Department of Community Services
Land Use Planning Division
www.multco.us/landuse

Multnomah County

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Decision

Community Use Conditional Use, Design Review and Significant Environmental Concern for Wildlife Habitat Permits

Case File:	T3-2017-7661		
Location:	6704 SE Cottrell Road, Gresham, OR Tax Lot 200, Section 22BA, Township 1 South, Range 4 East, W.M. Tax Account #R994220300 Tax ID # R342553		
Applicant(s):	Robert Goldie	**Property Owner(s):**	Portland Water Bureau
Base Zone:	Commercial Forest Use (CFU)		
Overlay Zones:	Significant Environmental Concern for Wildlife Habitat SEC-h		
Site Size:	14.55		

HEARING OFFICER'S DECISION

Approval of the Community Service Conditional Use, Design Review and Significant Environmental Concern for Wildlife Habitat Permits for the Portland Water Bureau's replacement radio tower to be used in conjunction with the water treatment facility subject to the conditions of approval, below.

Dated this 15th day of December 2017.

Liz Fancher, Hearings Officer

Conditions of Approval

1. Approval for this Community Service 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 or within subsequent land use permits. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.

2. This land use permit expires two years from the date the decision is final if (a) development action has not been initiated; (b) building permit has not been issued as required. The property owner may request to extend the timeframe within which this permit is valid, as provided in MCC 37.0690.

3. Prior to issuance of County Land Use Planning signoff on the plans for the building permit, the applicant shall demonstrate that the project qualifies as a Minimal Impact or obtain a Grading and Erosion Control permit. The applicant shall show erosion control measures sufficient to ensure that visible or measureable erosion does not leave the site shall be maintained during development. [MCC 36.2060(I), MCC 36.4550(A)].

4. The property owner shall maintain a minimum of two parking spaces for maintenance of the tower. [MCC 36.6115(D)]

5. The proposed lattice tower shall be painted green from base to treeline with the remainder painted silver or given galvanized finish. Prior County Land Use Planning signoff on the plans for the building permit the property owner shall submit color chips of the green to be used on the site. The green shall be dark and should match the predominant green color found on the site within the shadows in order for the tower to reduce visual impacts on adjacent parcels. [MCC 36.6115 C].

6. The tower shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautic Division or other responsible agency. [MCC 36.6115 C].

7. Prior to building the tower, the property owner or representative shall apply for and obtain a building permit. The property owner shall ensure that a final inspection for its construction is completed prior to its operation. [MCC 36.2105 (B)(1)].

8. The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. [MCC 36.456550(C) and 36.4560(A)(5)].

Scientific Name	Common Name
Chelidonium majus	Lesser celandine
Cirsium arvense	Canada Thistle
Cirsium vulgare	Common Thistle
Clematis ligusticifolia	Western Clematis
Clematis vitalba	Traveler's Joy
Conium maculatum	Poison hemlock
Convolvulus arvensis	Field Morning-glory
Convolvulus nyctagineus	Night-blooming Morning-glory
Convolvulus seppium	Lady's nightcap

Scientific Name	Common Name
Cortaderia selloana	Pampas grass
Crataegus sp. except C. douglasii	hawthorn, except native species
Cytisus scoparius	Scotch broom
Daucus carota	Queen Ann's Lace
Elodea densa	South American Water-weed
Equisetum arvense	Common Horsetail
Equisetum telemateia	Giant Horsetail
Erodium cicutarium	Crane's Bill
Geranium roberianum	Robert Geranium

Scientific Name	Common Name
Hedera helix	English Ivy
Hypericum perforatum	St. John's Wort
llex aquafolium	English Holly
Laburnum watereri	Golden Chain Tree
Lemna minor	Duckweed, Water Lentil
Loentodon autumnalis	Fall Dandelion
Lythrum salicaria	Purple Loosestrife
Myriophyllum spicatum	Eurasian Watermilfoil
Phalaris arundinacea	Reed Canary grass
Poa annua	Annual Bluegrass
Polygonum coccineum	Swamp Smartweed
Polygonum convolvulus	Climbing Binaweed
Polygonum sachalinense	Giant Knotweed
Prunus laurocerasus	English, Portugese Laurel
Rhus diversiloba	Poison Oak
Rubus discolor	Himalayan Blackberry
Rubus laciniatus	Evergreen Blackberry
Senecio jacobaea	Tansy Ragwort
Solanum dulcamara	Blue Bindweed
Solanum nigrum	Garden Nightshade
Solanum sarrachoides	Hairy Nightshade
Taraxacum otficinale	Common Dandelion
Ultricularia vuigaris	Common Bladderwort
Utica dioica	Stinging Nettle
Vinca major	Periwinkle (large leaf)
Vinca minor	Periwinkle (small leaf)
Xanthium spinoseum	Spiny Cocklebur
various genera	Bamboo sp.

9. The property owner shall maintain the fire safety zones required by MCC 36.2056(D). A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Shall be clear of all trees or have trees within this safety zone that shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches with-in 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. [MCC 36.2056(D)].

10. Existing forested areas on the property shall be maintained. [MCC 36.6115(B)].

Findings of Fact

FINDINGS: Written findings 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. Staff comments may include a conclusionary statements recommendations in *italic*. Staff comments have been accepted as findings of the Hearings Officer with minor corrections. Additional findings by the hearings officer are preceded by **'Hearings Officer:'**

1. PROJECT DESCRIPTION

Staff: Portland Water Bureau is requesting approval of a Community Service Conditional Use, Design Review, and Significant Environmental Concern for Wildlife Habitat Permit for a new microwave tower facility to replace an old microwave tower facility in the same location within the Commercial Forest Use Zone and the Significant Environmental Concern for Wildlife Habitat Overlay Zone. The applicant is requesting to replace and to construct with a more robust Radio and Telecommunications Tower. The purpose of the tower is to increase security and communication between the City of Portland's Bureau of Water Works facilities in-town, at their Bull Run facility, and at this existing Lusted Hill Site. The tower will be the same height and in the same location. It is being replaced because it does not have the stability that the system needs for best functionality.

2. PROPERTY DESCRIPTION & HISTORY

Staff: The subject property and site has been used as a utility facility prior to zoning. In 1991 through Community Service Conditional Use Case CS-3-91 and Design Review DR 91-05-02 an ammoniation water treatment facility was established on the site. The expansion of the treatment plant was approved for expansion through DR 12-95.

Through Community Service Conditional Use Case T3-06-003 the existing microwave radio tower was approved. That tower is proposed to be replaced by the new proposed tower. The proposed 120 ft self-supporting steel lattice tower is designed to allow the attachment of antennas for the City's 800 MHz radio system and microwave telecommunication system. The tower is needed in order to improve radio and telecommunication signals between the Water Bureau's in town facilities, Lusted Hill treatment facility, and Bull Run Headworks treatment facility. The tower will be located approximately 35 feet north of the Lusted Hill water treatment building in a landscaped, cleared area bordered by the building on the south side and by a 24 ft paved driveway on the west, north, and east sides. Design drawings for the tower are shown are shown in Exhibits 1 through 4.

3. BASE ZONE CRITERIA

3.1. Conditional Uses (Community Service Uses)

MCC 36.2030: 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 36.2045, 36.2050, 36.2056, 36.2061, and 36.6000 through 36.6020. The applicable criteria of 36.6010 shall be limited to (A) through (H) for uses in this section.

* * *

(11) Radio and television transmission towers subject to the definitions, restrictions and standards in MCC 36.6010, 36.6015 (A) (8) and 36.6100 through 36.6130 and wireless communications facilities when found to satisfy the requirements of MCC 36.6175 through 36.6188.

Staff: The applicant is proposing a new microwave tower replacing an existing microwave tower permitted through Case T3-06-003. Microwave is a type of radio wave transmission. Findings for the code sections are in the following Section 4 of this staff report. *These standards are met.*

3.2. Use Compatibility Standards

MCC 36.2045 Specified uses of MCC 36.2025 (D) and (E) and MCC 36.2030 (A), (B) and (C) may be allowed upon a finding that:

(A) The use will:

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

(2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel;

Staff: No additional land will be used for the new tower, it is sited in the same location as the existing tower. The proposed tower is replacing an existing tower in the same location which is clustered with the other development on the site. The existing development is sited in an area is relatively close to the Cottrell Road with building at about 130 feet from right-of-way. Thus there will not be any significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands. There are existing fire safety zones on the property for the existing tower. Staff is recommending a condition of approval requiring the maintaining the fire safety zones. Given there is no change in use; the use will not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel. *The proposal meets these standards through implementing recommended a condition of approval.*

(B) 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.

Staff: The property owner has previously recorded this statement. *This standard is met.*

3.2. Forest Practices Setbacks and Fire Safety Zones

MCC 36.2056: 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:

Use	Forest Practice Setbacks		Fire Safety Zones
Description of use and location	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Other Accessory structures	30	130	Primary & Secondary required
Other Structures	30	130	Primary & Secondary required

Staff: The proposed tower location is over 130 feet from the right-of-way line and all other property boundaries. *This standard is met.*

(D) Fire Safety Zones on the Subject Tract

(1) Primary Fire Safety Zone

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches with-in 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Staff: The slope is less than 10 percent for the first thirty feet surrounding the tower. That thirty foot area is cleared of vegetation except for grass. The area includes a loop driveway as well. The primary fire safety zone is required to be maintained. Staff recommends an on-going condition of approval that the primary fire safety zone be maintained. *The primary fire safety zone is currently being met.*

(2) Secondary Fire Safety Zone

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 36.2110.

Staff: The secondary fire safety zone is located 100 feet in all directions out from the outer edge of the 30 foot primary fire safety zone. The tower is located a sufficient distance from all property lines so that a full secondary fire safety zone can be maintained on the property for the tower. Staff recommends an on-going condition of approval that the Secondary fire safety zone be maintained.

* * *

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: The primary and secondary fire safety zones are required to be maintained. Staff recommends an on-going condition of approval that the primary and secondary fire safety zones zone be maintained according to MCC 36.2056(D)(1) and (D)(2) standards. *The proposal meets these standards through implementing the recommended condition of approval.*

3.3. Development Standards for Dwellings and Structures

MCC 36.2061: ... structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 36.0570:

Staff: The proposal does not meet (A) thus must comply with the approval criteria in (B) through (D) below.

(B) ...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):

Staff: There is no dwelling associated with the subject property, thus the proposal must meet following standards in (1) and (3) or (2) and (3).

(1) The structure shall satisfy the following requirements:
(a) To meet the Forest Practices Set-back, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;
(b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;
(c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the driveway;
(d) The structure is sited within 300-feet of frontage on a public road and the driveway from the public road to the structure is a maximum of 500-feet in length;
(e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or

Staff: The entirety of the development on the site exceeds 30,000 square feet of total cleared area. Thus, the development must meet (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 36.2056;
(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: No additional land will be used for the new tower, it is sited in the same location as the existing tower. The proposed tower is replacing an existing tower is the same location which is clustered with the other development on the site. The existing development is sited in an area is relatively close to the Cottrell Road with building at about 130 feet from the right-of-way. Thus any adverse impacts on forest operations and accepted farming practices on the tract will be minimized. The amount of forest land used to site the structure, access road, and service corridor is minimized to about an acre and a quarter. The access road is less than 500 feet in length. *The proposal meets these standards.*

(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 Fire Service Agency Review submitted with the application indicates the site meets the fire apparatus access standards (Exhibit A.12). There is no perennial water source of 4,000 gallons or more, thus this standard is not applicable. *The proposal meets the applicable standards.*

(C) The structure shall:
(1) Comply with the standards of the applicable building code ...

Staff: A condition of approval can require a building permit to be obtained. Staff recommends a condition of approval that a building permit to be obtained. *The proposal meets these standards through implementing the recommended condition of approval.*

<u>Lot of Record</u>
36.2075 (A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:
(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
(2) A group of contiguous parcels or lots:
(a) Which were held under the same ownership on February 20, 1990; and
(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

Staff: In Case T3-06-003, the Hearings Officer found that the subject property, Tax Lot 100 (1S4E22BA) along with the parcel on the opposite of SE Lusted Road to the northwest known as Tax Lot 200 (1S4E22BA) are a Lot of Record. *This standard is met.*

4. COMMUNITY SERVICE CONDITIONAL USE

4.1. Radio Transmission Tower Community Service Use

MCC 36.2030(B)(11): Radio and television transmission towers subject to the definitions, restrictions and standards in MCC 36.6010, 36.6015 (A) (8) and 36.6100 through 36.6130 and wireless communications facilities when found to satisfy the requirements of MCC 36.6175 through 36.6188.

Staff: The applicant is proposing a new microwave tower replacing an existing microwave tower permitted through Case T3-06-003. Microwave is a type of radio wave transmission. The Findings for MCC 36.6010, 36.6015 (A)(8) and 36.6100 through 36.6130 follow in this section. Wireless communications facilities are cellular towers, thus MCC 36.6175 through 36.6188 do not need to be addressed because this proposal is for a microwave radio tower. *These standards are met.*

4.2. Community Service Approval Criteria

MCC 36.6010 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 36.6100 through 36.6125.

Staff: Findings for MCC 36.6100 through 36.6125 follow. *These standards are met*

4.3. Community Service Uses

MCC 36.6015 (A) Except as otherwise limited in the EFU, CFU and OR districts, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority. Allowed Community Service Uses in the EFU, CFU and OR districts are limited to those uses listed in each respective district.

(8) Radio and television transmission towers.

(a) VHF and UHF television towers, FM radio towers, two-way radio, com-mon carrier, and cellular telephone towers, and fixed point microwave towers are permitted in any district,

Staff: The property is in the CFU District thus it must meet the standards listed under Subsection 4.1 (above) of this staff report. *This standard is met.*

4.4. Application Requirements

MCC 36.6110 An application for approval of a Community Service designation for a radio or television transmission tower shall contain at least the following information before it is complete:

(A) Site plan or plans to scale specifying the location of towers(s), guy anchors (if any), transmission building and/or other accessory uses, access, parking, fences, landscaped areas, and adjacent land uses. Such plan shall also demonstrate compliance with MCC 36.6115 (I) and 36.6115 (J).

Staff: The submitted plans show the necessary items. The plan demonstrates compliance with MCC 36.6115(I) and 36.6115(J) [see Subsection 4.4 of this staff report]. *These standards are met.*

(B) Landscape plan to the scale indicating size, spacing and type of plantings required in 36.6115 (B).

Staff: The site is surrounded by forested land which effectively screen the tower area from the public view. *No landscape plan is needed.*

(C) Report from a professional engineer licensed in the State of Oregon, documenting the following:

(1) Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section of the tower structure shall be included.

(2) Total anticipated capacity of the structure, including number and types of antennas which can be accommodated.

(3) Evidence of structural integrity of the tower structure as required by the Building Official.

(4) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.

(5) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment.

Staff: Report from a professional engineer licensed in the State of Oregon, Christopher W. Blaumer, PE in collaboration with Douglas Cottel, State of Oregon Registered Architect (A.10) documenting (1)-(5) has been submitted. The number of antennas is discussed in Exhibit A.3, page 3 and shown on Exhibit A.10. A condition of approval can require that building permit is obtained and inspection completed to meet the standard that evidence of structural integrity of the tower structure as required by the Building Official. The site provides setbacks of adequate size to contain debris in the case of failure and for ice hazards. The applicant has complied with this requirement.

