.1 Flysheet	10/12/22
A.63	20	F.1 Exterior Site Lighting Analysis Finish Water Intertie Facility	10/12/22
A.64	1	F.2 Flysheet	10/12/22
A.65	10	F.2 Preliminary Acoustical Analysis of the Facility Pipeline Finished Water Intertie	10/12/22
A.66	1	G.1 Flysheet	10/12/22
A.67	8	G.1 Raw Water Pipeline Wildlife Conservation Plan	10/12/22
A.68	1	G.2 Flysheet	10/12/22
A.69	7	G.2 Distribution Main Wildlife Conservation Plan	10/12/22
A.70	1	G.3 Flysheet	10/12/22
A.71	5	G.3 Draft Inadvertent Discovery Plan for Cultural Resources	10/12/22
A.72	1	H.1 Flysheet	10/12/22
A.73	499	H.1 Filtration Facility Stormwater Drainage Report	10/12/22
A.74	1	H.2 Flysheet	10/12/22
A.75	61	H.2 Finished Water Intertie Stormwater Report – 17 pages a. Appendix A – 7 pages b. Appendix B References – 14 pages c. Appendix C Calculation Results – 12 pages d. Appendix D Conveyance Calculations – 5 pages e. Appendix E Operations & Maintenance – 3 pages f. Appendix F Stormwater Certificate Form – 3 pages	10/12/22
A.76	1	H.3 Flysheet	10/12/22
A.77	117	H.3 Pipelines Stormwater Report – 17 pages a. Appendix A: Figures – 4 pages b. Appendix B: Stormwater Drawings – 12 pages c. Appendix C: References – 35 pages d. Appendix D: Calculations – 43 pages e. Appendix E: Operations & Maintenance – 3 pages f. Appendix F: Stormwater Certification Form – 3 pages	10/12/22
A.78	1	H.4 Flysheet	10/12/22

A.79	6	H.4 Stormwater Drainage Control Certification – Bull Run Filtration Facility – 2 pages a. Stormwater Drainage Control Cert. - Finished Water Intertie Site – 2 pages b. Stormwater Drainage Control Cert. – Filtration Pipelines – 2 pages	10/12/22
A.80	1	I.1 Flysheet	10/12/22
A.81	2	I.1a Filtration Facility Geotechnical Engineering Summary	10/12/22
A.82	2	I.1b Raw Water Pipelines Geotechnical Engineering Summary	10/12/22
A.83	2	I.1c Finished Water Pipelines Geotechnical Engineering Summary	10/12/22
A.84	1	I.2 Flysheet	10/12/22
A.85	4	I.2 Raw Water Pipeline Alternatives from Lusted Road to Filtration Facility	10/12/22
A.86	1	I.3 Flysheet	10/12/22
A.87	13	I.3 Raw Water Pipelines Geologic Hazards Permit Form – 1 page a. Key Plan for Forms – 2 pages b. Raw Water Pipeline – Tunnel within Geologic Hazard Zone – Form B – 2 pages c. Geologic Hazards Permit Form 1 – 5 pages d. Plans – 3 pages	10/12/22
A.88	1	I.4 Flysheet	10/12/22
A.89	18	I.4 Lusted Road Distribution Main Geologic Hazards Permit Form – 1 page a. Key Plan for Forms – 3 pages b. Finished Water Pipeline – LRDM within Geologic Hazard Zone – Form A – 1 page c. Geologic Hazards Permit Form -1 – 4 pages d. Geologic Hazards Permit Application Additional Responses – 2 pages e. Bull Run Filtration Pipelines Project Geohazard Area Exhibits – 7 pages	10/12/22
A.90	1	J.1 Flysheet	10/12/22
A.91	2	J.1 Gravel Road Emergency Vehicle Support	10/12/22
A.92	1	K.2 Flysheet	10/12/22
A.93	122	K.2 Current Title Reports	10/12/22
A.94	8	K.3a Filtration Facility Property Deeds	10/12/22
A.95	1	K.3b Flysheet	10/12/22

A.96	78	K.3b Finished Water Pipelines Property Deeds	10/12/22
A.97	1	K.3c Flysheet	10/12/22
A.98	34	K.3c Raw Water Pipelines Property Deeds	10/12/22
A.99	1	K.4a Flysheet	10/12/22
A.100	2	K.4a Historic Imagery Filtration Facility	10/12/22
A.101	1	K.4b Flysheet	10/12/22
A.102	3	K.4b Historic Imagery Raw Water Pipelines	10/12/22
A.103	1	K.5 Flysheet	10/12/22
A.104	2	K.5 Partition Plats – Partition Plat 1991-111 a. Edgewater Subdivision Plat	10/12/22
A.105	1	K.6 Flysheet	10/12/22
A.106	1	K.6 Historic Zoning Maps 1S4E23C-1400 and 1500	10/12/22
A.107	1	L.1 Flysheet	10/12/22
A.108	1	L.1 Multnomah County Sheriff's Office Facility Will Serve Form	10/12/22
A.109	1	L.2 Flysheet	10/12/22
A.110	1	L.2 Multnomah County Sheriff's Office Intertie Will Serve Form	10/12/22
A.111	1	L.3 Flysheet	10/12/22
A.112	1	L.3 Clackamas County Sheriff's Office Will Serve Letter	10/12/22
A.113	1	L.4 Flysheet	10/12/22
A.114	1	L.4 Sandy Fire District 72 Will Serve Letter	10/12/22
A.115	1	L.5a Flysheet	10/12/22
A.116	1	L.5a Portland General Electric Facility Will Serve Letter	10/12/22
A.117	1	L.5b Flysheet	10/12/22
A.118	1	L.5b Portland General Electric Intertie Will Serve Letter	10/12/22
A.119	1	L.6 Flysheet	10/12/22
A.120	1	L.6 M.V.S. & Recycling Services Will Serve Letter	10/12/22
A.121	1	L.7 Flysheet	10/12/22
A.122	2	L.7 Ziplly Fiber Will Serve Letter	10/12/22
A.123	1	L.8 Flysheet	10/12/22
A.124	24	L.8 Septic Review Certification	10/12/22

A.125	1	L.9 Flysheet	10/12/22
A.126	3	L.9a Portland Water Bureau Facility Will Serve Letter	10/12/22
A.127	1	L.9b Pleasant Home Water District Intertie Certification of Water Service	10/12/22
A.128	2	L.9c Pleasant Home Water District Certification of Water Service	10/12/22
A.129	1	L.10 Flysheet	10/12/22
A.130	14	L.10 Fire Service Agency Review a. Mult. Rural Fire Protection Dist. #10 9/21/22 – 5 pages b. Gresham Fire / District #10 dated 7-12-2022 – 9 pages	10/12/22
A.131	1	M.1 Flysheet	10/12/22
A.132	8	M.1 Design Report	10/12/22
A.133	1	M.2 Flysheet	10/12/22
A.134	1	M.2 Bull Run Tower Design Drawing	10/12/22
A.135	1	M.3 Flysheet	10/12/22
A.136	1	M.3 Bull Run Tower Foundation Design	10/12/22
A.137	1	M.4 Flysheet	10/12/22
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A.139	1	M.5 Flysheet	10/12/22
A.140	2	M.5 Design Criteria and Failure Modes for Valmont Communication Towers	10/12/22
A.141	1	M.6 Flysheet	10/12/22
A.142	4	M.6 Federal Aviation Administration Determination of No Hazard to Air Navigation	10/12/22
A.143	1	M.7 Flysheet	10/12/22
A.144	5	M.7 Oregon Department of Aviation Comments Regarding Construction or Alteration of an Antenna Tower	10/12/22
A.145	1	M.8 Flysheet	10/12/22
A.146	1	M.8 Federal Communications Commission Radio Station Authorization	10/12/22
A.147	1	M.9a Flysheet	10/12/22
A.148	2	M.9a Microwave Path Survey Interpretation Memo	10/12/22
A.149	1	M.9b Flysheet	10/12/22
A.150	29	M.9b Microwave Path Survey Report	10/12/22

A.151	1	M.10 Flysheet	10/12/22
A.152	2	M.10 Proposed Tower for Bull Run Filtration Facility Ice Hazards and Mitigation Measures	10/12/22
A.153	1	M.11 Flysheet	10/12/22
A.154	9	M.11 Proposed Bull Run Filtration Tower NIER Study	10/12/22
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A.158	1	O.2 Flysheet	10/12/22
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A.160	10	O.2b 2022-15566 PWB Bull Run Filtration Project Transportation Comments	10/12/22
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A.162	122	O.3 Prior Land Use Decisions a. T3-2017-7661 – 28 pages b. T3-2019-11784 – 67 pages c. T3-2013-2935 – 17 pages d. T3-2019-11560 – 7 pages	10/12/22
A.163	15	Bull Run Filtration Land Use Completeness Response Narrative	1/27/23
A.164	4	Attachment E.1 Geologic Hazards Permits Narrative	1/27/23
A.165	8	Attachment K.1a Cathodic Protection Rectifiers Narrative (Revised, see Exhibit A.209)	1/27/23
A.166	3	Attachment A.1a Legal Lot Deed	1/27/23
A.167	2	Attachment A.1b Legal Lot Map	1/27/23
A.168	3	Attachment A.2a Contract 1971	1/27/23
A.169	2	Attachment A.2b Contract Assignment 1975	1/27/23
A.170	1	Attachment B.1 Resume Adam Jenkins PE INCE	1/27/23
A.171	1	Attachment B.1 Resume Justin Morgan INCE	1/27/23
A.172	14	Attachment B.1 Acoustic Baseline Measurement	1/27/23
A.173	1	B.1 Flysheet	1/27/23
A.174	1	C.1 Flysheet	1/27/23
A.175	9	Attachment C.1 Pre-Construction Ambient Sound Level Measurement	1/27/23
A.176	7	Attachment D.1 Antennae Data Sheets	1/27/23

A.177	2	Attachment D.2 Tower Drawing with Antennae	1/27/23
A.178	2	Attachment D.3 Tower Antennae Locations	1/27/23
A.179	1	E.2 Flysheet	1/27/23
A.180	55	Attachment E.2 Responses to County Comments on Geologic Hazards Permits	1/27/23
A.181	1	F.1 Flysheet	1/27/23
A.182	6	Attachment F.1 Landscape Drawing Sheets	1/27/23
A.183	3	Attachment G.2 Ancillary Building Drawing Sheets	1/27/23
A.184	2	Attachment G.3 Tower Area Drawing Sheet ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.185	3	Attachment H.1 Appurtenances and Grading Drawing Sheets ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.186	2	Attachment H.2a Intertie Yard Setbacks	1/27/23
A.187	2	Attachment H.2b Intertie Site Plan Drawing Sheet ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.188	2	Attachment H.2c Intertie Landscape Drawing Sheet ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.189	2	Attachment H.2d Intertie Model View Lusted Road ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.190	2	Attachment H.2e Intertie Model View Lusted Road ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.191	2	Attachment H.2f Intertie Model View Lusted Road ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.192	2	Attachment H.2g Intertie Model View Farm Road ( <i>Revised, see Exhibit A.214</i> )	1/27/23
A.193	1	I.1 Flysheet	1/27/23
A.194	7	Attachment I.1 Pipeline SEC Drawing Sheets	1/27/23
A.195	2	Attachment I.2 Multnomah Connection Proposed Ground Disturbance	1/27/23
A.196	1	J.2 Flysheet	1/27/23
A.197	2	Attachment J.2a Stormwater Drainage Control Certificate Facility	1/27/23
A.198	2	Attachment J.2b Stormwater Drainage Control Certificate Intertie	1/27/23
A.199	2	Attachment J.2c Stormwater Drainage Control Certificate Pipelines	1/27/23

A.200	3	Attachment J.6 Existing Retaining Wall	1/27/23
A.201	26	Attachment J.7a Pipeline Drawing Sheets Site Plans (Revised, see Exhibit A.214)	1/27/23
A.202	7	Attachment J.7b Pipeline Drawing Sheets Architectural Plans	1/27/23
A.203	7	Attachment J.7c Pipeline Drawing Sheets Civil Plans	1/27/23
A.204	3	Attachment K.1b Agricultural Review of Cathodic Protection Rectifiers	1/27/23
A.205	1	K.3a Flysheet	1/27/23
A.206	8	Attachment K.3a Off-site Improvements Drawing Sheets	1/27/23
A.207	7	Attachment K.3b Off-site Grading and Paving Drawing Sheets	1/27/23
A.208	8	Attachment K.3c Off-site Roadway Plan and Profile Drawing Sheets	1/27/23
A.209	8	Revised Attachment K.1a Cathodic Protection Rectifiers Narrative_2.23.	2/24/23
A.210	2	Response to County questions - T3-2022-16220	2/24/23
A.211	1	A.1a Flysheet	3/20/23
A.212	42	Appendix A.1a Site Plans Cover Pages – pg 1 - 4 a. Cover Sheet – LU – 101 pg. 5 b. Vicinity and Zoning Map - LU-102 pg. 6 c. Existing Conditions Plan – LU- 301 pg. 7 d. Proposed Conditions Site Plan LU-302 pg. 8 e. Utility Plan LU-303 pg. 9 f. Grading Plan LU-304 pg. 10 g. Facility Circulation Map LU-305 pg. 11 h. Landscape Plan LU-306 pg. 12 i. Stormwater Management Plan – Filtration Facility LU-307 pg. 13 j. Facility Enlargement 1 LU-400 pg. 14 k. Facility Enlargement 2 LU-401 pg.15 l. Tower Area Enlargement 2 LU-402 pg. 16 m. Signs LU-403 pg. 17 n. Stormwater Planting LU-404 pg. 18 o. Roadway Typical Section LU-405 pg. 19 p. Roadway Typical Section-2 LU-406 pg. 20 q. Pond Section Details LU-407 pg. 21 r. Flow Control Maintenance Hole Details LU-408 pg. 22 s. Plant Species and Sizes LU-409 pg. 23 t. Planting Details LU-410 pg. 24 u. Storm Details 1 Gen-C-920 pg. 25 v. Storm Details 4 Gen-C-923 pg. 26	3/20/23