(D) Statements from the F.A.A, O.S.A.D., and F.C.C., that the standards of MCC 36.6115 (G) are met or the required good faith, timely effort it achieve such responses.

Staff: These statements are included as Exhibit A.7.

(E) Written authorization from adjoining property owners, if needed, under MCC 36.6115 (J).

Staff: The tower is not a guy wired tower as cover in MCC 36.6115(J). *Standard not applicable.*

(F) Responses to the applicable Comprehensive Plan Policies.

Staff: The applicable Comprehensive Plan Policies require a Septic Review Certification to determine there is no impacts as stated on Exhibit A.12. Comprehensive Plan Policies also requires a Fire District Review of the proposed development (Exhibit A.13). *These standards are met.*

4.5. Approval Criteria for New Transmission Towers

MCC 36.6115 New transmission towers in rural districts permitted under MCC 36.6015 (A) (8) (a) or (b) may be allowed, based on findings by the approval authority that the following criteria are met.

(A) The site is of a size and shape sufficient to provide the following setbacks:

(1) For a tower located on a lot abutting an urban residential district or a public property or street, except a building-mounted tower, the site size standards of MCC 36.6115 (I) and 36.6115 (J) are met as to those portions of the property abutting the residential or public uses.

(2) For all other towers, the site shall be of sufficient size to provide the setback required in the underlying district between the base of the tower, accessory structures and uses, and guy anchors, if any, to all abutting property lines.

Staff: The proposed tower is on a parcel that abuts a public road. The tower meets MCC 36.6115 (I), see finding MCC 36.6115 (I) below. *These standards are met.*

(B) The required setbacks shall be improved to meet the following landscaping standards to the extent possible within the area provided:

(1) Landscaping at the perimeter of the property which abuts streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property. Such landscaping plan shall demonstrate the following:

(a) For towers 200 feet tall or less, a buffer area no less than 25 feet wide shall commence at the property line. At least one row of evergreen shrubs shall be spaced not more than five feet apart. Materials should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. At least one row of evergreen trees or shrubs, not less than four feet height at the time of planting, and spaced not more than 15 feet apart, also shall be provided. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

* * *

(c) In lieu of these standards, the approval authority may allow use of an alternate detailed plan and specifications for landscape and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in (a) and (b) above, except as lesser requirements are desirable for adequate visibility for security purposes and for continued operation of existing bona fide agricultural or forest uses, including but not limited to produce farms, nurseries, and tree farms.

Staff: The proposed tower is 120 feet in height. The vegetative buffer for the tower is about 130 feet wide from Cottrell Road to the loop driveway which is included in the cleared 30 foot primary fire safety zone and substantially larger in all other direction. The first 100 feet of the vegetative buffer extending from the 30 foot primary fire safety zone is required to meet the secondary fire safety zone as outlined in MCC 36.2056(D)(5). Staff finds that the existing vegetative buffer with the required secondary fire safety zone exceeds the degree of screening achieved in subsection (a) above. A condition of approval can require the property owner to maintain the forested area

between Cottrell Road and the primary fire safety zone. *The proposal meets these standards through implementing the recommended condition of approval.*

(C) The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. Towers shall be painted and lighted as follows:

(1) Towers 200 feet or less in height shall have a galvanized finish or be painted silver. If there is heavy vegetation in the immediate area, such towers shall be painted green from base to treeline, with the remainder painted silver or given a galvanized finish.

(2) Towers more than 200 feet in height shall be painted in accordance with regulations of the Oregon State Aeronautics Division.

(3) Towers shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency.

(4) Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower.

Staff: The proposed tower is 120 feet in height. The tower is designed to be the minimum needed height. A condition of approval can require the following:

- The tower shall be painted green from base to treeline, with the remainder painted silver or given a galvanized finish.
- The tower shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency.

The proposal meets these standards through implementing the recommended condition of approval.

(D) A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at facilities which require on-site personnel, provided additional parking may be required in accordance with MCC 36.4100 to 36.4220 if the site serves multiple purposes.

Staff: The site has seven parking spaces approved in previous Design Review Case T2-07-057 which included a design review for the existing tower to be replaced. *This standard is met.*

Hearings Officer: This is a new approval that replaces the prior approval for the tower and its conditions of approval. To assure continued compliance with this code provision, a minimum of two parking spaces are required as a condition of approval of this permit.

(E) The applicable policies of the Comprehensive Plan are met.

Staff: Findings for the applicable policies of the Comprehensive Plan are made previously in Sub-section 4.4 (F) of this staff report. *This standard is met.*

(F) The NIER standards of MCC 36.6125 are met.

Staff: Findings for the NIER standards of MCC 36.6125 are made in Section 4.7 (below) of this staff report. *This standard is met.*

(G) The following agency coordination standards are met:

(1) A written statement provided by the applicant from the appropriate official in the Federal Aviation Administration that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or a statement that no compliance with Part 77 is required;

(2) A written statement provided by the applicant from the appropriate official in the Oregon State Aeronautics Division that the application has been found to comply with the applicable regulations of the Division, or a statement that no such compliance is required; and,

(3) A written statement provided by the applicant from the appropriate official in the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.

(4) The statements in (1) through (3) may be waived when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further provided any subsequent response that is received is conveyed to the approval authority as soon as possible.

Staff: The applicant has submitted the required statements which are included as Exhibit A.7. *This standard is met.*

(H) For a proposed tower in the EFU, CFU and MUA-20 districts, the following restrictions on accessory uses shall be met:

(1) Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function.

(2) Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.

Staff: The proposed tower is located in CFU district. Equipment necessary for tower operation will be placed in the existing building that was used for the existing tower. No new building is proposed. The tower is accessory to a previously approved utility facility site used for drinking water treatment by the City of Portland Water Bureau that includes an existing building. *This standard is met.*

(I) Site size and tower setbacks:

(1) The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting an urban residential district, public property, or public street. Such setback shall be sufficient to:

(a) Provide for an adequate vegetative, topographic or other buffer, as provided in MCC 36.6115 (C) and 36.6115 (B),

(b) Preserve the privacy of adjoining residential property,

(c) Protect adjoining property from the potential impact of tower failure and ice falling from the tower by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required in MCC 36.6110 (C) (4) and (5), and

(d) Protect the public from NIER in excess of the standard of MCC 36.6125 (A).

(2) A site is presumed to be of sufficient size when it:

(a) Meets the requirements of (1) (c) and (d) above,

(b) Provides a setback equal to 20 percent of the height of the tower to any property line abutting an urban residential district, public property, or public street, and

(c) Provides a setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not in an urban residential district nor a public property or a public street.

(3) Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements are met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in MCC 36.6110 (C) (4) will not lead to multiple failures in the event that one fails.

(4) Structures and uses associated with the transmission use other than the transmission tower shall be located to meet the setbacks required in MCC 36.6020.

Staff: The site is large enough to provide a buffer exceeding the height of the tower. The site exceeds all required setback standards. *These standards are met.*

4.6. Design Review

MCC 36.6120 The use shall comply with the design review provisions of MCC 36.7000 to 36.7060. This may be implemented as a condition of approval.

Staff: Findings for design review provisions of MCC 36.7000 to 36.7060 are in Sections 5 and 6 of this staff report. *This standard is met.*

4.7. Radiation Standards

MCC 36.6125 Non-ionizing electromagnetic radiation standards.

Staff: The applicant addresses the non-ionizing electromagnetic radiation in Exhibit A.3 (pages 36 to 40), Exhibit A.11, Exhibit A.14 (pages 2 and 3), Exhibit A.15 and Exhibit A.16.

4.7.1 (A) No source of non-ionizing electromagnetic radiation shall hereinafter be operating, which causes the general population to be exposed to radiation levels exceeding the mean squared electric (E2) or mean squared magnetic (H2) field strengths, or their equivalent plan wave free space power density, as specified in Table 1.

(1) For near field exposures, measurements of the mean squared electric and magnetic field strengths are especially important to determine compliance with the standards in columns 2 and 3 of Table 1. For convenience, mean squared electric or magnetic field strengths may be specified as the equivalent plane-wave power density. At higher frequencies (e.g., above 30-300 MHz), measurement of mean-squared magnetic field strength may not be necessary if it can be reliably inferred from measurements of either mean squared electric field strength or equivalent plane-wave power density.

(2) In the event the federal government promulgates mandatory or advisory standards more stringent than those described herein, the more stringent standards shall apply.

(3) These standards are adapted from the American National Standards Institute's American National Standard C95.1-1982, Safety Levels with Respect to Human

Exposure to Electromagnetic Fields (300 kHz to 100 GHz). This ANSI standard's documentation should be consulted to help resolve any future questions about the basis or interpretation of the standards in this section.

(4) Similarly, the latest revision of ANSI's American National Standards Institute's American National Standard C95.3, Techniques and Instrumentation for the Measurement of Potentially Hazardous Electro-magnetic Radiation at Microwave Frequencies, is incorporated here by reference as one source of acceptable methods for measuring non-ionizing radiation levels in determining compliance with this standard.

(a) For all measurements made to ensure compliance with this section, evidence shall be submitted showing 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; 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.

(5) The standards adopted herein shall be periodically reviewed by the Multnomah County Health Officer, in light of any new scientific knowledge as to the effects on the general population of non-ionizing electro-magnetic radiation; and these standards may hereafter be raised, lowered or otherwise changed as the County shall require by amendment of this section. The first such reports shall be delivered on or before January 1, 1984.

(6) For average times less than 0.5 hour, the allowed power density P in μw/cm2 as a function of averaging time (in hours is given by P = k/(where in turn K is equal to 1/2 times the allowed power density for averaging times of 0.5 hour and greater.

Staff: The application submittal includes an analysis by Bernard Rate, Oregon State Register Profession Engineer included as Exhibit A.11 and A.16 in which he states, "This agrees with MCC Ordinance 330, Section (F) Table 1 'Equivalent Plane Wave Power Density' (300 MHz to 1500 MHz)." The tables are below in this section under (F) of the staff report. MCC Ordinance 330 (Exhibit B.4) regulating radio towers was adopted in 1982 and repealed in 2002. While MCC Ordinance 330 is similar to the current code it is not the current code that must be addressed. Staff requested a statement from the engineer and the applicant just kept resubmitting the statement referencing the current code sections as being met. Staff is uncertain that current code is met because the applicant continues to address the repealed MCC Ordinance 330 instead of addressing the current code. As a condition of approval, applicant will need to submit a statement from a Professional Engineer that current code MCC 36.6125 Non-ionizing electromagnetic radiation standards has been addressed and that standards are met.

Hearings Officer: The applicant submitted evidence, Exhibit H.1, that provides evidence that demonstrates compliance with current code requirements.

(B) All existing sources of non-ionizing electromagnetic radiation in the frequency spectrum, 100 kHz to 300 GHz, except those exempted below, are within 120 days of the enactment of this section, hereby required to register with the County and provide the following information for each individual source on forms provided by the Planning Director.

(1) Name and address of owner of transmitter and/or antenna.

(2) Name and address of owner of property on which the transmitter and/or antenna is located.

(3) Location of transmitter.

(4) Location of antenna by geographic coordinates by either latitude and longitude or state plane coordinates.
(5) Output frequency of transmitter.
(6) Type of modulation and class of service.
(7) Power output of transmitter (average and peak).
(8) Power input to antenna.
(9) Manufacturer, type, manufacturer's model number of antenna and a copy of the antenna radiation patterns.
(10) Gain of antenna with respect to an isotopic radiator.
(11) Polarization of radiation from antenna.
(12) Height of antenna above ground.
(13) Horizontal and radial distance of antenna to nearest point on property line and to nearest habitable space regularly occupied by others than immediate family or employees of transmitter and/or antenna owner and/or operator.
(14) Elevation above mean sea level of ground at the antenna location and the points specified in (B)(13).
(15) The call letters assigned to the source.
(16) Date of installation of present transmitter, and date of installation of the associated antenna, date of installation of the structure, if any, on which the antenna is located.
(17) Any sources not so registered shall be regarded as a new source and any registered source with different essential technical characteristics than those of (B) (3) through (B) (13) above as a changed existing source.

Staff: This code section requires owners of radio towers to register existing towers within 120 days of the enactment of this section. The existing tower was registered through the previous Community Service Use Permit T3-06-003. The proposed tower will be registered through this decision if approved. The application submittal includes the required information in Exhibit A.17. *This standard is met.*

(C) After August 19, 1982, no installation of a new source of non-ionizing electromagnetic radiation or changes in an existing source which in any way causes increases in the NIER or radiation pattern of the NIER source shall occur without first obtaining a Community Service use designation or modification thereof, unless otherwise provided herein.

Staff: This request is a Community Service Use. *This standard is met.*

(D) The application for the use shall be on forms provided by the Planning Director, and shall show:
(1) The information required under (1) through (16) of subpart (B) above.

Staff: The application form is included as Exhibit A.1. The application submittal includes the required information under (1) through (16) of subpart (B) above in Exhibit A.17. *This standard is met.*

(2) The measured existing nonionizing radiation levels at the nearest point on the property lines of the predicted maximum radiation from the source, and the nearest point regularly occupied by other than the immediate family and/or employees of the transmitter owner and/or operator.

(a) These measurements shall be made at a height of 1.5 meters above the ground or at the greater height if habitation occurs at a greater height with lesser radial distance to the source.

(b) If the measured level is equal to or less than 1/5 of the limits, the measurement shall be made for the continuous period 6 a.m., to 6 p.m., on a regular business day.

(c) If the measured level is greater than 1/5 of the limits, the measurement shall be made for a continuous period of 168 hours.

(d) If there exists an operational situation which would cause higher levels to occur at some other time than the intervals of (b) or (c) above, the measurement shall be made during that time.

(e) These measurements may be made by whatever means the registered professional engineer under whose direction and supervision they are made deems appropriate. The effects of contributing sources of frequency below the lower frequency limit of broadband instruments may be appropriate separate single instant measurements of the contribution due to these sources. Further, levels below 20 microwatts/cm2 or the minimum sensitivity of the instruments used, whichever is lesser, shall be deemed zero for further computational purposes.

(3) The calculated average levels at the three points specified in (D) (2) after installation of the new source, including both the background and the new source.

(4) The calculated levels at the boundaries of other sources at which the new source may cause a detectable increase in level.

(5) The calculated level at the predicted point of maximum radiation off of the property on which the new source is located caused by the new source along with the measured background NIER at this point. This measurement shall meet the requirements of (D) (2).

Staff: Exhibit A.17 and H.1 provide the information required by these code subsections.

(6) The geographic coordinates (latitude and longitude or state plane coordinates) of each point of measurement and/or calculation shall be furnished.

Staff: Exhibit A.17 addresses this code subsection and provides latitude and longitude. *This standard is met.*

(E) A Community Service use designation or modification thereof may be granted if the levels calculated in MCC 36.6125 (D), including the existing measured background, do not exceed the limits set forth in MCC 36.6125 (A), and if a new tower is required, the siting standards of this section are met. However, if the calculated levels, including existing measured background at any point specified in MCC 36.6125 (D) exceed one-third of the maximum levels of MCC 36.6125 (A), then, the approval shall be conditional upon measurements made after the new source is installed showing that the maximum levels of MCC 36.6125 (A) are not exceeded. If the calculated levels exceed the maximum level of MCC 36.6125 (A), the application shall be denied.

Staff: The Oregon State Registered Engineer will need to confirm that this code sub-section is met. A condition of approval can require the applicant to submit a statement from a registered engineer that this subsection is met.

Hearings Officer: The information staff indicated was required, above, was provided.

(F) All commercial intermittent sole source emitters of less than 1 KW average output are exempt from the measurement requirements of MCC 36.6125 (D) if they comply with the separation requirement of MCC 36.6125 (F) and all other requirements of this section. Prior to issuance of a building permit for a tower to support an antenna associated with one of these uses, the Planning Director shall determine that the antenna meets the following requirements:

(1) For an effective radiated power (ERP) of less than 100 watts the highest current point of the antenna is located at least ten feet and all portions of the antenna three feet from the external surface of any habitable structure not located on the property containing the source and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

(2) For an ERP greater than 100 watts, but less than 1,000 watts, the highest current point of the antenna is at least 15 feet and all portions of the antenna at least six feet from the external surface of any habitable structure not located on the property containing the source and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

(3) For an ERP equal to or greater than 1,000 watts, but less than 10 kW, the antenna meets the following separation criteria from the external surface of any habitable structure not located on the property containing the source and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

Frequency	**Minimum Distance from Highest Current Portion**	**Minimum Distance from Any Portion**
<7 MHz	11 feet	5 feet
7 - 30 MHz	f/0.67 feet	f/1.5 feet
30 - 300 MHz	45 feet	20 feet
300 -1500 MHz	780 / □f feet	364 / □f feet
>1500 MHz	20 feet	10 feet
Where f is frequency in megahertz.		

(4) For an ERP equal to or greater than 10 kW, but less than 30 kW, the antenna meets the following separation criteria from the external surface of any habitable structure not located on the property containing the source, and from habitable space on the same property normally occupied on a regular basis by others than the immediate family and/or employees of the owner and/or operator of the source.

Frequency	Minimum Distance from Highest Current Portion	Minimum Distance from Any Portion
<7 MHz	17.5 feet	8 feet
7 - 30 MHz	*f*/0.4 feet	*f*/0.91 feet
30 - 300 MHz	75 feet	33 feet
300 -1500 MHz	1300 / □*f* feet	572 / □*f* feet
>1500 MHz	34 feet	15 feet

Hearings Officer: The applicant states the new microwave dish is not exempt. The provisions of this code section, therefore, are not applicable.

5. DESIGN REVIEW CRITERIA

MCC 36.7050 (A) Approval of a final design review plan shall be based on the following criteria:

(l) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

(b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.

(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, interrelated, and shall provide spatial variety and order.

Staff: The applicant addresses this code section in Exhibit A.3 page 46. The property is forested in all directions from the proposed tower location. The forest acts as a buffer from all the property lines. The closest point the public has access along Cottrell Road which has a 160 foot forest buffer. The proposed tower relates harmoniously to the natural environment and the existing development.

The new tower is an improved design which should save energy. The design will reduce the number of vehicle trips to the site. The proposed tower is a stronger design to better withstand natural forces. The forested buffer will buffer the sounds from the site. No air pollution will come from the tower.

With the forested buffer and clustered development, the site effectively, efficiently, and attractively serves its function. The elements of the site are on a human scale, interrelate and provide spatial variety and order. The site is functional and well screened from public view. *These standards are met.*

(2) Safety and Privacy - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.

Staff: The site has a security fence along the road. The site is quite private due to the forested buffers. Security gate setback from the right-of-way provide transition from public to private space. *These standards are met.*

(3) Special Needs of Handicapped - Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheel-chairs and braille signs.

Staff: Accessibility relates to the rest of the development on the site as an employer which was reviewed under previous decisions. Towers are required to have two parking spots with no handicapped parking requirement. *This standard is met through previous approvals.*

(4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.

Staff: The subject property currently is heavily vegetated with a number of large trees along Cottrell and Lusted Roads. Instead of converting this forested area into landscaping, the proposal provides adequate screening for the tower along the perimeter of the property. Given the forested buffer no additional landscape planting is needed. The existing lack of vegetation is in the first 30 feet surrounding the tower is a good safety measure to prevent damage should there be a wildfire on-site in the future. A condition of approval can require that the forest vegetation be preserved after the required primary and secondary fire safety zones are met as described in MCC 36.2056(D)(1) and (2).

(5) Pedestrian and Vehicular circulation and Parking - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be de-signed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.

Staff: The parking design for the site, for the Water Treatment Facility was reviewed through previous Design Review Cases DR 91-05-02, and DR 12-95 and Design Review T2-07-057 for the tower to be replaced. The applicant has shown two parallel spaces on the site plan (Exhibit A.2). The on-site parking appears to meet or exceed the dimensional standards of the off-street parking code (MCC 36.4100 -.4210). The size of the site ensures that it is feasible to expand the parking is it is needed for the site for employees. *This standard is met by previous reviews.*

(6) Drainage - Surface drainage and storm-water systems shall be designed so as not to adversely affect neighboring properties or streets. Systems that insure that surface run-off volume after development is no greater than before development shall be provided on the lot.

Staff: There will be no stormwater drainage resulting from the tower. Any impervious surfaces related to the tower are previously approved existing. *This standard is met.*

(7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.

Staff: The property is forested in all directions from the proposed tower location. The forest acts as a buffer from all the property lines. The closest point the public has access to is along Cottrell Road which has a 160 foot forest buffer. *This standard is met.*

(8) Utilities - All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.

Staff: The utility installation above ground and its base are located at least 150 ft from all adjacent properties. This standard has been met.

(9) Signs and Graphics - The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.

Staff: No signage or graphics are proposed. *This standard is not applicable.*

6. TYPE I SIGNIFICANT ENVIRONMENTAL CONCERN FOR WILDLIFE HABITAT PERMIT

6.1. Application for SEC Permit

MCC 36.4540 A decision on an application for an SEC permit shall be based upon findings of consistency with the purposes of the SEC district and with the applicable criteria for approval specified in MCC 36.4545 through 36.4560. An application for a use on a property containing more than one protected re-source shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.

6.1.2. (A) General SEC: All applications for SEC permits shall include the information listed in this section in sufficient detail for County staff to evaluate the impacts of the proposal. The applicant is responsible for providing all of the required information. In addition to the information listed in this section, the application shall contain the supplemental information that is listed for the resource area in which the development is proposed.

(1) A written description of the proposed development and how it complies with the requirements applicable to the resource area in which development is proposed as listed in SECsw, SECwr, SECh.

(2) A map of the property drawn to scale 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) Location of natural drainageways, springs, seeps, and wetlands on the site. The Planning Director may require the applicant to provide the location of the SEC-wr

boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;

(e) Proposed fill, grading, site contouring or other landform changes;

(f) 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;

(g) Location and width of existing and proposed roads, driveways, parking and maneuvering areas, and service corridors and utilities.

(3) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation.

(4) Application for a flood hazard permit, erosion control permit, and/or other required natural hazards permit for the proposed development;

Staff: The application submittal provides sufficient detail for staff to evaluate the project to provide findings for the SEC-h standards. *This standard has been met.*

6.1.2. (D) SEC Wildlife Habitat: In addition to the information required in MCC 36.4540(A) above, an application to develop in SEC-h areas shall also include:

(1) 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:

(2) 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.

(3) Location and width of existing driveways 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 application submittal provides sufficient detail for staff to evaluate the project to provide findings for the SEC-h standards. *This standard has been met.*

6.2. <u>General Requirements for Approval in Areas Designated as SEC-H</u>

MCC 36.4550 The requirements in this section shall be satisfied for development in the SEC-h areas in addition to the provisions of 36.4555 or 36.4560 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: The potential for erosion related to the tower replacement is minor. The erosion control measure will need to be shown on the site plan for building permit zone review plans signoff. *This standard will be met through the building permit zoning review plans signoff.*

(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: A condition of approval can require any lighting related to the tower shall be a hooded fixture that does not project the light into the forested area. Exterior light will need to meet the Dark Sky Lighting Standards code under MCC 36.0570(C) with findings in Sections 7 of this staff report. Lighting required by the FAA is exempt from these standards. *This standard will be met through the building permit zoning review plans signoff.*

(C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the ... SEC-h Overlay Zone:

Staff: The list in Table 1 is included in the recommended conditions of approval. A condition of approval can require this standard be met. *The proposal meets these standards through implementing the recommended condition of approval.*

6.3. Criteria for Approval of SEC-h Permit -Wildlife Habitat

MCC 36.4560 Development within areas designated SEC-h shall comply with the provisions of this section. An application shall not be approved unless it contains the information in 36.4540(A) and (D).
(A) 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: The proposed tower is in a cleared area. *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: The proposed tower is about 160 feet from Cottrell Road, a public road providing access to the property.

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

Staff: The access driveway and service corridor serving the development shall not exceed 500 feet in length.

(4) 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.

Staff: No additional fencing will be necessary for the replacement tower security. The property has an existing security fence in front of the property which was approved through the Community Service Conditional Use Case CS-3-91. *This standard is met.*

(5) The nuisance plants listed in Table 1 shall not be planted as landscaping and shall be controlled within cleared areas of the subject property.

Staff: The list in Table 1 is included in the recommended conditions of approval. A condition of approval can require this standard be met. *The proposal meets these standards through implementing the recommended condition of approval.*

7. DARK SKY LIGHTINGSTANDARDS

MCC 36.0570(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: A condition of approval can require any lighting related to the tower the light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. These requirements a exempted for lighting required by a federal, state, or local law or rule, when such lighting cannot comply with both the law or rule and these standards in paragraph (C) of this section. Lighting required by the FAA is exempt from these standards. *This standard will be met through the building permit zoning review plans signoff.*

8. EXHIBITS

'A' Applicant's Exhibits
'B' Staff Exhibits
'C' Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	5/11/17
A.2	6	Site Maps and Aerial Photos	5/11/17
A.3	50	Narrative Addressing Code for the CS and DR	5/11/17
A.4	10	Applicant's Appendix A: Application Forms, SEC-h Worksheet	5/11/17
A.5	6	Applicant's Appendix B: Title Report	5/11/17
A.6	14	Applicant's Appendix C: Pre-Application Notes	5/11/17
A.7	80	Applicant's Appendix D: A.7.1: Pleasant Home Water District Water Service Form (1 page) A.7.2.: Oregon Dept. of Aviation Letter (1 page) A.7.3. FFA Approval Letter (6 pages) A.7.4.: FCC Website Confirmation (1 page)	5/11/17
A.8	6	Applicant's Appendix E: Site Maps and Aerial Photos	5/11/17
A.9	3	Recorded covenant accepting farm and forest practices on nearby properties	
A.10	45	Applicant's Appendix G:: Tower Plans and Calculation New Tower Footing New Tower Drawing Set New Tower Calculation	5/11/17
A.11	14	Applicant's Appendix H: Mom-Ionizing Electromagnetic Exposure Analysis Report	5/11/17
A.12	2	Septic Review Certification	5/30/17
A.13	3	Fire Service Agency Review	6/12/17
A.14	3	Narrative Addendum	7/03/17
A.15	13	Non-Ionizing Electromagnetic Exposure Analysis	7/03/17
A.16	1	Letter from Bernard Rate, PE addressing Proposed Radio Frequency Facility Modification	8/01/17
A.17	4	Narrative Addendum	9/28/17
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	35	T3-06-003 Conditional Use for Community Service Use and	NA

		Significant Concern for Wildlife Habitat Permit for existing tower	
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Application Letter	6/9/17
C.2	1	Applicant's Acceptance of 180 Day Clock	7/3/17
C.3	2	Second Incomplete Application Letter)	8/15/17
C.4	1	Complete Letter (Day 1	10/4/17
C.5	4	Notice of Hearing	11/26/17
'D'	#	Comments Received (if needed)	Date
		No Comments Received	-
'H'	#	Hearing Exhibits	Date
H.1	1	Letter from Gillespie, Prudhon & Assoc	11/17/17
H.2	1	Hearing Sign-in sheet	11/17/17

Department of Community Services
Land Use Planning Division
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DECISION OF HEARINGS OFFICER

Application for a Conditional Use/Community Service permit (CU/CS), Design Review Permit (DR Permit), Significant Environmental Concern for Wildlife Habitat (SEC-h), Lot of Record Verification, and Geologic Hazard Permit for the expansion of the City of Portland Water Treatment Facility at 6704 SE Cottrell Road, known as the Lusted Hill Water Treatment Facility.

Case File: T3-2019-11784

Hearing Date, Time, & Place: The hearing was opened at 9:00 a.m. on Friday, August 23, 2019, in Room 103 at the Land Use Planning Division office located at 1600 SE 190th Avenue, Portland, Oregon 97233, and was closed at 9:55 a.m. At the conclusion of the hearing, the record was held open until 4:00 p.m. September 13, 2019.

Permits: Community Service Conditional Use, Design Review, and Significant Environmental Concern for Wildlife Habitat (SEC-h).

Location: (Multiple Properties):

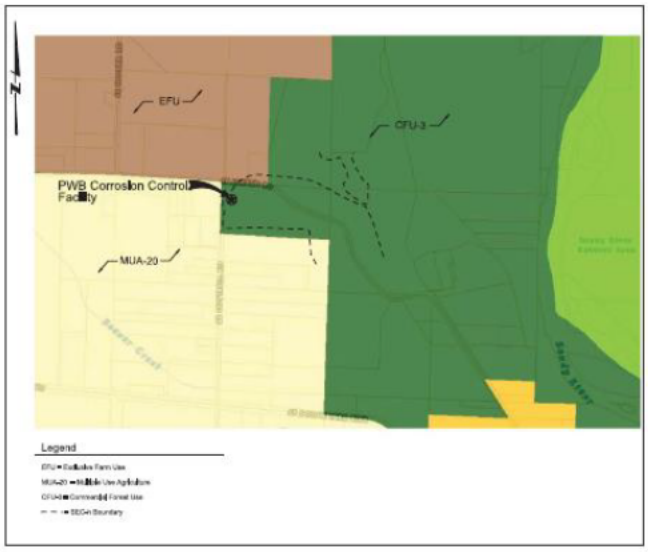
Property 1: 6704 SE Cottrell Road – 14.55 acres
Tax Lot 200, Section 22BA, Township 1 South, Range 4 East, WM
Alt. Acct. #R994220300 Property ID #R342553
Property Owner: City of Portland

Property 2: No Situs Address – 3.43 acres
Tax Lot 100, Section 22BA, Township 1 South, Range 4 East, WM
Alt. Acct. #R994221120 Property ID #R342633
Property Owner: City of Portland

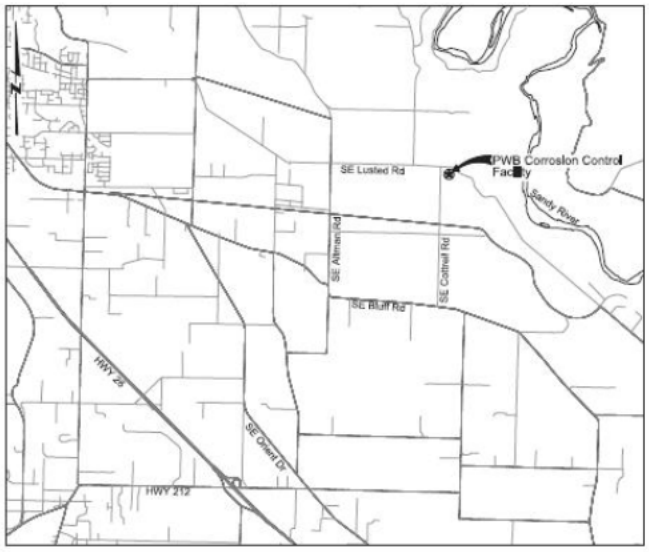
Property 3: 34747 SE Lusted Road – 20.3 acres
Tax Lot 801, Section 15C, Township 1 South, Range 4 East, WM
Alt. Acct. #R994150140 Property ID #R341824
Property Owner: Lusted Road Farms LLC