		<p>w. Attachment B: Lighting Plans Cover Sheet pg. 27</p> <p>x. Site Lighting Key Plan E-322 pg. 28</p> <p>y. Lighting &amp; Receptacle Plan – Grid 1 E-323 pg. 29</p> <p>z. Lighting &amp; Receptacle Plan – Grid 2 E-324 pg. 30</p> <p>aa. Lighting &amp; Receptacle Plan – Grid 3 E-325 pg. 31</p> <p>bb. Lighting &amp; Receptacle Plan – Grid 4 E-326 pg. 32</p> <p>cc. Lighting &amp; Receptacle Plan – Grid 5 E-327 pg. 33</p> <p>dd. Lighting &amp; Receptacle Plan – Grid 6 E-328 pg. 34</p> <p>ee. Lighting &amp; Receptacle Plan – Grid 7 E-329 pg. 35</p> <p>ff. Lighting &amp; Receptacle Plan – Grid 8 E-330 pg. 36</p> <p>gg. Lighting &amp; Receptacle Plan – Grid 9 E-331 pg. 37</p> <p>hh. Lighting &amp; Receptacle Plan – Grid 10 E-332 pg. 38</p> <p>ii. Lighting &amp; Receptacle Plan – Grid 11 E-333 pg. 39</p> <p>jj. Lighting Schedule – 1 Gen-E-140 pg. 40</p> <p>kk. Lighting Schedule – 2 Gen-E-141 pg. 41</p> <p>ll. Lighting Schedule – 3 Gen E-142 pg. 42</p>	
A.213	1	A.2a Flysheet	3/24/23
A.214	26	<p>Appendix A.2a Site Plans Cover Pages – pg. 1-3</p> <p>a. Cover Sheet LU-000 pg. 4</p> <p>b. Key Map LU-001 pg. 5</p> <p>c. Zoning Map LU-002 pg. 6</p> <p>d. Raw Water Pipeline Existing Conditions Grid 1, 2, &amp; 3 LU-100 pg. 7</p> <p>e. Finished Water Pipeline Existing Conditions Grid 4 &amp; 5 LU-102 pg. 8</p> <p>f. Finished Water Pipeline Existing Conditions Grid 6 &amp; 7 LU-103 pg. 9</p> <p>g. Finished Water Pipeline Existing Conditions Grid 8 &amp; 9 LU-104 pg. 10</p> <p>h. Finished Water Pipeline Existing Conditions Grid 10 &amp; 11 LU-105 pg. 11</p> <p>i. Finished Water Pipeline Existing Conditions Grid 12 &amp; 13 LU-106 pg. 12</p> <p>j. Finished Water Pipeline Existing Conditions Grid 14 &amp; 15 LU-107 pg. 13</p> <p>k. Finished Water Pipeline Existing Conditions Grid 16 LU-108 pg. 14</p> <p>l. Raw Water Pipeline Proposed Conditions Grid 1, 2 &amp; 3 LU-200 pg. 15</p> <p>m. Finished Water Pipeline Proposed Conditions Grid 4 &amp; 5 LU-201 pg. 16</p> <p>n. Finished Water Pipeline Proposed Conditions Grid 6 &amp; 7 LU-202 pg. 17</p> <p>o. Finished Water Pipeline Proposed Conditions Grid 8 &amp; 9 LU-203 pg. 18</p> <p>p. Finished Water Pipeline Proposed Conditions Grid 10 &amp; 11 LU-204 pg. 19</p>	3/24/23

		q. Finished Water Pipeline Proposed Conditions Grid 12 & 13 LU-205 pg. 20 r. Finished Water Pipeline Proposed Conditions Grid 14 & 15 LU-206 pg. 21 s. Finished Water Pipeline Proposed Conditions Grid 16 LU-207 pg. 22 t. Finished Water Intertie Typical Appurtenance LU-208 pg. 23 Finished Water Intertie Site Plan LU-500 pg. 24 Finished Water Intertie Landscape Plan LU-501 pg. 25 Finished Water Intertie Visualizations LU-502 pg. 26	
A.215	1	Bull Run Filtration Pipelines Stormwater Report Addendum	3/28/23
A.216	1	T3-2022-16220 3-24-23 Memo	3/28/23
A.217	32	1.C Communications Tower Conditional Use and Design Review Application Narrative April 2023	4/18/23
A.218	2	Email re Bldg. Permits for Lusted Hill Distribution Main	4/27/23
A.219	2	T3-2022-16220 4-28-23 Memo	5/1/23
A.220	1	T3-2022-16220 4-28-23 Certification of Water Service	5/1/23
A.221	1	T3-2022-16220 4-28-23 Location of Drain Fields on Raw Water Pipeline Properties	5/1/23
A.222	1	T3-2022-16220 5-3-23 Memo	5/4/23
A.223	1	T3-2022-16220 5-3-23 Tower Supplemental Attachment 1	5/4/23
A.224	1	T3-2022-16220 5-3-23 Tower Supplemental Attachment 2	5/4/23
A.225	4	T3-2022-16220 5-8-23 Response to Fire District 10 Comments	5/9/23
A.226	220	Appendix - Traffic Count Data	5/9/23
A.227	26	Bull Run Filtration Construction Traffic Impact Analysis	5/9/23
A.228	1	LRDM and SEC	6/2/23
A.229	1	LU-200 Symbology Clarification	6/2/23
A.230	386	Updated Construction Traffic Impact Analysis	6/2/23
<b>'B'</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	1	1962 - 10.5.1977 Zoning 1S4E22	5/1/23
B.2	2	Zoning Districts ZO 1974-5-17	5/1/23
B.3	1	F2 Zone 1974-5-17	5/1/23
B.4	1	Current Tax Map 1S4E22D	5/1/23
B.5	1	Warranty Deed B1025 P516	5/1/23

B.6	3	Parcel Record Card for R994220930	5/1/23
B.7	9	T2-2010-1052 Decision	5/1/23
B.8	11	T2-2015-4092	5/1/23
B.9	1	Partition Plat 1991-111	5/1/23
B.10	1	Edgewater Subdivision Plat 1912	5/1/23
B.11	35	T3-06-003 Hearing Officer Decision	5/1/23
B.12	1	County Engineer Letter regarding Paving Exception	5/16/23
B.13	36	Transportation Planning Memorandum to Hearings Officer	6/14/23
B.14	1	Probability of Liquefaction Map	6/14/23
B.15	1	Earthquake Damage Potential Map	6/14/23
B.16	35	Revised Transportation Planning Memorandum	6/22/23
'C'	#	Procedural Exhibits	Date
C.1	6	T3-2022-16220 Incomplete Letter 11.10.2022	11/10/22
C.2	1	T3-2022-16220 Applicant Response Letter 11.15.2022	11/15/22
C.3	1	T3-2022-16220 Complete Letter 02.28.2023	2/28/23
C.4	5	T3-2022-16220 OTC 03.31.2023	3/31/23
C.5	24	T3-2022-16220 Public Hearing Notice mailed June 8, 2023 – 4 pages a. Oregonian Ad published June 9, 2023 – 2 pages b. Transportation Email regarding Posting of Signs in R.O.W. on June 15, 2023 – 11 pages c. Hearing Notice Mailing List – 5 pages d. Proof of Mailing of Hearing Notice – June 8, 2023 – 2 page	6/22/23
C.6	16	T3-2022-16220 Bull Run Filtration Notice Posting Exhibit	6/22/23
C.7	146	T3-2022-16220 Staff Report	6/22/23
'D'	#	Public Comments	Date
D.1	28	Fire District 10 Comments 1.03.2023	1/3/23
D.2	2	GBSD Email rec'd 3.3.23	3/3/23
D.3	1	GBSD PWB Water Treatment Plant Opposition Resolution SIGNED rec'd 3.3.23	3/3/23
D.4	1	Nerison Comment 3.6.23	3/6/23
D.5	2	Ekstrom Comment dated 3.14.23 rec 3.21.23	3/21/23
D.6	2	Surface Nursery - Farm Impacts Letter 4.4.23	4/4/23