Property 4: No Situs Address – 7.57 acres
Tax Lot 500, Section 15, Township 1 South, Range 4 East, WM
Alt. Acct. #R994150400 Property ID #R501655
Property Owner: Samuel and Crofton Diack

	Property 5: No Situs Address – 22.91 acres Tax Lot 300, Section 22A, Township 1 South, Range 4 East, WM Alt. Acct. #R994220410 Property ID #R342564 Property Owner: Samuel and Crofton Diack
Applicant(s):	Tony Re, City of Portland Water Bureau
Base Zone:	Commercial Forest Use (CFU) zone
Overlays:	Significant Environmental Concern for Wildlife Habitat (SEC-h) and Geologic Hazard Overlay
Site Size:	See above site size(s) above under multiple properties
Summary:	The applicant has submitted a request to conduct improvements and expansion of the City of Portland Water Bureau Treatment Facility and distribution lines in the Commercial Forest Use (CFU) zone to accommodate corrosion control improvements. The applicant is seeking to expand the existing water treatment facility by adding the following corrosion control treatment structures: a horizontally mounted, 60-foot long, cylindrical liquid carbon dioxide storage tank, two 54-foot tall, 14-foot diameter cylindrical soda ash storage silos, a 1,200 square foot chemical building which contains chemical pumping and mixing equipment, and 400 square feet of outdoor electrical equipment, including a new standby generator. In addition, the applicant proposed to install new underground vaults and pipes adjacent to existing underground water distribution pipes located within existing easements.
Testified at the Hearing:	Katie Skakel, County Planner Michelle Cheek, applicant's representative Zoee Powers, applicant's attorney Dr. Jennifer Vines, Multnomah County Health Department Tom Taylor, area resident Kelly Hossaini, attorney for Lusted Road Farms, LLC Pat Meyer, representing Citizens for Peaceful Rural Living Mona Ayles, area resident Mercedes Brown, area resident



ZONING MAP
NTS



VICINITY MAP
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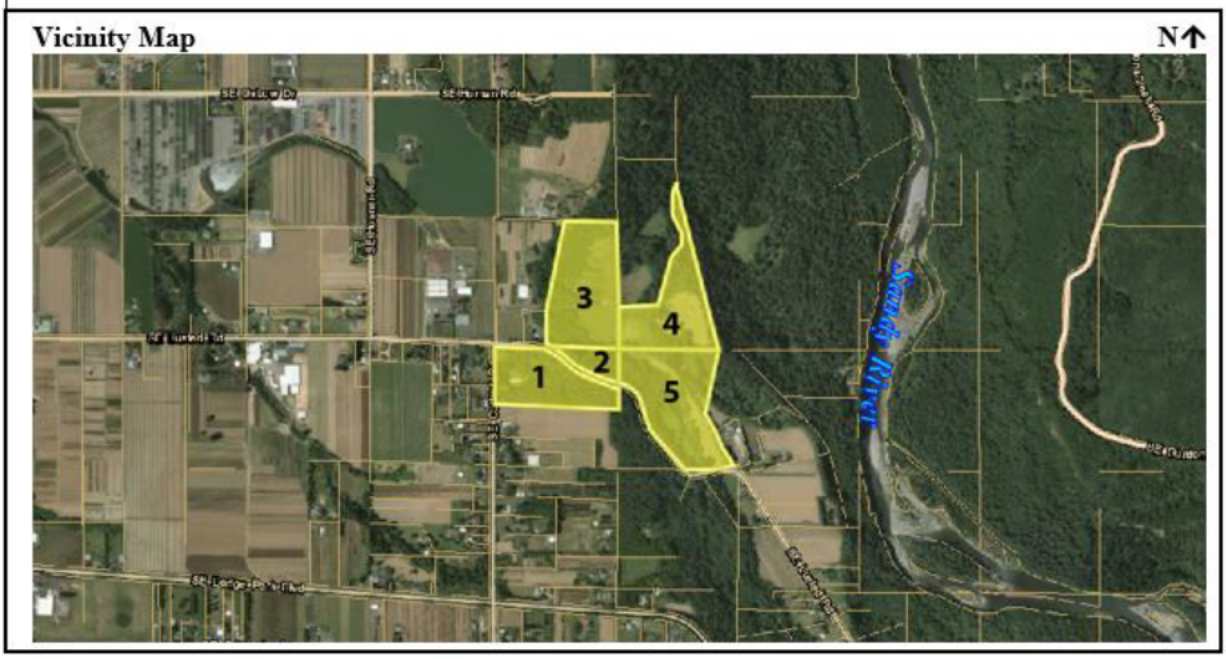


Applicable Approval Criteria:

Multnomah County Code (MCC)	
General Provisions:	
MCC 39.2000	Definitions
MCC 39.3005	Lot of Record – Generally
MCC 39.3010	Lot of Record – CFU

MCC 39.6850	Dark Sky Lighting Standards
Administration and Procedures	
MCC 39.1515	Code Compliance and Applications
Commercial Forest Use (CFU) Zone:	
MCC 39.4080(A)(5)	Conditional Uses – Water intake facility, related treatment facility, pumping station, and distribution line. The term "distribution line" includes water conduits and water transmission lines.
MCC 39.4100	Use Compatibility Standards
MCC 39.4105	Building Height Requirements
MCC 39.4110	Forest Practices Setbacks and Fire Safety Zones
MCC 39.4115	Development Standards for Dwellings and Structures
MCC 39.4135	Access
MCC 39.4145	Off-Street Parking and Loading
Significant Environmental Concern for Wildlife Habitat (SEC-h)	
MCC 39.5850	SEC-h Clear and Objective Standards
MCC 39.5860	Criteria for Approval of SEC-h Permit
MCC 39.5550	Existing Uses
MCC 39.5560	General Requirements for Approval in Areas Designated as SEC-wr or SEC-h
MCC 39.5580	Nuisance Plant List
Geologic Hazards	
MCC 39.5070 through MCC 39.5095	Geologic Hazards
Conditional Use and Community Service Uses	
MCC 39.7000 – MCC 39.7035; MCC 39.7500-MCC 39.7515 (For MCC 39.7515 only (A) through (H) apply)	Conditional Use and Community Service Uses
Parking, Loading, Circulation and Access	
MCC 39.6500 – MCC 39.6600	Parking, Loading, Circulation and Access:
Design Review	
MCC 39.8000 – MCC 39.8050	Design Review

DECISION: The request for Conditional Use/Community Service permit (CU/CS), Design Review Permit (DR Permit), Significant Environmental Concern for Wildlife Habitat (SEC-h), Lot of Record Verification, and Geologic Hazard Permit approval for the expansion of the City of Portland Water Treatment Facility at 6704 SE Cottrell Road, known as the Lusted Hill Water Treatment Facility is **Approved** subject to the conditions of approval included in this Final Order.

Conditions of Approval:

1. Scope of Approval: 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.

2. Permit Expiration –
    a. This land use permit shall expire as follows:
        i. When construction has not commenced within two (2) years of the date of the final decision, or; [MCC 39.1185(B)(1)]
        ii. When the structure has not been completed within four (4) years of the date of commencement of construction, or; [MCC 39.1185(B)(2)]
    b. For purposes of Condition 2.a.i, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway. [MCC 39.1185(B)(1)]
    c. For purposes of Condition 2.a.ii, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval. [MCC 39.1185(B)(2)]

    Note: The property owner may request to extend the timeframe within which this permit is 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.

3. Prior to Land Use Planning review and sign-off for a building permit, the applicant(s), owner(s), or their representative(s) shall record the Hearing's Officer Decision page 1 through 7 - the conditions of approval with the County Recorder. The Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]

4. Prior to Land Use Planning review and sign-off for a building permit, the applicant(s), owner(s), or their representative(s) shall obtain an Erosion and Sediment Control (ESC) permit from the County. Proof of issuance of the ESC permit must be submitted when the applicant brings the building plans in for sign-off. [MCC 39.6210]

5. Required landscaping shall be continuously maintained as shown on plan sheet (Exhibit A.21). [MCC 39.8045]. Provision shall be made for watering planting areas where such care is required to maintain the plants in a living condition. [MCC 39.8045(C)(4) and (6)]

6. Areas within the landscape strips that would otherwise contain bare soil shall include vegetative ground cover. [MCC 39.8045(C)(3)]

7. No nuisance plants as listed in MCC 39.5580 shall be planted on the subject property and the property must be kept free of the listed nuisance plants. [MCC 39.5860(B)(7)]

8. The applicant shall submit final design review plans. The plan shall reflect this approval and all approval conditions. [MCC 39.8030].

9. The property owner shall install the stormwater system designed by Adam Odell, PE as shown in the Stormwater report (Exhibit A.13) and on the submitted plans (Exhibit A.20) including the infiltration trench and filter strip, or as otherwise certified by an Oregon Registered engineer certifying the design will meet or exceed the expected 10-year, 24-hour storm runoff. This system shall collect and dispose of stormwater from new impervious surfaces and shall properly control the rate of flow for a 10year/24hour storm event with the runoff no greater than that which existed prior to development. [MCC 39.6235]

10. Parking of trucks equipment, materials, structures or signs or the conducting of any business activity shall be prohibited on any required parking space (pickup trucks exempt) [MCC 39.6520(B)].

11. Traffic directions shall be plainly marked on the pavement [MCC 39.6515]. All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 39.6530(A), and such marking shall be continually maintained [MCC 39.6515(A))].

12. Required landscaping shall be continuously maintained [MCC 39.8045 C(5)]. Provisions shall be made for watering planting areas where such care is required to maintain the plants in a living condition [MCC 39.8045 C(4)]. Should landscaping and newly planted and existing trees that are intended to screen die, to ensure that screening is maintained that the trees be planted with suitable screening trees, in size and stature.

13. MCC 39.4110(D)(2) require that fires safety zones be maintained.

14. The Fire Department has included two recommendations:
    a. Unless modified by the Gresham Fire District, the fire sprinkler system and fire alarm system will be required to be extend to building additions and new buildings during the

building permit process. An Oregon licensed engineer/architect will be required to evaluate the buildings including use and occupancy and provide that information with building permit. OFC 101

b. All Fire Dept Access Roads shall be drawn to scale and shown clearly on plans. The extended access roads shall be constructed and maintained to meet the following requirements. The minimum width is 20 feet wide. Access Roads on site shall be designed to support an apparatus weighing 75,000 lbs. (imposed load). This requirement is only for the access road itself. Provide an engineer's letter stating the access road meets those requirements with the building permit submittal. Turning radius for the access road is a minimum of 28 feet inside and 49 feet outside. OFC 503.2.4 OFC App D-102.1 OFC 1410, 503.2.1 & D103.1.

15. The City of Portland Sanitation Department has three requirements:
    a. Pavement drainage must be directed towards catch basins to avoid excess saturation of existing and repair drainfield area per OAR 340-071-220(1)(i).
    b. 50 foot setback to soakage trench.
    c. Drainfield and repair area must be protected from soil compaction during proposed tree removal process.

16. The applicant shall notify Lusted Road Farms, LLC prior to beginning excavation or construction within the easements on Tax Lot 801. The applicant shall provide Lusted Road Farms, LLC reasonably necessary access across or around the construction area as necessary to access the gate in the southeastern corner of Tax Lot 801 or as necessary to access farmed areas of Tax Lot 801 outside of the easement. Such access shall be provided upon reasonable advance request by Lusted Road Farms, LLC of the date and time of the needed access.

Dated this 26th day of September 2019

Joe Turner, Esq., AICP
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.

Findings of Fact

FINDINGS: Written findings 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. Staff comments may include a conclusory statement in *italic*. Staff findings have been accepted as findings by the Hearings Officer except where noted otherwise. Additional findings written by the Hearings Officer are preceded by the words "**Hearings Officer:**"

1.0 Project Description:

Applicant: The proposed locations of the new corrosion control facilities were carefully chosen to accomplish three objectives. **1) Minimize Wildlife Habitat Impacts**: All of the proposed above-ground improvements are located immediately adjacent or connected to the existing facility, leaving the rest of the site undisturbed; where possible, structures are located within existing cleared areas of the site, and also aligned to minimize tree canopy reduction. 2) **Maximize Operational Efficiency**: Consistent with the goal to minimize habitat impacts, the proposed structures are efficiently clustered; pipeline improvements are arranged along existing pipeline easements. 3) **Provide Visual Screening**: As shown on Drawing 1.2, proposed structures are located generally to the east of the existing building. This arrangement allows for the existing building to screen much of the new development from Cottrell Road.

Hearings Officer : The City of Portland Water Bureau is requesting approval of a Conditional Use/Community Service, Design Review, Significant Environmental Concern for Wildlife Habitat Permit, and Geologic Hazards permit, for improvements and expansion of the existing Water Treatment Facility (WTF) located at 6704 SE Cottrell Road. The existing facility was constructed in 1991. The intent of this project is to implement the Corrosion Control Improvement Project (CCIP) to reduce lead concentrations in tap water. The existing WTF must be expanded in order to provide the new treatment, adding chemicals to the Bull Run supply water for disinfection and for compliance with the Lead and Copper Rule (LCR).

As described in more detail in the applicant's narrative (Exhibit A.2) the new structures proposed with this project include:

- A horizontally mounted, 60-foot long, cylindrical liquid carbon dioxide storage tank.
- Two 50-foot tall, 14-foot diameter cylindrical soda ash storage silos.
- A 1,200 square foot chemical building, which contains chemical pumping and mixing equipment.
- 400 square feet of outdoor electrical equipment, including a new standby generator.
- A buried valve vault and six submersible pumps.
- 11,400 square feet of additional paving and construction of a covered offloading facility to accommodate large truck delivery traffic and maintain emergency vehicle circulation and related stormwater detention facilities. Working and chemical delivery areas are proposed with canopies, including a covered walkway between the new chemical building and the existing metal building.

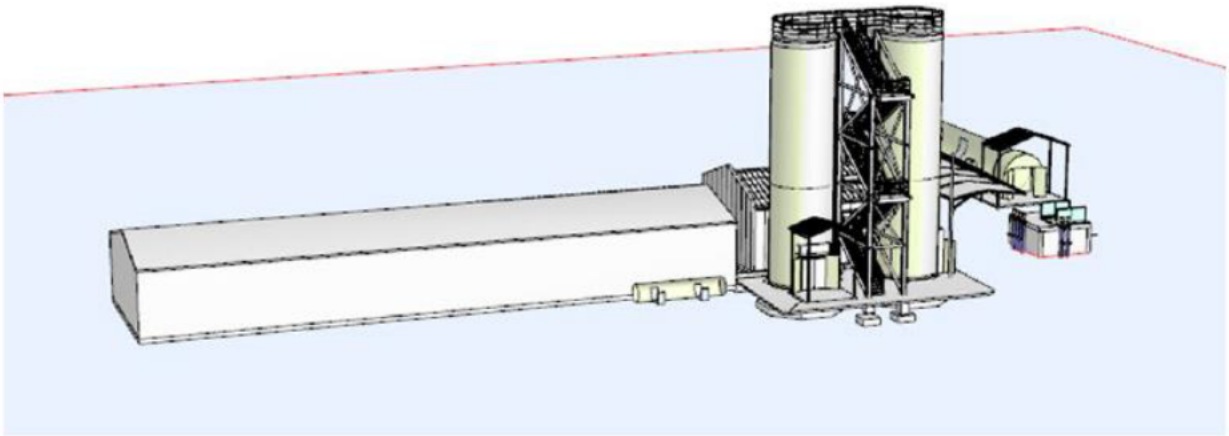
A significant part of the project takes place on Tax Lot 100 and Tax Lot 200, which combined form a 17.98 acre parcel (the "WTF site"). The majority of the improvements proposed in this application are located within the existing developed and cleared area of the WTF site. However,

the carbon dioxide storage tank, some of the paved vehicle circulation area, and some of the proposed piping and related facilities will need to be extended into the forested area of these tax lots. Therefore, this application includes a Wildlife Conservation Plan (Exhibit A.8) consistent with MCC 39.5860(C). The needed piping will be routed within the existing pipeline corridor, underground and parallel to existing pipeline infrastructure. By using the existing utility corridor creation of separate cleared areas will not be necessary.

Underground chemical feed pipelines will extend from the WTF site for a distance of approximately 1,800 feet within an existing pipeline easement east of the WTF site.

New paving is required to accommodate large trucks delivering soda ash and liquid carbon dioxide and to maintain emergency vehicle circulation. Chemical feed pipelines will be routed underground and parallel to existing pipeline infrastructure. Drawing 1.2 below is a 3D model showing the existing building (on the left) and proposed facility structures in the main complex.

Drawing 1.2: New Corrosion Control Facilities



Corrosion Control Improvements Project – Lusted Hill WTF April 1, 2019

LR, CSU, SEC-h, GH, DR Applications Page 11

2.0 Property Description & History:

Staff: The WTF site is heavily forested, with the current water treatment facility and ancillary uses located in a clearing on the west side of the WTF site. There is an existing driveway access from Cottrell Road on the west property line of the WTF site. The driveway is secured by a card-activated gate that is restricted to WTF operators and authorized visitors. A second access off of Lusted Road on the north property line is used only in emergencies and is a lawfully established nonconforming use per County land use permit number T3-2012-2648. Over the years there have been several permit applications on the subject properties. Below is a table of past land use cases:

Case Number(s)	Description
CS 3-91, DR 91-05-02	The original 3,000 square foot, pre-engineered, metal, on-grade single-story, Lusted Hill WTF structure was authorized by CS 3-91. The 1991 facility accommodated an ammonia

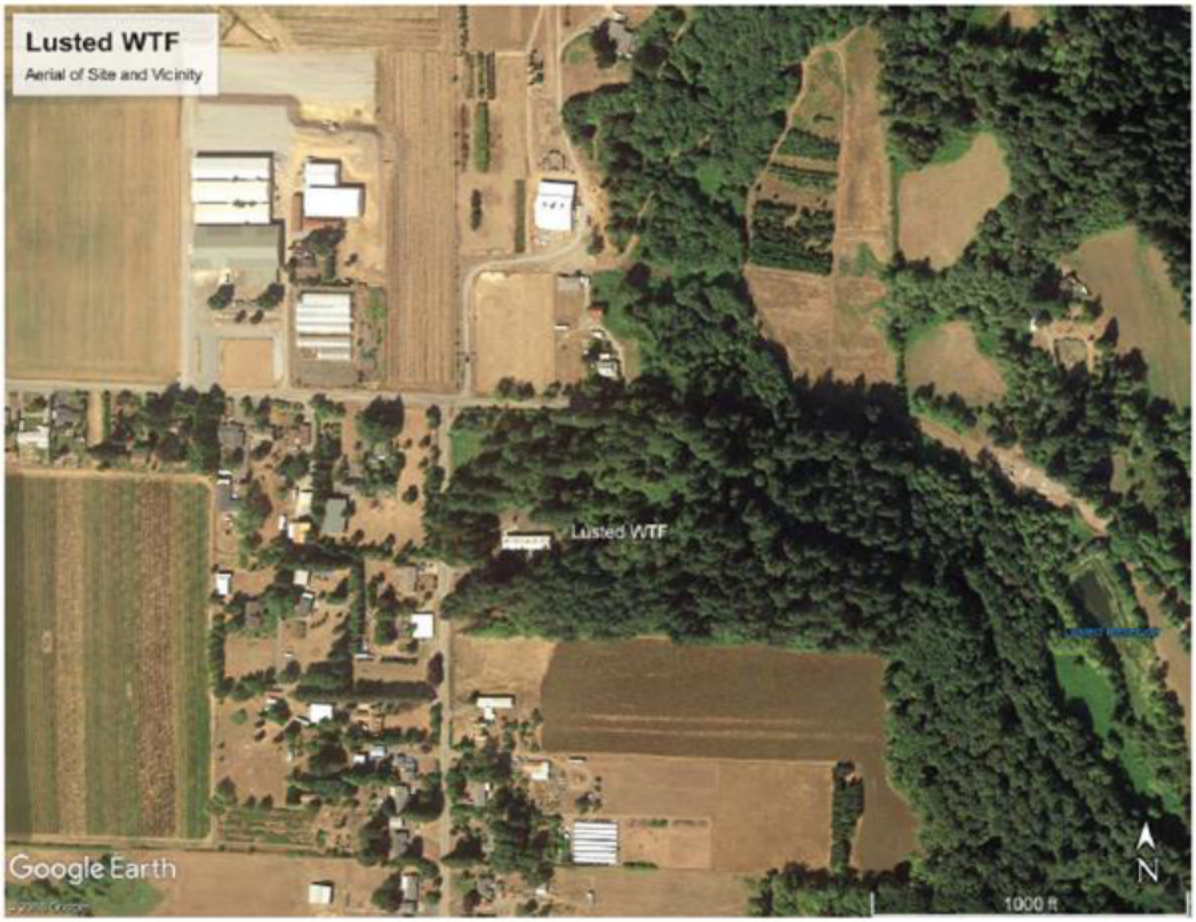
	storage and feed system, ammonia unloading station, control room/office space, work bench area, lab area, restroom, and generator room, including the paved circular drive and parking area, landscaping and eight-foot chain link security fence.
CS 2-95, HV 12-95, DR 12-95, GEC 36-95	In 1996 (following approval of CS 2-95), the facility was expanded from 3,000 square feet to approximately 4,800 square feet to add a caustic soda storage and feed system, storage and workshop areas, office space, lunch room and work out area, and a mechanical room. Paved parking and drive isles were expanded and additional landscaping was provided.
TP 2-96	Temporary placement of a construction trailer and subsequent storage of a mobile water treatment plant trailer starting January, 1996 and ending March, 1997.
CS 7-97, DR 13-97	Community Service Permit to establish a permanent location for a mobile pilot water treatment plant trailer.
T3-06-003	Community Service Permit and Significant Environmental Concern Permit to construct a Radio and Telecommunications tower to improve security and communication between the City of Portland's water works facilities in town and their Bull Run facility.
T2-07-057	Design Review Application & Exception to the Secondary Fire Safety Zone for a Radio & Telecommunication Tower in the CFU zoning district approved under application T3-06-003.
T2-07-057	Design Review Application & Exception to the Secondary Fire Safety Zone for a Radio & Telecommunication Tower in the CFU zoning district approved under application T3-06-003.
T3-2012-2648	Community Service Permit, Design Review, SEC, Road Rules Variance, and Exception to the Secondary Fire Safety Zone for the Expansion of a Water Treatment Facility for new operations building and replacement of an existing emergency power generator; however, the operations building was not developed.
T3-2017-7661	Community Service Permit, Design Review for replacement of the existing communications tower approved and installed in 2017.

The Conditional Use/Community Service is proposed to expand the facility on the WTF site, located on the southeast corner of the intersection with SE Lusted Road and SE Cottrell Road, within the Commercial Forest Use (CFU) zoning district in the West of Sandy Rural Area. This portion of the site is also within the Significant Environmental Concern for Wildlife Habitat (SEC-h) and subject to the Geologic Hazard (GH) overlay.

The existing WTF building (white roof in forested area) shown center-left in the photograph below, is surrounded by a mix of forest canopy and cleared areas. The communications tower (a small square) is visible immediately north of the facility. SE Cottrell Road (to the left/west) and SE Lusted Road (above/north) are clearly visible. A circular drive provides access to the WTF site from SE Cottrell Road.

The Lusted Hill site is in a rural transition area, with large tracts of agricultural (Exclusive Farm Use - EFU) land containing large agricultural buildings to the northwest, large tracts of forest (Commercial Forest Use - CFU) land to the north and east, and rural residential (Multiple Use Agriculture - MUA-10) land to the south and west. As shown in the photo below, much of the surrounding area is currently being farmed.

Photo 1.1: Existing Site Conditions



3.0 Code Compliance and Applications Criteria:

3.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: There are no known violations noted on the subject properties. *As conditioned, this standard is met.*

4.0 Lot of Record Commercial Forest Zone (CFU) Criteria

MCC 39.3005- LOT OF RECORD – GENERALLY.

(A) An area of land is a "Lot of Record" if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

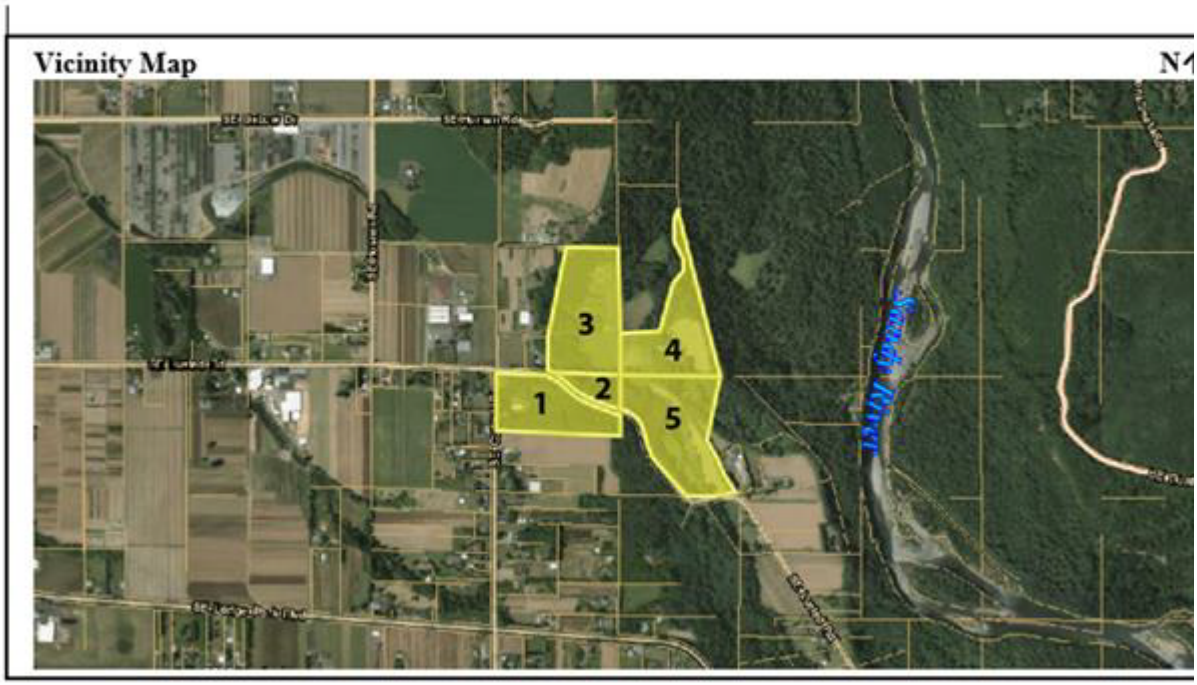
5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and

Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

MCC 39.3010- LOT OF RECORD – COMMERCIAL FOREST USE (CFU).
(A) In addition to the standards in MCC 39.3005, for purposes of the CFU district, a Lot of Record is either:
(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
(2) A group of contiguous parcels or lots:
(a) Which were held under the same ownership on February 20, 1990; and
(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.
1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.
2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.
3. Three examples of how parcels and lots shall be aggregated are shown in MCC 39.3070 Figure 1 with the solid thick line outlining individual Lots of Record.
4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or
(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.
(4) Exceptions to the standards of (A)(2) above:
(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.
(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Since there are multiple properties – staff has underlined Properties 1-5 (see map) and related Tax Lots.



Staff:
<u>Property 1</u>: **Tax Lot 200**, 14.55 acres Section 22BA, Township 1 South, Range 4 East, WM
Property Owner: City of Portland
<u>Property 2</u>: **Tax Lot 100** 3.43 acres Section 22BA, Township 1 South, Range 4 East, WM
Property Owner: City of Portland

In Case T3-06-003 the Hearings Officer found that **Tax Lot 100** (1S4E22BA) along with the parcel on the opposite side of SE Lusted Road to the northwest known as **Tax Lot 200** (1S4E22BA) are a Lot of Record (this is the site of the WTF and owned by the applicant). Both tax lots, which make up one parcel, are still owned by the City of Portland. The configuration has not changed since the 2006 permit, therefore the property is a Lot of Record.

Staff:
<u>Property 3</u>: Tax Lot 801 16.71 acres and **Tax Lot 800** 34747 SE Lusted Road – 20.3 acres
Section 15C, Township 1 South, Range 4 East, WM
Property Owner: Lusted Road Farms LLC

Tax Lot 801, owned by Lusted Road Farms, LLC, is greater than the 19-acre minimum lot size at 20.30 acres. It is also in the same ownership as abutting **Tax Lot 800** to the west. The above property was reviewed under T1-2018-9985 and verified in this review that the current property configuration came into existence under Warranty Deed Book 1095 (pg. 1 and 2) 3/29/1976, at which time it was zoned F2 with a minimum lot size of 2.0 acres, and under Warranty Deed Instrument #2016-064481 which was recorded 5/26/2016. According to T1-2018-9985, when aggregated, Tax Lot 800 and 801 are considered to be a Legal Lot of Record as defined in MCC 39.3010. This is consistent with Mr. Taylor's testimony that the Lusted Road Farms, LLC property is a 37-acre "U" shaped parcel. *This criterion is met.*

Staff:
Property 4 Tax Lot 500 7.57 acres
Section 15, Township 1 South, Range 4 East, WM
Property Owner: Samuel and Crofton Diack
Property 5 Tax Lot 300: 22.91 acres
Section 22A, Township 1 South, Range 4 East, WM
Property Owner: Samuel and Crofton Diack

Tax Lot 300 (22.91 acres) and **Tax Lot 500** (17.41 acres) are in the same ownership and are collectively 40.32 acres in size, but because the ownership spans a section line are assigned separate tax lot numbers in accordance with State standards. Title reports for both tax lots (Exhibit A.5) contain identical property surveys and describe the land as containing both lots. According to this review, when aggregated Tax Lot 500 and 300 are considered to be a Legal Lot of Record as defined in MCC 39.3010. *This criterion is met.*

5.0 Commercial Forest Zone (CFU) Criteria:

5.1 MCC 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 proposed expansion to the water intake structure and distribution line is listed as a Community Service under MCC 39.4080(A)(5), "water intake facility, related treatment facility, pumping station, and distribution lines" as part of the existing water treatment facility. The applicant is proposing improvements and expansion of the Lusted Hill Water Treatment Facility (WTF) which received community service use approval from Multnomah County in 1991 (CS 3-91) and 1995 (CS-2-95). The proposed water intake facility is subject to design review, which is addressed in Section 5.0 of this Final Order. *Staff finds the proposal is eligible for review under the Conditional Use/Community Service Use provisions.*

5.2. MCC 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.

Hearings Officer: The Water Treatment Site is in a transition area between rural residential (MUA-20) development to the southwest and farm and forest lands to the northwest and southeast. The applicant identified existing farm and forest uses within ¼ mile of the WTF site (See pgs. 11-65 of Exhibit I.1 and aerial photos). The identified area includes: various types of forest, shrubland, grass/pasture, farm fields, nursery stock, wetlands, residential and farm buildings. Farm crops include: dry beans, pears, blueberries, alfalfa, clover, other hay, sod/grass seed, walnuts, other tree crops, and grapes. The WTF has been in continuous operation since 1992 without any adverse impacts on farm and forest practices in the area. As such, the WTF serves as an effective buffer between rural residential development and resource lands. The applicant's narrative (Exhibit A.2) outlines that the proposed development provides a modest increase in space for uses currently existing on site, represents no increase in traffic or change in use, and adds no conceivable impacts to neighboring farm and forest uses.