D.7	1	Kost Comment 4.17.23	4/17/23
D.8	2	Swinford Comment 4.17.23	4/17/23
D.9	1	Allott Comment rec 4.21.23	4/21/23
D.10	1	Cottrell Community Planning Organization Comment rec 4.21.23	4/21/23
D.11	1	Cottrell CPO Email submitting Resolutions rec 4.21.23	4/21/23
D.12	1	Cottrell CPO Resolution rec 4.21.23	4/21/23
D.13	1	PHCA Comments - PWB water plant rec 4.21.23	4/21/23
D.14	1	PHCA Resolution rec 4.21.23	4/21/23
D.15	1	Gale – Bacon Comment rec 5.2.23	5/2/23
D.16	1	Gresham Fire and Emergency Services Comment rec 6.5.23	6/6/23
D.17	2	Oregon Health Authority Comment rec 6.12.23	6/12/23
D.18	1	Grahn Comment rec 6.12.23	6/12/23
D.19	1	Wilson Comment rec 6.12.23	6/12/23
D.20	3	Oregon Trail School District Comment rec 6.12.23	6/12/23
D.21	1	Jessen Comment rec 6.14.23	6/14/23
D.22	3	Oregon Trail School District Comment Addendum rec 6.14.23	6/14/23
D.23	1	Woodward Comment rec 6.19.23	6/20/23
<b>‘E’</b>	<b>#</b>	<b>Exhibits Submitted Post Staff Report Issuance</b>	<b>Date</b>
E.1	2	Jennifer Hart Written Testimony	6/26/23
E.2	1	Mathew Jessen Testimony	6/26/23
E.3	2	Jennifer Hart Testimony, Continued	6/27/23
E.4	5	Paul Lewis MD Testimony	6/27/23
E.5	1	Kaitlin Mulkey Testimony	6/27/23
E.6	5	Paul Lewis MD Testimony - Revised	6/27/23
E.7	1	Jim Riegelmann Testimony	6/28/23
E.8	1	Tammy Rickman, First Student Testimony	6/28/23
E.9	67	Charles Ciecko Testimony	6/28/23
E.10	39	Rural Fire Protection District #10 Supplemental Testimony	6/28/23
E.11	1	Voruz Testimony	6/28/23
E.12	1	Glynn Allott Testimony	6/28/23

E.13	1	Julie Allott Testimony	6/28/23
E.14	1	Grace Allott Testimony	6/28/23
E.15	3	Cindy Bennington Testimony	6/29/23
E.16	4	Park Testimony	6/29/23
E.17	15	Lauren Courter Land Use Testimony	6/29/23
E.18	2	Cris Courter Written Testimony	6/29/23
E.19	4	Ian Courter Land Use Statement	6/29/23
E.20	2	Suzanne Courter Written Testimony	6/29/23
E.21	7	T Carlson Project Geologist to Cottrell CPO Technical Memo	6/29/23
E.22	1	Dahl Testimony	6/29/23
E.23	2	J Coker Sandy Public Works Director Testimony	6/29/23
E.24	4	OR Department of Agriculture – James Johnson Testimony	6/29/23
E.25	2	Keathley Testimony	6/29/23
E.26	4	Dan Brink Testimony	6/29/23
E.27	1	M Person Testimony	6/29/23
E.28	2	LJ McFarlane Testimony	6/29/23
E.29	1	M Dahl Testimony	6/29/23
E.30	2	Gresham Barlow School District – K Howatt Testimony	6/29/23
E.31	2	Emily Hafer Testimony, Revised	6/29/23
E.32	4	C Waugh Testimony	6/29/23
E.33	1	Moldovanyl Testimony	6/29/23
E.34	1	Pool Testimony	6/29/23
E.35	1	Bartha Testimony	6/29/23
E.36	7	Shawn Nerison Testimony	6/29/23
E.37		Cottrell Community Planning Organization (CCPO) Submittal a. Diack Photos b. Oregon Trail Academy Photos – 4 pages c. Reynolds HS PM Traffic Photos – 4 pages d. Sandy High School PM Pickup Photos – 4 pages e. Community Opposition Petitions – 41 pages f. Bear and Cougar Photos g. Accident Dodge Park and Cottrell June 21, 2023	6/29/23

		<ul style="list-style-type: none"> <li>h. Size of PWB Plant vs Largest Nurseries and Scenic Fruit Photo – 1 page</li> <li>i. Photo of Coyote Pups – 1 page</li> <li>j. Cottrell CPO Drone Footage – 19 pages</li> <li>k. Johnson Creek Headwaters Photos – 2 pages</li> <li>l. PWB Site Nature Photos – 7 pages</li> <li>m. Bear and Deer Photos – 2 pages</li> <li>n. East Orient School Photos – 6 pages</li> <li>o. Various Animal Photos – 7 pages</li> <li>p. OTA Photos – 2 pages</li> <li>q. Sam Barlow HS Photos – 9 pages</li> <li>r. Sandy HS Aerial Photos – 6 pages</li> <li>s. West Orient School Photos – 4 pages</li> </ul>	
E.38	13	<p>Cottrell Community Planning Organization (CCPO) Videos</p> <ul style="list-style-type: none"> <li>a. COTA Evening Walk Carpenter Lane Video</li> <li>b. Dangerous Detour Route Video</li> <li>c. Night Sky 34828 Carpenter Lane Video</li> <li>d. Night Sky RH Nursery Video</li> <li>e. Carpenter Lane Night Sky Video</li> <li>f. Refuting PWB Night Sky Report Video</li> <li>g. Traffic Dodge Park Video</li> <li>h. Carpenter Lane Widening Proposal COTA Video</li> <li>i. Carpenter Lane Widening Proposal Video</li> <li>j. Dodge Park Blvd Drone Video</li> <li>k. Culver COTA Video</li> <li>l. Culver COTA Video 2</li> <li>m. 36014 SE Lusted Rd Elk Video dated April 2, 2023</li> </ul>	6/29/23
'H'	#	Hearing Exhibits	Date
H.1	2	June 30 Memorandum to the Hearings Officer from Land Use Planning	6/30/23
H.2	19	Memorandum to the Hearings Officer from Pleasant Home Neighborhood Association Attorney Jeffrey Kleinman	6/30/23
H.3	128	Pre-Hearing Statement by the Applicant	6/30/23
H.4	11	<p>Memorandum to the Hearings Officer from Cottrell Community Planning Organization Attorney Carrie Richter</p> <p style="text-align: center;">❖ See attachments under Exhibits H.31 – H.33 below.</p>	6/30/23
H.5	3	Memorandum to the Hearings Officer from Shelley Ekstrom	6/30/23
H.6	4	Memorandum to the Hearings Officer from Cindy Bennington	6/30/23
H.7	3	Written Testimony by Andrea Culver	6/30/23
H.8	23	Technical Memorandum to the Hearings Officer from Michael Ard	6/30/23