While the subject properties (which include five properties) are zoned Commercial Forest Use, there are no active forest uses on the properties. Properties 1 and 2 are owned and being utilized by the City of Portland Water Bureau for water treatment. Portions of Properties 3, 4, and 5 are used for farming. However, much of the land is too steep for farming or forest uses (See p. 67 of Exhibit I.1). The existing development on the WTF site is located relatively close to Cottrell Road, with buildings, about 130 feet from the right-of-way. The new buildings are proposed approximately 300 feet from Cottrell Road and screened from Cottrell Road by 120 feet of forested area. The existing WTF building is screened from neighboring farm uses to the north and south by over 200 feet of forested area between the proposed buildings and the property line.

As described by the applicant, the proposed expansion will not create an increase in vehicular trips to site that could potentially impact nearby farm operations, making it more difficult to use public roads to move heavy equipment from farm to farm.

The proposed expansion also includes new underground vaults and pipes. These facilities will be located entirely underground, parallel to existing underground pipes located within existing easements and will not impact existing farm and forest practices any more than the existing underground facilities within the easements. As noted in Exhibit I.2, Lusted Road Farms, LLC, the owner of Property 3 and other properties in the area, occasionally uses an existing gate to cross the adjacent Diack property to the east in order to access SE Lusted Road with farm equipment. Excavation and construction within the easements could potentially limit this farm access while construction is occurring on the site. The applicant proposed to provide Lusted Road Farms, LLC with access over or around the construction areas upon reasonable advance notice. A condition of approval is warranted to that effect.

As noted in Exhibit I.2, the applicant is in the process of acquiring a portion of Tax lot 800 as well as expanding the easements on this and other properties in the area that are currently being farmed. However, these acquisitions are not proposed as part of this development and therefore, the acquisitions and potential future uses of these lands are not relevant to review of this application.

No development is proposed on lands zoned EFU. Therefore, ORS 215.296, cited by Ms. Hossaini, is inapplicable.

Based on the above analysis, it appears the proposed use will not cause any significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands. Farm uses are located a significant distance from the WTF site and buffered by the tree canopy on the WTF site. Pipes and vaults proposed outside of the WTF site will be located underground, within existing easements and alongside existing underground pipes. Excavation and construction within the easements may limit farm access during construction. However, such limitations are short term, while excavation and construction are actually occurring and the applicant agreed to ensure that alternative access remains available. As such, there will be no changes in the cost or practices associated with farm and forest uses on surrounding properties in the area. *As conditioned, this criterion is met.*

(b) Not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel.

Staff: The site of the Water Treatment Facility is within the Gresham Fire District (Exhibit A.7) with a hydrant located near the access to the property off of Cottrell Road. As shown in the applicant's site plan (Exhibit A.4), the WTF site meets primary and secondary fire breaks of the Commercial Forest Use zoning district. The Gresham Fire Marshal has reviewed proposed plans for the WTF expansion. A completed fire safety service form is included in (Exhibit A.7). The Fire Marshal indicates the site plan meets fire service standards, subject to conditions. Based on these findings, the proposed WTF expansion will not increase fire hazard, fire suppression costs, or risks to fire suppression personnel. Taken together, there is no increased risks of fire hazard or risks to fire suppression personnel; nor is there an increase in fire suppression costs for the local district. In addition, the proposal includes implementation of a 30-foot primary fire break and 100 foot (additional) secondary fire break consistent with MCC 39.4110 requirements.

The applicant proposed to modify Condition 14(1) in the Staff Report, to eliminate the requirement that fire sprinkler systems extend to building additions and new buildings. However, there is no evidence that the Fire District would approve the fire safety service form without this condition. Therefore, Condition 14 should be modified to allow the Fire District to modify the fire sprinkler and alarm requirements. *As conditioned, this criterion is met.*

(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.

Staff: The property owner has previously recorded this statement (Exhibit A.12). Instrument number 96 17447 is the covenant containing the language listed in this criterion. *This criterion is met.*

5.3 MCC 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: As shown on (Exhibit A.19), the two silos for soda ash storage will be approximately 54 feet in height, but under Subsection (B) above are exempt from the height limits of Subsection (A). All other buildings and structures are under 35 feet in height. *This criterion is met*

5.4 MCC 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:

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Set-backs	Front Property Line Adjacent to County Maintained Road (feet)	All Other Set-backs (feet)	Fire Safety Zone Requirements (FSZ)
Other Accessory structures	N/A	30	130	Primary & Secondary required
Other Structures	N/A	30	130	Primary & Secondary required

Staff: The proposed expansion includes a horizontally mounted, 60-foot long, cylindrical liquid carbon dioxide storage tank, two approximate 50-foot tall, 14-foot diameter cylindrical soda ash storage silos, a 1,200 square foot chemical building which contains chemical pumping and mixing equipment, and 400 square feet of outdoor electrical equipment, including a new standby generator which is considered an Other Structure under Table 1 in the CFU zone. As such, the structures must be setback 30-feet from the front property line and 130-feet from all other property lines. Additionally, these structures must meet the fire safety zones as defined in MCC 39.4110(D). As measured on the site plan (Exhibit A.4), the new silo buildings are located over 60 feet from the front property line (Cottrell Road) and more than 250-feet from any other property line. All of these structures meet the Forest Practice Setbacks.

MCC 39.4110(D) requires a primary fire safety zone of 30-feet and a secondary fire safety zone of 100 feet, unless an exception to the secondary fire safety zone is granted under MCC 39.4110. The underground infrastructure related to the proposed expansion are not subject to these requirements because of how "structure" is defined. A "structure" is defined 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." "Building" is defined as "any structure used or intended for supporting or sheltering any use or occupancy." Staff does not

consider the associated underground pipeline to meet definition of building or structure and because of this it is not required to meet fire safety zone setbacks. *This criterion is met.*

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

Staff: There is no reduction in Forest Practices Setback dimension requested or required. *This criterion is not applicable.*

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

Staff: There is no reduction in Forest Practices Setback dimension requested or required. *This criterion is not applicable.*

(C) The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with 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 setback requirements in consultation with the Road Official..

Staff: The new structures are proposed to be clustered with legally existing structures that do not require additional right of way per County Road Officials. Therefore, the structures meet the secondary fire safety zone. *Criterion is met.*

(D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

Staff: As shown on (Exhibit A.4 and A.15), the primary safety zone of 30 feet around all of the buildings is met, including the fact that there are no trees in the 30-foot primary fire safety zone. *This criterion is met*.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

Staff: As shown on (Exhibit A.4) the proposed buildings, and areas within 30 feet of proposed buildings, are located in areas with less than ten percent slope. Therefore, no extension of the primary fire safety zone is required. *This criterion is met*.

(c) The building site must have a slope less than 40 percent.

Staff: The proposed building site has a slope less than 40 percent. *This criterion is met.*

(2) Secondary Fire Safety Zone. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

Staff: As shown on the site plan (Exhibit A.4) the primary and secondary fire safety zones as depicted on the site plan show that both the primary and secondary fire safety zones are met. Staff recommends an on-going condition of approval be established requiring that the primary and secondary fire safety zones be maintained according to MCC 39.4110 standards. *The proposal meets these standards through implementing the recommended condition of approval.*

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

Staff: There is no evidence in the record to suggest the subject properties are subject to a forest management plan for which the proposed development could conflict. *This criterion is met.*

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

Staff: The proposed new structures are clustered near the legally existing structures. As such, the structures must be 30-feet from the front property line and 130-feet from all other property lines.

Additionally, they must meet the fire safety zones as defined in MCC 39.4110. The proposed structures meet the Forest Practice Setbacks. *This criterion is met*.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: As shown on the site plan and tree removal plans (Exhibit A.4, Exhibit A.15 and A.16) the primary and secondary fire safety zones have been established as depicted on the site plan, showing that both the primary and secondary fire safety zones are met and as conditioned will be required to be maintained. A condition of approval will require that Portland Water Bureau maintain vegetation as an ongoing use of the WTF facility to maintain the fire safety zones. *With condition of approval, primary and secondary fire breaks will be enforced consistent with this standard.*

5.5 MCC 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.
All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:
(1) Expansion of existing dwelling.
(a) Expansion of 400 square feet or less additional ground coverage to an existing dwelling: Not subject to development standards of MCC 39.4115;
(b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 39.4115(C).

Staff: There is no existing dwelling. *This criterion does not apply***.**

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115(C);

Staff: There is no existing dwelling. *This criterion does not apply***.**

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) and (C);

Staff: There is no existing dwelling; therefore, these standards do not apply. As explained in the application narrative (Exhibit A.4), the proposed new buildings are primary to the permitted conditional use. *This criterion does not apply.*

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 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: No dwellings exist or are proposed on the site; therefore, these standards do not apply. As explained in Section 1 of this application narrative, the proposed new buildings are primary to the permitted conditional use. *This standard does not apply.*

(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.

(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(2) Evidence of a domestic water supply means:
(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
(b) A water use permit issued by the Water Resources Department for the use described in the application; or
(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Staff: Water supply to the site is provided by the Pleasant Home Water District via a six-inch water main in Cottrell Road. The Water Service Provider form is included in (Exhibit A.7). *This criterion is met.*

4.4 MCC 39.4120 LOT SIZE REQUIREMENTS.
(A) The minimum lot size for new parcels or lots shall be 80 acres, except as provided in MCC 39.4125, 39.4130, 39.4140, 39.3010, 39.3020, 39.3030, 39.3040, 39.3050 and 39.3060.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

Staff: No new lots are being created. *This criterion is not applicable.*

(C) The minimum Front Lot Line Length is 50 feet, except for flag lots as provided in MCC 39.9510(D).

Staff: No new lots are being created. *This criterion is not applicable.*

4.5 MCC 39.4135 ACCESS.

All lots and parcels in this base zone shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 39.3010(C).

Applicant: The WTF complex is accessed from SE Cottrell Road through a card-activated gate that is restricted to WTF operators and authorized visitors. The general public cannot access or use the WTF. A secondary access (blocked by a cable) is provided via a jeep track from SE Lusted Road. This secondary access is used only in emergencies and is a lawfully established nonconforming use per T3-2012-2648. A paved 24-foot wide looped driveway provides access from SE Cottrell Road to the existing building and storage area. Delivery trucks drive through the building to the internal unloading and chemical storage area.

Staff: Access to the site is provided via a gated driveway on Cottrell Road. No new or modified street access is proposed for the site as part of this development. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 39.3010(C), which has been confirmed for the five properties. *This criterion is met.*

4.6 MCC 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(R) 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: A new lot is not being created to accommodate the proposed project. The applicant has submitted Lot of Record verification for the five parcels that are the subject of this application. *This criterion is met*.

4.7 MCC 39.4145 OFF-STREET PARKING AND LOADING.

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

Staff: Parking and Loading standards of MCC 39.6500 through 39.6600 are addressed in Section 8 below.

5.0 Conditional Use / Community Service Uses (CS) Criteria:

5.1 MCC 39.7500- PURPOSE.
This subpart of MCC Chapter 39 provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate as specified in each base zone.

5.2 MCC 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.

Staff: The five parcels that make up the site are all zoned CFU – Commercial Forest Use. Water treatment and distribution facilities are listed as a community service use in MCC 39.4080(A). The existing WTF received community service use approval from Multnomah County in 1991 (CS 3-91) and 1995 (CS-2-95). The proposed water utility facility is subject to design review, which is addressed in Section 5.0 of this Final Order. *These general provisions are met*

(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: An amendment to the Zoning Map has not been proposed. The base zone is and will continue to be Commercial Forest Use (CFU). *This criterion is not applicable.*

5.2 MCC 39.7510 CONDITIONS AND RESTRICTIONS.
The approval authority may attach conditions and restrictions to any community service use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, parking, loading, circulation, access, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

Hearings Officer: The hearings officer imposed conditions of approval under this authority.

5.3 MCC 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;

Applicant:: As detailed in this response: 1) The County Hearings Officer found the existing use and structures to be consistent with the character of the area in 1995;
2) The proposed additions will not make a visually significant difference to the area due to development location and extensive screening;
3) The character of the area has not significantly changed since 1995;
4) The proposed additions continue to be consistent with the visual character of the area, as the impact (study) area continues to include many large agricultural buildings and large metal sheds /workshops;
5) No other potential impacts from the proposed addition will affect the character of the area; and
6) We conclude the proposed addition will be consistent with the character of the area.

Photo Pair 2.1: View of WTF through Limbed Trees from SE Cottrell Road

Staff: The area around the subject property and proposed expansion of the water treatment facility is a mix of forest land and uses, farm land and uses, and residential land and uses. The types of uses and buildings in the immediate area consist of large and small barns, miscellaneous agriculture buildings used for large farm nursery stock operations and residences with small and large accessory buildings. Many, if not most, of the barns, other agricultural buildings and accessory structures are made of wood or metal materials and are generally square and rectangular in design. The general design of the proposed soda ash silos and other proposed buildings consists of materials consisting of wood and some metals. The overall appearance of the two silo structures resembles a farm type silo (Exhibit A.18), which is commonly found in the rural area.

The subject properties, along with properties to the north and east, are within the Commercial Forest Use (CFU) zone district. As far as the development on the other properties that will be utilized for the pipeline these sites are sparsely developed, forested, and have parcel areas roughly ranging between twenty (20) and forty (40) acres in size. Portions of the CFU zoned properties are actively farmed. Properties zoned Exclusive Farm Use (EFU) are located to the immediate north and northwest. Properties in the EFU district are generally between fifteen (15) and twenty (20) acres in size and are actively farmed. To the immediate west, southwest and south, parcels are zoned Multiple Use Agriculture-20 (MUA-20). The MUA-20 parcels are more densely developed with residences and small parcels ranging between one (1) and twelve (12) acres in size. Some of the MUA-20 parcels are also actively farmed.