H.9	4	Memorandum to the Hearings Officer from Brent Leathers	6/30/23
H.10	3	Written Testimony by Terry Ciecko	6/30/23
H.11	6	Memorandum to the Hearings Officer by Andrew Mulkey, Staff Attorney for 1000 Friends of Oregon	6/30/23
H.12	25	Memorandum to the Hearings Officer by Paul Willis	6/30/23
H.13	2	Memorandum to the Hearings Officer by Lucia Willis	6/30/23
H.14	2	Written Testimony from Suzanne Courter	6/30/23
H.15	2	Written Testimony from John Edmondson	6/30/23
H.16	7	Written Testimony from Holly H. Martin	6/30/23
H.17	1	Pictures of Arrowheads and Tools provided by Christy McKenzie	6/30/23
H.18	2	Meyer Family Arrowhead Collection submitted by Lauren Courter	6/30/23
H.19	1	Map submitted by Charles Waugh	6/30/23
H.20	1	Meyer Family Arrowhead Collection submitted by Lauren Courter (pt. 2)	6/30/23
H.21	2	Written Testimony from Larry Bailey	6/30/23
H.22	2	Evidence from Paul Willis regarding Accident Dodge Park & Cottrell	6/30/23
H.22.a	8	Written Testimony from R&H Nursery Inc Owner Patrick Holt	6/30/23
H.22.b	1	Written Testimony from Julie Allot	6/30/23
H.22.c	1	Written Testimony from Mary Appelt	6/30/23
H.22.d	2	Written Testimony from Jeff & Mona Ayles	6/30/23
H.22.e	2	Written Testimony from Rick & Carol Bartha	6/30/23
H.22.f	5	Written Testimony from Laura Belson	6/30/23
H.23	2	Written Testimony from Kelsey Betsill	6/30/23
H.23.a	1	Written Testimony from Laura Beving	6/30/23
H.23.b	1	Written Testimony from Kathleen Box	6/30/23
H.23.c	3	Written Testimony from Dan Brink	6/30/23
H.23.d	1	Written Testimony from Jim & Theresa Bunting	6/30/23
H.23.e	1	Written Testimony from Terry Ciecko	6/30/23
H.23.f	1	Written Testimony from Oriah Columbres	6/30/23

H.23.g	2	Written Testimony from Angela Parker	6/30/23
H.23.h	2	Written Testimony from Kenneth & Patsy Carlson	6/30/23
H.23.i	1	Written Testimony from Cris Courter	6/30/23
H.23.j	1	Written Testimony from Lauren Courter	6/30/23
H.23.k	2	Written Testimony from Suzanne Courter	6/30/23
H.24	1	Written Testimony from Andrea Culver	6/30/23
H.24.a	1	Written Testimony from Braeden Culver	6/30/23
H.24.b	2	Written Testimony from Katrina Dawson	6/30/23
H.24.c	1	Written Testimony from Mike Dawson	6/30/23
H.24.d	4	Written Testimony from Samuel Diack	6/30/23
H.24.e	1	Written Testimony from Gloria Driscoll	6/30/23
H.24.f	1	Written Testimony from Ed Evans	6/30/23
H.24.g	1	Written Testimony from Patricia Fiedler	6/30/23
H.24.h	1	Written Testimony from Darren & Michelle Ford	6/30/23
H.24.i	1	Written Testimony from Amy Galasso	6/30/23
H.24.j	2.	Written Testimony from Robert Galasso, MD	6/30/23
H.24.k	1	Written Testimony from Penny Kay & Michael Haight	6/30/23
H.24.l	6	Written Testimony from Jennifer Hart	6/30/23
H.25	2	Written Testimony from Tom Newberry	6/30/23
H.25.a	1	Written Testimony from Kathleen Obrist	6/30/23
H.25.b	1	Written Testimony from Emily Hafer OR Trail Academy	6/30/23
H.25.c	3	Written Testimony from Jodi Riehl	6/30/23
H.25.d	1	Written Testimony from Victoria Hutfilz	6/30/23
H.25.e	1	Written Testimony from Sharon Jones	6/30/23
H.25.f	1	Written Testimony from Mike & Carol Kost	6/30/23
H.25.g	2	Written Testimony from The Kramers	6/30/23
H.26	1	Written Testimony from Debbie Layton	6/30/23
H.26.a	2	Written Testimony from Jamie Martin	6/30/23
H.26.b	2	Written Testimony from Doug and Pat Meyer	6/30/23
H.26.c	2	Written Testimony from Kaitlin Mulkey	6/30/23
H.26.d	1	Written Testimony from Jesse Nelson	6/30/23

H.26.e	3	Written Testimony from Leslie Newberry	6/30/23
H.27	3	Written Testimony from Diane Rolen	6/30/23
H.28	7	Written Testimony and Photos from David Shapiro	6/30/23
H.28.a	2	Written Testimony from Clackamas County Commissioner Mark Shull	6/30/23
H.28.b	1	Written Testimony from John Sieling	6/30/23
H.28.c	4	Written Testimony from Swinford	6/30/23
H.29	3	Written Testimony from Kristy McKenzie	6/30/23
H.30	4	Written Testimony from Charles Waugh	6/30/23
H.30.a	1	Written Testimony from Debra Westcott	6/30/23
H.30.b	1	Written Testimony from Deborah Wilson	6/30/23
H.31	8	Current Sound Measurements on Proposed Filtration Site dated June 25, 2023	6/30/23
H.32	21	Review of Archaeological Investigations for Carpenter Lane Project	6/30/23
H.32.a	4	Arden Meyer Interview dated 02/28/2023	6/30/23
H.32.b	5	Annell Carlson Interview dated 06/14/2023	6/30/23
H.33	2	Transcript of 4-13-23 Portland Water Bureau Work Session	6/30/23
H.34	7	Written Testimony from Holly Martin	6/30/23
H.35	5	Written Testimony from Brent Leathers	6/30/23
H.36	3	Written Testimony from Kyza Nelson	6/30/23
H.37	1	Request to Keep Record Open from OR Assoc of Nurseries	6/30/23
H.38	7	Written Testimony from Ryan Marjama, Don Marjama Nursery, Inc.	6/30/23
H.39	14	Written Testimony from David Shapiro	6/30/23
H.40	2	Rural Filtration Plants Comparison Data from CCPO	6/30/23
H.41	4	Written Testimony from Patricia Walter	6/30/23
H.42	31	Portland Water Bureau PowerPoint Presentation from the Public Hearing	6/30/23
<b>'I'</b>	<b>#</b>	<b>Post Hearing Exhibits (New Evidence Period)</b>	<b>Date</b>
I.1	1	Ekstrom Testimony	7/2/23
I.2.	30	Clackamas County Decision Z0036-23 Utility Facility in EFU (Emergency Access Road Decision)	7/5/23

I.3	2	CCPO Carpenter Lane (Traffic will get detoured through)	7/7/23
I.4	1	Written Testimony from Scott Eck	7/13/23
I.5	14	Email from Jodi Riehl – 1 page a. Testimony against PWB from Jodi Riehl given on June 30, 2023 – 2 pages b. Sodium Bisulphate Information – 2 pages c. Sodium Hypo No 5 Safety Data Sheet – 9 pages	7/16/23
I.6	5	Oregon’s Mt Hood Scenic Byway Addendum from Cindy Bennington – 1 pg. a. OR Scenic Byways Official Driving Guide Cover – 1 pg. b. Contents Page Mt. Hood Scenic Byway – 1 pg. c. Mt Hood Scenic Byway Page – 1 pg. d. Sandy to Troutdale Page – 1 pg.	7/21/23
I.7	4	Citizens for Peaceful Rural Living Video a. Additional Testimony in Opposition from Brent Leathers	7/27/23
I.8	3	Supplemental Testimony of Holly Martin	8/1/23
I.9	2	Bull Run Filtration Facility Fire Protection Strategy Letter from Gresham Fire Chief Scott Lewis	8/2/23
I.10	17	Multnomah Rural Fire Protection District No 10 Supplemental Testimony	8/3/23
I.11	47	Ekstrom Rebuttal to PWB Treatment Plant – 4 pages a. Pipeline Installation Effects on Soils & Plants – A Review & Quantitative Synthesis by Brehm & Culman – 28 pages b. FY 2019-20 Demand and Consumption Information Portland Water Bureau – 2 pages c. Pipeline Study Shows Soil Compaction and Crop Yield Impact in Construction Right-of-Ways – 3 pages d. Pipelines Keep Robbing the Land Long after the Bulldozers Leave _ Grist - 10 pages	8/3/23
I.12	5	Gresham Barlow School District Supplemental Testimony in Opposition	8/3/23
I.13	17	Oregon Association of Nurseries Written Testimony – 9 pages a. Address Locations of Nursery License Map – 1 page b. Location of Agriculture Operations Map – 1 page c. Relationships of Area Agriculture Land to Roads utilized in Proposed Traffic Analysis and to Proposed Development Sites Map – 1 page d. LCDC Approved Metro Area Designated Rural Reserves Map – 1 page e. OR Water Resource Dept Groundwater Restricted Areas Information– 4 pages	8/3/23