A water treatment facility is not a common use in the rural area. However, it is a necessary use for the municipalities in the area. The subject water treatment facility has been operating on site since 1995. Prior to that the site was still owned by the City of Portland Water Bureau and used for water bureau purposes. Therefore, the existing facility is part of the character of this area. Farm uses which are common in the area, are generally similar to industrial uses with the noise, smells, and activity levels consistent with loading docks, transfer locations, processing facilities etc. Residences in the rural area often have shops, hobby farms, and other more intense uses. In that regard the water treatment facility is not out of character in its intensity and scope. As

described by the applicant, with the number of employees, trips, and noise levels, the water treatment facility will have less of an impact than a commercial farm use.

Considering the water treatment facility sits at least 65-feet into the property, is surrounded by forest canopy, and has relatively low intensity level of use, the structure and use fit into the character of the area. Staff concurs with the applicant's findings that the proposed Portland Water Bureau Facility is generally consistent with the character of the area in terms of both scale and neighborhood setting. *This criterion is met.*

(B) Will not adversely affect natural resources:

Staff: A water treatment facility is an existing use on the property. The subject application is for an expansion of that use. The natural resources on the site are forested wildlife habitat (SEC-h) and geologic hazard (GH) overlay. The SEC-h requirements are intended to protect this resource, and findings demonstrating compliance with applicable SEC-h and GH standards are found later in Section 11 of this Final Order. To the extent that SEC-h and GH standards are met, *this criterion is also met.*

***(*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

Applicant:. Farm and forest uses in the impact area have not changed in any material way since 1995. In 1995, the Hearings Officer incorporated the following findings in support of his decision to approve PWB's WTF expansion request that "the proposed improvements will not conflict with farm and forest operations in the area, and will not increase the off-site impacts on neighboring farm and forest lands beyond the level already approved in CS 2-95."

Hearings Officer: Based on the applicants narrative and photographs (Exhibit A.2), plans for expansion (Exhibit A.4), and analysis of existing farm and forest uses in the area, the fact that this is an expansion of an existing WTF facility, and the fact that the use and operation of site is not increasing traffic or visitation to the property; the hearings officer finds that proposed expansion will not cause a change to farm/forest practices on surrounding lands. In addition, the hearings officer incorporates the findings in Section 5.2 above, in support of this finding *This criterion is met*.

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

Hearings Officer: The new buildings as proposed are approximately 300 feet from Cottrell Road and screened from Cottrell Road by 120 feet of forested area as well as the existing WTF building, and from neighboring farm uses to the north and south by over 200 feet of forested area between the proposed buildings and the property line. There will be no additional interaction, and therefore no adverse impacts, between the site and neighboring land uses. As discussed above, excavation and construction within the existing pipeline easements could restrict farm equipment access during construction. The applicant agreed to a condition requiring that the applicant provide access across or around the construction area to ensure that construction activities will not disrupt farming operations. Once construction is completed all facilities within the easements will

be located underground where they will have no impact on farming activities. Farm access over the easement will be available as currently exists. *As conditioned, this criterion is met*.

(D)Will not require public services other than those existing or programmed for the area;

Staff: This standard is generally applied to the need for any new public infrastructure generated by the proposal. The proposal does not require additional public services or infrastructure or any other road improvements on Cottrell Drive. The applicant notes that no new public services are required for the proposed WTF expansion. Proposed utilities and pipes are shown on (Exhibit A.4) Completed service provider forms are provided in (Exhibit A.7). Water, sanitation, and stormwater will be accommodated on site. *The criterion is met.*

(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;

Staff: This site has not been identified by the Multnomah County Comprehensive Plan or the Oregon Department of Fish and Wildlife as having big game habitat value. *The standard is met.*

(F) Will not create hazardous conditions;

Applicant: The Hearings Officer adopted the following findings by reference in his 1995 approval decision: *"The Bureau desires to alter the existing use at Lusted Hill by adding facilities to store and feed the three corrosion treatment chemicals (sodium carbonate, sodium hydroxide and carbon dioxide). Each of these chemicals is briefly discussed in terms of its delivery, storage and handling requirements. Each of these chemicals must be delivered, stored and handled in prescribed manners to avoid hazardous conditions, both to the workers and to the general public as well as to the environment. There are numerous codes in effect which apply to these chemicals that must be adhered with to comply with local, state and federal requirements. These requirements apply to the delivery of the chemicals, and response plans in case of accidental spills, as well as to their on-site storage and usage. The liquid sodium hydroxide must be stored in such a manner that prevents any material which may leak from entering the surface water or groundwater. The carbon dioxide storage vessel must meet all applicable codes for high-pressure containers. The carbon dioxide itself is not considered a hazardous chemical except in confined spaces where it may displace oxygen. The dry soda ash is not considered to be a hazardous chemical when handled properly.*

Staff: The existing use and proposed expansion of the water treatment facility by its nature uses hazardous chemicals. The City of Portland Water Bureau serves the City of Portland and several other suburban cities for drinking water. As a result of their responsibility to their citizens and employees, the city has policies and procedures in place to ensure compliance with federal and state requirements regarding the transport, handling, and use of hazardous chemicals. The site has shown a history of operating without incident. The new buildings and paving area will not significantly increase traffic or alter the vehicle maneuvering on site to create a hazardous pedestrian/automobile interface.

As described by the applicant and reviewed by staff, the proposed buildings and emergency generator will not create a hazardous condition because adequate licensing and handing procedures through local, state and Federal agencies will help to mitigate possible hazardous

conditions that the storage and use of these chemicals will create. According to the applicant, the proposed improvements remove the use of sodium hydroxide on the site, replacing the sodium hydroxide with sodium carbonate. Sodium carbonate and carbon dioxide will continue to be delivered and stored consistent with approved findings.

Staff finds that because of state and federal agencies providing adequate licensing and handling standards and procedures to ensure that hazardous conditions are not created on the site. *This criterion is met*.

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

Staff: Multnomah County staff identified three applicable plan polices, 11.12, 11.13, and 11.17 which are reviewed as follows: 1) *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.*

Applicant: Potable water is currently received from the local private water system (Pleasant Home Water District) from a 6" water main in Cottrell Road. Please see Appendix D for Pleasant Home Water District certification and fire flow.

2) 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.

The existing facility is connected to a DEQ approved on-site septic system. The existing septic system is capable of handling wastewater from the existing building restrooms and kitchen. Some pavement expansion required for the proposed development extends on to an existing backup drainfield. Therefore, the backup drainfield is proposed to be moved slightly to the north. Septic certification from City of Portland Bureau of Development Services (BDS) relating to the revised backup drainfield location is included in Appendix D.

3) 11.17 As appropriate, include school districts, police, 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. Strategy 11.17-1: Encourage school districts to review land use proposals for, among other factors as determined by the school district, impacts to enrollment and the district's ability to meet community educational needs within existing or planned district facilities and impacts to traffic circulation and pedestrian safety. Strategy 11.17-2: Encourage police, fire protection, and emergency response service providers to review land use proposals for, among other factors as determined by the agency, sufficiency of site access and vehicular circulation and, for fire protection purposes, the availability of adequate water supply, pressure, and flow, whether provided on-site or delivered from off-site. The site is within Gresham School District #4; the City of Gresham provides fire protection services; public safety services are provided by the Multnomah County Sheriff's' Office.

Staff Finding: The three applicable plan polices, 11.12, 11.13, and 11.17 which are reviewed as follows: 1) 11.12 A water supply system and 11.13 Wastewater disposal for new development and 11.17 police, fire, and emergency services. There will be no increase in employees on site; and the use remains materially the same, therefore there will be no impact on police services related to the site. Accordingly, service provider forms for schools and police services were not required by County staff in the pre-application conference. As indicated in (Exhibit A.7), the Gresham Fire Department has determined the proposed site plan requires no changes for fire service and the applicable plan policies of 11.12 and 11.13 addressing water and sewer are addressed in the service provider forms also in (Exhibit A.7). *This criterion has been met.*

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

Staff: Staff concurs with the applicant that compliance has been demonstrated with all the applicable approval standards of the Community Service code section (Exhibit A. 7). By meeting the zoning code approval criteria and demonstrating that service providers have signed off on the proposal, the comprehensive plan policies are satisfied. *This criterion is met.*

(I) In the West of Sandy River Rural Planning Area, the use is limited in type and scale to primarily serve the needs of the rural area. (Ord. 1270, Amended, 03/14/2019)

Staff: The proposed community service is exempt from this criterion as stated under MCC 39.7515(A). *This criterion does not apply to the WTF*.

<u>MCC 39.7520 USES.</u>
(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.

Staff: The proposed expansion of the Water Treatment Facility in the CFU zone is eligible for review through Community Service Use Provisions. *This criterion is met***.**

(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 proposed expansion to the Water Treatment Facility is a utility facility eligible for review through Community Service Use Provisions subject to approval criteria in MCC 39.7515 (A) through (H). *This criterion will be addressed below.*

<u>MCC 39.7525 RESTRICTIONS</u>.
A building or use approved under MCC 39.7520 through 39.7650 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, MUA-20, RR, BRC, OCI, OR and PH-RC, UF-20, LR-10, 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.

Hearings Officer: The buildings and use are proposed on property within the Commercial Forest Use zone. The two silo buildings and other proposed accessory buildings are located over 65 feet from the front yard which exceeds the front yard minimum of 30-feet. The proposed new buildings are setback more than 150-feet from the side and rear property lines. *This criterion is met*

(B) Minimum yards in LR-7, LR-5 and MR-4 Base Zones.

Staff: The site is not located in these base zones. *This criterion is not applicable*.

(C) Minimum Site Size:

Staff: The proposed use is not listed and therefore is not subject to a minimum site size. Nonetheless, the parcel is just under 20-acres in size. *This criterion is met.*

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

Staff: Off-street parking and loading standards are addressed under MCC 39.6500 through MCC 39.6600.

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

Staff: The proposed use does not include signs. The provisions of MCC 39.6700 through MCC 39.6820 are not applicable. *This criterion is met.*

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

Staff: Any restrictions or limitations required by the district are addressed under Finding #5 above. *This criterion is met.*

7.0 Design Review Criteria:

7.1 MCC 39.8010 DESIGN REVIEW PLAN APPROVAL REQUIRED.
No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this Code.

Staff: The proposal includes buildings, grading, and parking, The following Design Review standards are addressed in the findings below.

7.2 <u>MCC 39.8020 APPLICATION OF REGULATIONS</u>.
(A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.

Staff: There are no new parking spaces proposed for the expansion of the Water Treatment Facility. There are seven existing striped and paved parking spaces at the Water Treatment Facility. Two of the parking spaces are used for operational employees. Five additional spaces are reserved for visitors to the facility and for maintenance of the communication tower. The application is for a Community Service Use that is not exempted by MCC 39.8015 and it is therefore subject to the provisions of MCC 39.8000 through MCC 39.8050.

(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: MCC 36.8040(A)(1)(a) and (1)(c), (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.

Staff: No new parking spaces are proposed for the expansion of the Water Treatment Facility. *This criterion is met.*

d

(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

Staff: Because no new parking spaces are proposed, Design Review Approval Criteria listed in MCC 39.8040 and 39.8045 will still need to be reviewed. All other uses will need to be reviewed in Section 7 below.

(D)Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

Staff: Proposed alterations will be reviewed through Design Review Approval Criteria listed in MCC 39.8040 and 39.8045 in Section 7 below.

<u>7.3 MCC 39.8025 DESIGN REVIEW PLAN CONTENTS.</u>

(A) The design review application shall be filed on forms provided by the Planning Director and shall be accompanied by a site plan, floor plan, architectural elevations and landscape plan, as appropriate, showing the proposed development.

(B) Plans shall include the following, drawn to scale:

(1) Access to site from adjacent rights-of-way, streets, and arterials;
(2) Parking and circulation areas;
(3) Location, design, materials and colors of buildings and signs;
(4) Orientation of windows and doors;
(5) Entrances and exits;
(6) Existing topography and natural drainage;
(7) Pedestrian circulation;
(8) Boundaries of areas designated Significant Environmental Concern, Geologic Hazards and Areas of Special Flood Hazards;
(9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;
(10) Areas to be landscaped;
(11) Exterior lighting location and design;
(12) Special provisions for handicapped persons;

(13) Surface and stormwater drainage and on-site waste disposal systems;
(14) The size, species, and approximate locations of plant materials to be retained or placed on the site; and
(15) Proposed ground-disturbance, grading, filling and site contouring.

Applicant: New structures proposed with this project include:
• A horizontally mounted, 60-foot long, cylindrical liquid carbon dioxide storage tank.
• Two 50-foot tall, 14-foot diameter cylindrical soda ash storage silos.
• A 1,200 square foot chemical building which contains chemical pumping and mixing equipment.
• 400 square feet of outdoor electrical equipment, including a new standby generator.
• A buried valve vault and six submersible pumps.
• Increased paving of 11,400 square feet and construction of a covered offloading facility to accommodate large truck delivery traffic and maintain emergency vehicle circulation, and related stormwater detention facilities.
• Underground chemical feed pipelines extended from the WTF for a distance of approximately 1,800 feet within an existing pipeline easement east of the WTF.
• Water supply/chemical feed piping - Needed piping will be routed within the existing pipeline corridor, underground and parallel to existing pipeline infrastructure. By using the existing utility corridor, creation of separate new cleared areas will not be necessary and no additional habitat fragmentation will occur

Staff: The submitted plans include all the elements listed above, as applicable. Plans submitted by the applicant are found in Exhibit A.4. *This criterion is met.*

7.4 <u>MCC 39.8030 FINAL DESIGN REVIEW PLAN.</u>
Prior to land use approval for building permit review or commencement of physical development where no additional permits are necessary, the applicant shall revise the plans to show compliance with the land use approvals granted, all conditions of approval and required modifications. Final design review plan shall contain the following, drawn to scale:

(A) Site Development and Landscape Plans drawn to scale, indicating the locations and specifications of the items described in MCC 39.8025, as appropriate;

(B) Architectural drawings, indicating floor plans, sections, and elevations; and

(C) Approved minor exceptions from yard, parking, and sign requirements.

Staff: *As conditioned, the standard is met*.

7.5 <u>MCC 39.8040 DESIGN REVIEW CRITERIA</u>.

(A) Approval of a final design review plan shall be based on the following criteria:

(l) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

Applicant: "Proposed floor plans and elevations are shown in Sheets 7-10. This standard has three elements to which a "harmonious relationship" applies: first, to the natural environment; second, to existing buildings; and third, to structures having a visual relationship with the site. Each of these elements are addressed below. **Harmonious relationship to the natural environment.** The natural environment on site is predominantly Douglas fir forest. Previous design reviews have found that the existing facilities (including a Butler building and communications tower) were consistent with this standard. The Wildlife Conservation Plan (Appendix E) and SEC-h Mitigation Plan (Sheet 16) show mitigation plantings, landscape plantings, and invasive species removal that will increase the site's overall harmonization with the natural environment. **Harmonious relationship to existing buildings.** As shown on the Site Plan (Sheet 3) and the Utilities, Parking, Loading, Circulation, Signage and Drainage Plan (Sheet 4), proposed development is integrated with and adjacent to the existing building and circulation areas on site. As shown on Sheets 8-10 (Architectural Elevations and Detail) new buildings are proposed to be a neutral color and metal, consistent with the WTF structures that exist on site. **Harmonious relationship to structures having a visual relationship with the site.** As discussed extensively under CFU findings in Section 2, the property is viewable from houses to the west, southwest, south, and north. However, developed areas of the site are screened by extensive vegetation from every direction. Some parts of the existing building are visible from Cottrell Road, through 60 feet of forested area, due to limping and underbrush removal required by fire break standards. New buildings will be located to the east, behind the existing building. As the proposed development is behind at least 60 feet of forested area, as well as the existing building, from the most visible point on Cottrell Road, additional visible impact is not expected. Therefore, no additional screening is necessary. As noted above, the proposed neutral color scheme will continue to blend harmoniously with the forest background.