I.14	1	Attorney Z Powers Email for PWB regarding Water Bureau Clearwell at Filtration Facility	8/4/23
I.15	1	Mark Johnson Written Testimony	8/4/23
I.16	1	Kress Drew Written Testimony	8/4/23
I.17	1	Michael Cowan Written Testimony	8/5/23
I.18	1	Tammy Rickman Written Testimony	8/5/23
I.19	1	Patricia Fielder Written Testimony	8/5/23
I.20	1	Ken Smith submitted by Paul Willis	8/5/23
I.21	6	L Belson Testimony	8/5/23
I.22	19	L Belson Testimony – 6 pages a. Night Sky May 23 Pleasant Home Water Towers 1 Video b. Night Sky Carpenter Lane Site Looking North Video c. Night Sky Photos – 5 pgs d. Video Captions to the Record – 3 pgs e. Night Sky East C-Lane Video f. Photos Carpenter Ln – Detour and Night Sky – 5 pgs	8/6/23
I.23	1	William & Nick Meyers Written Testimony	8/6/23
I.24	6	Cindy Bennington Written Testimony	8/6/23
I.25	1	Cottrell CPO Testimony regarding Cultural & Archeological Resources	8/6/23
I.26	6	Cottrell CPO Traffic Conditions around Schools Testimony	8/6/23
I.27	2	Tanner & Macy Davis Written Testimony	8/6/23
I.28	2	Jennifer Hart Testimony re Hazardous Conditions & Retaining Wall	8/6/23
I.29	2	Black Gold Springs – J Hart Farm Impact Emergency Road Testimony	8/6/23
I.30	2	Kristen Markham Written Testimony	8/6/23
I.31	16	Surface Nursery Farmer Impact Statement – Shawn Nerison with Maps revised from June 29, 2023	8/6/23
I.32	3	Ron Roberts Written Testimony	8/6/23
I.33	2	Ronald Ruedi Written Testimony	8/6/23
I.34	3	Angela Parker, Hawk Haven Equine Written Testimony	8/6/23
I.35	11	Attorney Kleinman Written Testimony representing Pleasant Home Community Association	8/7/23
I.36	1	Sharon Jones Written Testimony	8/7/23
I.37	3	Pat Meyer Written Testimony	8/7/23

I.38	6	Hans Nelson & Sons Nursery Written Testimony	8/7/23
I.39	4	Cottrell CPO Sound Impacts Testimony	8/7/23
I.40	25	Cottrell CPO Written Testimony – 8 pgs. a. Appendix A: Portland Utility Board dated 7/27/17 – 5 pgs. b. Appendix B: Email regarding OHA Agreement – 5 pgs. c. Appendix C: Filtration Plant Site Alternatives – 4 pgs. d. Appendix D: City of Portland Wholesale Customers Statistics – 1 pg. e. Email submitting documents – 1 pg.	8/7/23
I.41	1	Leroy & Dorinda Grahn Written Testimony	8/7/23
I.42	4	Tami Wensenk Written Testimony	8/7/23
I.43	2	Brittany & Aaron Cory, Free Rein Stables Written Testimony	8/7/23
I.44	2	Les Poole Written Testimony	8/7/23
I.45	4	Memorandum to Hearings Officer from Land Use Planning	8/7/23
I.46	19	Ard Engineering PWB Mitigation Plan Review	8/7/23
I.47	8	Mona & Jeff Ayles Supplemental Testimony	8/7/23
I.48	7	Terry Ciecko Written Testimony	8/7/23
I.49	10	Suzanne Courter Written Testimony	8/7/23
I.50	5	TreeSource Response to Construction Farm Traffic Report	8/7/23
I.51	13	Surface Nursery Written Testimony regarding Exhibit H.3	8/7/23
I.52	4	Ken Carlson, Carlson Farms Written Testimony	8/7/23
I.53	3	R&H Nursery Written Testimony regarding PWB Construction	8/7/23
I.54	5	Emily Hafer, OR Trail Academy Written Testimony	8/7/23
I.55	6	Ian & Lauren Courter Written Testimony	8/7/23
I.56	9	Brent Leathers Supplement Testimony Truck Routes	8/7/23
<b>Portland Water Bureau Submitted Exhibits</b>			
I.57	42	Attachment 2: Water Filtration Facility Land Use Plans (Replaces Plans in Exhibit H.3)	8/7/23
I.58	2	Attachment 3: Supplemental Information for the Hazardous Materials Management Plan	8/7/23
I.59	30	Attachment 4: Hazardous Management Plan revision date 8.4.23	8/7/23
I.60	7	Attachment 5: Overflow Basin Overview	8/7/23

I.61	1	Attachment 6: Supplemental Information regarding Concrete Backfill in the Finished Water Pipelines	8/7/23
I.62	1	Attachment 7: Supplemental Information regarding Concrete in the Raw Water Pipeline Tunnel	8/7/23
I.63	3	Attachment 8: Supplemental Information regarding Existing Water Wells	8/7/23
I.64	12	Attachment 9: Effect of Raw Water Pipeline & Tunnels on the Local Water Wells	8/7/23
I.65	185	Attachment 10: Supplemental Geotechnical Information	8/7/23
I.66	52	Attachment 11: Supplemental Information regarding Expansive Soils	8/7/23
I.67	69	Attachment 12: Supplemental Information regarding Expansive Soils & Fat Clay	8/7/23
I.68	2	Attachment 13: Draft Exhibit G Legal Description for Permanent Access Easement	8/7/23
I.69	2	Attachment 14: Draft Exhibit Legal Description for a Temporary Access Easement	8/7/23
I.70	27	Attachment 15: Decision of the Hearings Officer for T3-2017-9259	8/7/23
I.71	70	Attachment 16: Decision of Hearings Officer for T3-2019-11405	8/7/23
I.72	67	Attachment 17: Decision of Hearing Officer for T3-2019-11784	8/7/23
I.73	28	Attachment 18: Notice of Hearings Officer Decision T2-2019-12701	8/7/23
I.74	5	Attachment 19: Filtration Facility Operations Supplemental Info	8/7/23
I.75	5	Attachment 20: Construction Supplemental Information	8/7/23
I.76	4	Attachment 21: Deed for Road Purposes	8/7/23
I.77	3	Attachment 22: Warranty Deed Instrument #2015-079565	8/7/23
I.78	1	Attachment 23: City of Fresno, CA vs Carollo	8/7/23
I.79	1	Attachment 24: Water Treatment Facility Construction	8/7/23
I.80	75	Attachment 25: Response to Public Comments Related to Farm Use Impacts in Multnomah County	8/7/23
I.81	5	Attachment 26: Response to Testimony of Agricultural Soils Impact	8/7/23

I.82	N/A	Attachment 27: Video of Truck driving on Existing Farm Road on Portland Water Bureau Property on Carpenter Lane	8/7/23
I.83	4	Attachment 28: Response to Select Testimony from Allan Felsot, WA State Univ. to Portland Water Bureau	8/7/23
I.84	30	Attachment 29: Response to Select Testimony from Dana Beckwith, Global Transportation Engineering on Transportation Impacts	8/7/23
I.85	8	Attachment 30: Pictures of Trucks on Roads, Private Property and Cars Parking on Private Property	8/7/23
I.86	21	Attachment 31: Water Filtration Facility Carpenter Lane One-Access Analysis Update to Construction TIA	8/7/23
I.87	3	Attachment 32: Supplemental Information about Chemical Safety	8/7/23
I.88	18	Attachment 33: Consultant Resumes	8/7/23
I.89	21	Attachment 34: Intergovernmental Agreement for Fire Services between Gresham and Fire District #10 - Unsigned	8/7/23
I.90	1	Attachment 35: Structural Fire Districts	8/7/23
I.91	67	Attachment 36: Fire Protection & Life Safety 3 <sup>rd</sup> Party Consulting Review	8/7/23
I.92	5	Attachment 37: Response to Exhibit E.21 concerning Stormwater Runoff to Beaver Creek	8/7/23
I.93	1	Attachment 38: Alternative Routes for Distribution to Avoid SEC-h Zone Letter dated July 31, 2023	8/7/23
I.94	5	Attachment 39: Climate Change Considerations in Design of Stormwater Management Systems Technical Memorandum	8/7/23
I.95	5	Attachment 40: Best Management Practices Proposed to Protect Aquatic Resources in Johnson Creek and Beaver Creek During Development and Operation of the Bull Run Water Pipeline and Filtration Facility	8/7/23
I.96	13	Attachment 41: Potential Wildlife Habitat Impacts from the Water Filtration Project and Measures for Avoidance and Mitigation	8/7/23
I.97	2	Attachment 42: SEC-H RW-01 Area (LU-601M) & SEC-H Lusted Hill Plan (LU-602M)	8/7/23
I.98	99	Attachment 43: Response to Paul Solimano, Willamette Cultural Resources Associates	8/7/23
I.99	47	Attachment 44: Stormwater Evidence Cover Memo	8/7/23

I.100	12	Attachment 45: Erosion Control Plans for Water Filtration Facility and Carpenter Lane (LU-501,	8/7/23
I.101	17	Attachment 46: Erosion & Sediment Control Plans for Pipeline Installations	8/7/23
I.102	26	Attachment 47: Finished Water Pipeline Erosion and Sediment Control Plans for Grids 8 – 16, Intertie Site	8/7/23
I.103	99	Attachment 48: Consultant Report 2022 Community Risk Assessment & Standards of Coverage for Gresham Fire	8/7/23
I.104	16	Verification of Date and Times of PWB Document Submittals	8/7/23
'J'	#	Rebuttal Period Exhibits	Date
J.1	3	Jim Johnson, Oregon Department of Agriculture Rebuttal Response	8/30/23
J.2	1	Patricia Fiedler Rebuttal Testimony	9/2/23
J.3	3	Angela Parker, Hawk Haven Rebuttal Testimony	9/5/23
J.4	36	Jennifer Hart Rebuttal Response to Exhibit I.80 – 7 pages a. Exhibit 1: Project Impact Assessment and Mitigation Summary Requirements for City-owned Lands in the Bull Run Closure Area – 24 pages b. Exhibit 2: Excerpt from: Technical Memorandum dated September 11, 2018 – 3 pages c. Exhibit 3: PWB Letter to Jennifer Hart dated September 30, 2021 – 1 page d. Email submitting Rebuttal Response – 1 page	9/5/23
J.5	3	Jennifer Hart Rebuttal Response to Exhibit I.81	9/5/23
J.6	4	Tammy Rickman, First Student Rebuttal Testimony	9/5/23
J.7	13	Charles Cieccko Rebuttal Testimony	9/5/23
J.8	3	Rod Park, Park's Nursery Rebuttal Testimony	9/5/23
J.9	11	Gresham Barlow School Board Rebuttal Testimony	9/5/23
J.10	5	Holly Martin Rebuttal Testimony	9/6/23
J.11	5	Holly Martin Amendment to Supplemental Testimony Provided in Exhibit I.8	9/6/23
J.12	5	Jeffrey Kleinman on behalf of Pleasant Home Community Association Rebuttal Testimony	9/6/23
J.13	6	Jesse Nelson, Hans Nelson & Sons Nursery Rebuttal Testimony	9/6/23
J.14	3	CCPO Response to Staff Report – Mult Code vs Plan	9/6/23

J.15	5	CCPO Rebuttal to I.91 David Stacy	9/6/23
J.16	41	CCPO Rebuttal to Exhibit A.35 Soil Restoration – 2 pages a. Soil Degradation and Crop Yield Declines Persist 5 Years after Pipeline Installation – 15 pages b. Evaluation of Pipeline Installation on Crop Productivity in Ohio – 3 pages c. Pipeline Installation Effects on Soils and Plants: A Review and Quantitative Synthesis – 15 pages d. Landowner Experiences with Natural Gas Pipeline Installations in Ohio – 6 pages	9/6/23
J.17	5	CCPO Rebuttal to Exhibit I.79 Comparable Facilities	9/6/23
J.18	4	CCPO Rebuttal to Exhibit I.98 Archeology – 1 page a. Credentials – 1 page b. Geovisions Letter – 2 pages	9/6/23
J.19	64	Impacts of PWB’s Proposed Filtration Plant on Johnson Creek and Neighboring Waterways prepared by CCPO – 36 pages a. Attachment A: Letter to EPA Office of Wastewater Management – 1 page b. Attachment B: Oregon DEQ Correspondence RE: 1200CA – 1 page c. Attachment C: PWB’s Admission of Adverse Effects – 3 pages d. Attachment D: Results of Biodiversity Query from ORBIC – 24 pages e. Attachment E: Author Bios – 3 pages	9/6/23
J.20	n/a	JC Report Dec-24-21-Pond.MOV submitted by CCPO	9/6/23
J.21	97	CCPO Rebuttal to Exhibits I.74, I.75 and I.82 -20 pages a. Appendix A: 10 Safety Tips for Workers in Water Treatment Plants – 3 pages b. Appendix B: Chlorine Mishap Sends 50 Water Treatment Workers to Hospital – 11 pages c. Appendix C: Hackers tampered with a Water Treatment Facility in Florida by Changing Chemical Levels – 23 pages d. Appendix D: Effects of Artificial Light on Bird Movement and Distribution: A Systematic Map – 28 pages e. Appendix E: Light Pollution Harms Wildlife and Ecosystems – 10 pages	9/6/23
J.22	4	Richard Carson, Sunshine Nursery Rebuttal to Exhibit I.80	9/6/23
J.23	165	MWH-Kiewit JV for Bull Run Filtration Facility Project Construction Procurement Report 00001428 submitted by CCPO	9/6/23
J.24	13	Verification of Date & Time of CCPO Submittals	9/6/23

J.25	n/a	Video 1.0 Large Trucks are Dangerous in Rural Areas submitted by CCPO	9/6/23
J.26	n/a	Video 2.0 Carpenter Lane is a Rural Residential LANE submitted by CCPO	9/6/23
J.27	n/a	Video 3.0 Large Trucks and Farm Traffic on Bluff Rd submitted by CCPO	9/6/23
J.28	n/a	Video 4.0 Large Trucks and Farm Traffic on Cottrell Rd SB at Bluff submitted by CCPO	9/6/23
J.29	n/a	Video 5.0 Character of the Area Carpenter Lane 6 September 2023 8 am submitted by CCPO	9/6/23
J.30	n/a	Video 6.0 Cottrell Rd with Truck then onto Carpenter Lane submitted by CCPO	9/6/23
J.31	10	Charles Waugh Explanatory Text of Videos & Testimony	9/6/23
J.32	2	Suzanne Courter Rebuttal to Exhibit I.80	9/6/23
J.33	4	Suzanne Courter Rebuttal Testimony for Character of the Area and Hazardous Conditions	9/6/23
J.34	5	Paul Solimano, Willamette Cultural Resources Associates response to HRA Letter Dated July 24, 2023	9/6/23
J.35	56	Attorney Carrie Richter representing CCPO Response to PWB Materials submitted on or before August 7, 2023	9/6/23
J.36	10	Michael Ard, Ard Engineering Rebuttal of Exhibits I.86 and I.84	9/6/23
J.37	26	Multnomah County Rural Fire Protection District 10, Board of Directors Rebuttal Testimony in Opposition	9/6/23
J.38	4	Lauren Courter, West Slope Farms Rebuttal Testimony to Exhibit I.80	9/6/23
J.39	9	Tom Newberry Rebuttal Testimony	9/6/23
J.40	3	Jim & Steve Ekstrom, Brandon Schmidt, Ekstrom & Schmidt Nursery Rebuttal Testimony to Exhibits I.83, I.80 and I.81	9/6/23
J.41	3	Andrea Culver Rebuttal Testimony to Exhibit I.80	9/6/23
J.42	4	Amalia Bruley General Rebuttal to PWB Conclusion regarding Character of the Area and Impacts to Farming Practices	9/6/23
J.43	26	Shawn Nerison, Surface Nursery & Other Nurseries Rebuttal to Various PWB Exhibits	9/6/23
J.44	20	Memorandum from Multnomah County Transportation to Hearings Officer regarding New Evidence Rebuttal	9/6/23

J.45	3	Memorandum from Multnomah County Land Use Planning to Hearings Officer regarding Cultural Resources	9/6/23
J.46	5	Residents of Carpenter Lane East of Cottrell Rebuttal Testimony in Relation to MCC 39.7515(A), (C), (D) and (E)	9/6/23
J.47	3	Various Farm Equipment Photographs from Residents of Carpenter Lane	9/6/23
J.48	n/a	Bicycles on Dodge Park 8-28-23 Video from Residents of Carpenter Lane	9/6/23
J.49	n/a	Bluff Rd Hazardous Condition Video from Residents of Carpenter Lane	9/6/23
J.50	1	Carpenter-Cottrell Intersection for Character of the Area Photograph from Residents of Carpenter Lane	9/6/23
J.51	n/a	Character of the Area Drive Typical Route 302 <sup>nd</sup> to Carpenter Lane Video from Residents of Carpenter Lane	9/6/23
J.52	n/a	Character of the Area Pedestrians on Carpenter Lane 8-30-23 Video from Residents of Carpenter Lane	9/6/23
J.53	n/a	Cottrell – Dangerous Alt Route Causes Delays Video from Residents of Carpenter Lane	9/6/23
J.54	n/a	Cottrell Tractor v. Dump Truck Video from Residents of Carpenter Lane	9/6/23
J.55	n/a	Dangerous Alt Route for Surface on Cottrell Video from Residents of Carpenter Lane	9/6/23
J.56	n/a	Dodge Park GPS maps detour to Carpenter Lane Video from Residents of Carpenter Lane	9/6/23
J.57	n/a	Dump Truck and Kids on Carpenter Lane Video from Residents of Carpenter Lane	9/6/23
J.58	n/a	Equipment on Low Boy Dodge Park Video from Residents of Carpenter Lane	9/6/23
J.59	n/a	Farm Traffic Cottrell Rd North ROW Tractor 8-28-23 Video from Residents of Carpenter Lane Video from Residents of Carpenter Lane	9/6/23
J.60	n/a	Farm Traffic Dodge Park Blvd 8-28-23 Video from Residents of Carpenter Lane	9/6/23
J.61	n/a	Farm Traffic June Dodge Park Video from Residents of Carpenter Lane Video from Residents of Carpenter Lane	9/6/23
J.62	n/a	Impatient Car Passes Dump Trucks Cottrell and Bluff Rd	9/6/23
J.63	n/a	Low Volume Months Misreported by Globalwise Video from Residents of Carpenter Lane	9/6/23

J.64	n/a	Main Site Route to Bluff Video from Residents of Carpenter Lane	9/6/23
J.65	n/a	MCC A and E Dodge Park Cottrell Intersection Concrete Retaining Walls Proposed Video from Residents of Carpenter Lane	9/6/23
J.66	n/a	Normal Route Carpenter to Dodge Park & Pleasant Home Video from Residents of Carpenter Lane	9/6/23
<b>Portland Water Bureau Exhibits</b>			
J.67	1	Facility Septic and Steep Slopes Supplemental Information	9/6/23
J.68	2	Wolfe Land PE GE Peng Resume	9/6/23
J.69	2	Facility Operational Noise Response	9/6/23
J.70	8	Impacts of Lighting at Filtration Facility	9/6/23
J.71	3	Odor Considerations Supplemental Information	9/6/23
J.72	12	School Locations and Access Overview	9/6/23
J.73	1	Outreach and Involvement with Area Schools	9/6/23
J.74	4	Legislative History of Development Definition	9/6/23
J.75	5	Wildlife Habitat Topics	9/6/23
J.76	2	Heritage Research Associates Response to Select Testimony	9/6/23
J.77	6	Dr Mengel Response to Select Testimony	9/6/23
J.78	11	Dr Felsot Response to Select Testimony – 3 pages a. Attachments Cover Sheet – 1 page b. Restrictions to Protect Workers After Pesticide Applications – 3 pages c. DCBS Oregon Occupational Safety and Health Division – Chapter 437 Division 4 Agriculture – 4 pages	9/6/23
J.79	4	Performance Based Fire Protection Engineering Response to Additional Testimony	9/6/23
J.80	1	Programmatic Environmental Assessment Adequacy	9/6/23
J.81	7	Dust Management Supplemental Information	9/6/23
J.82	5	Acoustics and Nighttime Generator Sound Levels	9/6/23
J.83	2	Temporary Fire Suppression Supplemental Information	9/6/23
J.84	37	Construction Compatibility with Farm Traffic Report (re-submitted)	9/6/23
J.85	4	Construction Transportation Demand Management Plan Update	9/6/23

J.86	58	Globalwise Response to Additional Testimony	9/6/23
J.87	50	Globalwise Transportation Traffic Responses to Specific Testimony	9/6/23
J.88	25	Globalwise Response to Testimony Related to Cumulative Farm Impacts	9/6/23
J.89	14	Truck Turning Paths at Multnomah County Intersections	9/6/23
J.90	2	Carpenter Lane Trees	9/6/23
J.91	4	Verification of Date & Time of PWB Submittals	9/6/23
Additional Testimony Submitted			
J.92	9	Cindy Bennington Rebuttal Testimony	9/7/23
J.93	n/a	PWBPOWtrees Video from Cindy Bennington	9/7/23
'K'	#	Post Rebuttal Period	Date
K.1	1	Extension of Final Argument Time Period	9/8/23
K.2	1	Extension of 150-Day Deadline	9/8/23
K.3	1	Hearings Officer Rappleyea's Acceptance of Bennington's 9.7.23 Testimony	9/10/23
'L'	#	Final Argument Period	Date
L.1	307	Applicant's Final Written Argument Under ORS 197.763(6)(e)	9/28/23