Hearings Officer: The proposed development is clustered with the existing development on the WTF site as required by the CFU and SEC-h code as well as to enhance the functionality of the WTF by locating structures near each other. The proposed development will relate harmoniously to the natural environment and existing buildings and structures. The proposed structures are located behind, to the east of, the existing facility, which will aid in screening the new buildings. The materials and designs of the proposed structures reflect the existing farm buildings in the surrounding area. In addition, the existing and proposed structures are largely screened from offsite views by the existing heavily forested buffer on the perimeter of the WTF site. All proposed above-ground development is more than 200 feet from any farm or forest use. Based on the narrative (Exhibit A.4) and review of site plans (Exhibit A.15) the site is buffered by a forest canopy and public roads.

The "site preparation, construction limit and tree removal plan" (Exhibit A.15) shows trees that will be removed from the site to accommodate additional circulation of trucks on the site. The remaining forest canopy on the perimeter of the site helps screen the structures. The use does not generate dust due to paving of site. Noise related to the proposed expansion includes the on-site generator, which is used only in emergencies and is sound insulated. The applicant asserts that the chemical offloading from delivery trucks will generate noise comparable to a lawn mower. The applicant states that there should be no sound impacts as deliveries are restricted to normal working hours and the loading area is buffered by at least 100 feet of forested area, located behind existing and proposed buildings, under a canopy, and over 400 feet from nearest residence.

Due to the highly regulated nature of the chemicals and the requirement that the site be compliant with state and federal standards related to the handling of chemicals stored and used at the site;

there should not be any odors associated with the activity on the site that could impact farm or forest use. There have been no complaints to Code Compliance officer since the operation has been in effect.

The applicant presents a lighting plan (Exhibit A.10) that shows lighting that consists of hooded lights directed downward towards the developed area on the site. The color of the buildings are proposed to be "neutral color scheme" to blend in harmoniously with forest background. *With condition of approval, the criterion is met.*

(b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.

Staff: The proximity of the proposed structures promotes energy conservation and reduces the amount of earth disturbance because they are building in the existing cleared area. The proposed configuration allows the entire development site to interact effectively and efficiently. As shown on (Exhibit A.4), developed areas on site are surrounded by forested areas which helps promote protection from adverse climate conditions, helps buffer noise, and helps with air pollution. This natural forest screening provides protection from the elements, and provides a sound buffer into and out of the site. *This criterion is met*

(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter related, and shall provide spatial variety and order.

Applicant: The proposed new buildings are designed and located to serve their basic engineering functions in a compact setting. The circulation system is designed to efficiently serve the building complex. The building design is also functional as is appropriate for a utility facility. The color scheme of existing and new buildings blends harmoniously with the forest background. Improvements adjacent to circulation areas. The carbon dioxide storage tank, valve vault with submersible pumps, and portions of the stormwater filtration trench and relocated fencing will be located within forested areas immediately adjacent to the paved circulation areas and across from the new chemical building and silos (located in cleared areas). These facilities have been clustered as close to the existing developed site as possible to minimize intrusion into and fragmentation of the forest.

Staff: Based on site plans (A.4) and Narrative (A.2), the proposed silo buildings, while intended to serve a specific function, are designed to blend with the surrounding human scale environs of a working farm area. The proposed development is clustered with the existing development as required by the CFU and SEC-h code but also by the functionality of having the structures near each other. The proximity promotes energy conservation, reduces the amount of earth disturbance and allows the whole development site to interact effectively and efficiently. *This criterion is met.*

7.6(2) Safety and Privacy - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.

Applicant: "The water treatment facility site is a fenced, access-controlled area, without "public spaces" on the site. Appendix G (Lighting Plan and Cut Sheets) shows that all structures on site are illuminated for security and access purposes, while vehicular circulation is clearly defined and

structured as shown on Sheet 4. Because the water treatment facility does not conflict with nearby farm and forest operations, it provides an effective transition between farm and forest land and rural residential development to west and south.

Staff: The applicant's site plan (Exhibit A.4) shows a parking and circulation plan and access to the Portland Water Bureau Treatment Facility. The applicant has demonstrated that the developed site is adequately secured, while transitioning from private space to the public road, by limiting access to the site from Cottrell Road to a card activated gate and by chaining off the Lusted Road access and using it strictly as an emergency exit. *This criterion is met.*

7.7(3) Special Needs of Handicapped - Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.

Staff: As noted by the applicant, all areas of the development site are at ground level. A handicapped parking space is provided and the general public is not permitted on site or into the structures. *This criterion is met.*

7.8(4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.

Applicant: "This standard has considerable overlap with SEC-h requirements. For additional detail, please see responses to SEC-h criteria in Section 2. In order to preserve vegetation, all proposed development is located within cleared areas to the maximum practicable extent.

Staff: As described in the applicant's narrative (Exhibit A.4), the existing development area of the site is approximately 39,640 square feet (including landscaped area); the expanded development area (for the new building, pavement and landscaping inside the fence) will be approximately 65,488 square feet. The existing floor area for buildings on this site is 4,900 square feet; the expanded building square footage will be 10,100 square feet. The existing paved surface area for the site (exclusive of buildings) is approximately 21,800 square feet; as a result of this proposal the paved surface area will increase to 33,200 square feet.

The development is proposed to be located in existing cleared areas. Both areas of proposed development are relatively flat and will not require significant grading to prepare for foundations. The sites were also chosen to reduce the amount of mature vegetation to be removed for their placement. While most of the proposed improvements will be located within the existing developed and cleared area at the site; the carbon dioxide storage tank, some of the paved vehicle circulation area, and some of the proposed piping and related facilities will need to extend into forested areas. Therefore, this development standard is not met and a Wildlife Conservation Plan (Exhibit A.8) has been prepared consistent with MCC 39.5860(C).

The applicant's site plan (Exhibit A.4), indicates those existing trees that will be maintained on site and additional landscaping provide per the Mitigation Plan (Exhibit A.22). The applicant states that the trees will be protected during construction. As noted on the applicant's site plan the proposed grading retains the general slope of the property and appears to be the minimum necessary to accommodate the development. *This criterion is met.*

7.9(5) Pedestrian and Vehicular Circulation and Parking - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.

Applicant: "Sheet 4 shows existing and proposed vehicular circulation and parking. There is one non-emergency access to the site, with a controlled-access gate. No pedestrian access is expected, as the use is a water treatment facility in a rural location. There is no pedestrian or vehicular circulation or interaction between the site and neighboring buildings or structures. As shown on Sheet 4, all parking spaces are proposed adjacent to buildings. Sidewalks between the parking area and buildings, and between buildings, are provided for visitors and workers.

• Paving/circulation. Chemical delivery of soda ash and liquid carbon dioxide require new paving which will extend slightly beyond the cleared areas to accommodate large truck delivery to the chemical and storage buildings, and to maintain emergency vehicle circulation. These areas have been reduced to the minimum required turn radii, and to avoid the septic drain field and preserve landscaped areas.

Staff: There is one established access to the site off of SE Cottrell Road. A second, limited access, is off of SE Lusted Road that is restricted to emergency use. Both access points connect to the internal maneuvering area that is circular in nature to provide for clear, predictable traffic flow patterns. As shown on (Exhibit A.14), parking locations are located adjacent to landscaped and sidewalk areas to provide maximum pedestrian safety and reduce the potential conflicts between pedestrians and vehicles. *This criterion is met.*

7.10(6) Drainage - Surface drainage and stormwater systems shall be designed so as not to adversely affect neighboring properties or streets. Systems that insure that surface runoff volume after development is no greater than before development shall be provided on the lot.

Applicant: "Sheet 4 provides the drainage plan for the proposed improvements. As indicated in Sheet 5 and the Stormwater Report (provided in Appendix J), surface runoff volume after the proposed development will be no greater than current levels.

Staff: The applicant has provided a completed stormwater certificate and calculations (Exhibit A.13) demonstrating that stormwater runoff from new impervious surfaces will be handled on site for a 10-year/24-hour storm event. The stormwater certificate and drainage plans (Exhibit A.13 and A.14) show that drainage from the new development will be directed north to an infiltration/soakage trench and south to forested bio-swale filter strips. Drainage from the new paved area will be graded towards the existing, adjacent vegetated area and curb cuts installed, such that runoff will infiltrate onsite. *This criterion is met.*

7.11(7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.

Staff: The entire development site is screened from neighboring properties by existing trees and forest canopy. The new buildings as proposed are approximately 300 feet from Cottrell Road and screened from Cottrell Road by 120 feet of forested area as well as the existing WTF building The new buildings are screened from neighboring farm uses to the north and south by over 200 feet of forested area between the proposed buildings and the property line. New buildings will be constructed east (behind) the existing buildings; thus, the existing buildings and trees will effectively screen new structures on the site from nearby residential areas. As described in the narrative (Exhibit A.2) and site plans (A.4) there will be no additional interaction, and therefore no adverse impacts, between the site and neighboring land uses. Additionally, the development is more than 200-feet from the closest neighbor adjacent to a side yard. To the west, north and east are public roads adjacent to the subject property. *This criterion is met.*

7.12(8) Utilities - All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.

Applicant: "Sheet 4 provides the proposed utility layout for the site. As shown on Sheet 4, utilities serving the proposed structures are integrated into existing and proposed developed areas and will have no additional impact on the site. None of the proposed utilities are visible from neighboring properties."

Staff: The subject property is already served by phone, internet, and electricity. No new installations are required. There will be some utility improvements on site between the existing buildings but they are buffered from the neighboring properties by existing vegetation. *This criterion is met.*

7.13(9) Signs and Graphics - The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.

Staff: The only signs proposed are those for traffic circulation and fire access purposes on site. Graphics on site are related to water treatment materials handling. No promotional features are proposed. No signs are proposed near the right of way or for public identification purposes and none are visible from neighboring properties. *This criterion is met*

7.14 MCC 39.8045 REQUIRED MINIMUM STANDARDS.
(C) Required Landscape Areas
The following landscape requirements are established for developments subject to design review plan approval:

(l) A minimum of 15% of the development area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.

(2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.

Staff: The WTF site consists of approximately 20 acres with the other properties having pipeline easements. As seen from air photos and photographs, the property contains natural vegetation on roughly 80-percent of the property – including full forest canopy. The developed area is limited to

the western side of the property, 100-feet from SE Cottrell Road. The site is already landscaped as a result of previous Community Service Permits.

The existing parking areas are separated from property lines and maneuvering areas by landscaping strips as shown in the site plans (Exhibit A.11) and landscaping and mitigation plans (Exhibit A.21 and Exhibit A.22). The proposed parking spaces will be located next to existing landscaped areas that separate the parking spaces from the internal circulation and travel lanes. Taken as a whole, the WTF site is landscaped and the addition of the two soda ash storage silo buildings, the chemical building, relocated propane tank, outdoor electrical equipment and generator, reserve drain field (partly in forested area but no tree removal planned), new piping (partly in forested area), stormwater infiltration trench (partly in forested area) will not require greater landscaped features.

With the developed site having an established landscaping scheme, the landscaping proposed by the applicant(Exhibit A.15), and the existing natural vegetation on the site, the landscaping criteria are satisfied. The entire site is subject to the final design review plan and all areas that are not part of a building or parking and circulation will be landscaped. A condition will require the landscaping to be maintained as shown in plan on (Exhibit A.21 and A.22). This c*riterion is met.*

7.15(3) The following landscape requirements shall apply to parking and loading areas:
(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.

Staff: Parking on the site consists of a total of seven spaces, as indicated on (Exhibit A.14) The parking area landscape requirements do not apply as only seven parking spaces are required. *This criterion is met.*

(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.

(c) A landscaped strip separating a parking or loading area from a street shall contain:
1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;
2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and

3. Vegetative ground cover.
(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.

(e) A parking landscape area shall have a width of not less than 5 feet.

Staff: The applicant submitted a Landscaping Plan (Exhibit A.21) and Mitigation Plan (Exhibit A.22) which include establishment and maintenance requirements for new planting and mitigation areas. No trees are proposed under overhead utility lines. *This criterion is met.*

7.16(4) Provision shall be made for watering planting areas where such care is required.

Staff: As indicated by the applicant (Exhibit A.3, page 71), provision for watering landscaped areas will be provided through rainwater collection and domestic well supply. Condition 7 requires that landscaped areas be watered as needed in order to ensure survival of trees and plants on the property. *As conditioned this standard is met.*

7.17(5) Required landscaping shall be continuously maintained.

Staff: A condition of approval will require landscaping to be continuously maintained. *As conditioned this standard is met.*

7.18(6) Maximum height of tree species shall be considered when planting under overhead utility lines.

Staff: The landscape plan shows trees with appropriate maximum height along the street right of way. (Exhibit 12).

7.19(7) Landscaped means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

Staff: The WTF site is 20-acres in size. As seen from air photos and photographs, the property contains natural vegetation on roughly 85-percent of the property – including full forest canopy. The developed area, including the proposed development, is limited to a small area on the western side of the property, 65-feet from SE Cottrell Road. The site is already landscaped as a result of previous Community Service Permits. The applicant has included landscaping (Exhibit A.21) and mitigation plans (A.22) to minimize wildlife habitat impacts and tree removal, the new infrastructure is proposed to be located in existing cleared areas to the greatest extent practicable given the operational needs of the facility and the spatial constraints of the existing developed site. However, the carbon dioxide storage tank, some of the paved circulation area, some of the proposed piping and related facilities will need to be extended into forested areas. To accommodate these facilities, an additional 18,500 square feet of cleared area is required. Planned reforestation of existing cleared area on the site will total 54,582 square feet, as stated by the applicant the replacement ratio is "2.95:1." Additional mitigation measures shown in (Exhibit A.22) include the removal and management of invasive species at the site.

The existing parking areas are separated from property lines and maneuvering areas by landscaping strips as shown in the site plans (Exhibit A.4) and landscaping plans (A.21and A.22). Taken as a whole, the immediate developed site is landscaped and the addition of the proposed buildings will not require greater landscaped features. With the developed site having an established landscaping scheme, the proposed landscaping (Exhibit A.15) by the applicant, and the natural vegetation on site, the landscaping criteria are satisfied. *This criterion is met.*

8.0 Parking, Loading, Circulation and Access Criteria:

8.1 MCC 39.6505 GENERAL PROVISIONS.

In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking, loading and traffic circulation and access (whether pedestrian, vehicular or otherwise) shall be provided according to the requirements of this Section Subpart. For nonconforming uses, the

objectives of this Subpart shall be evaluated under the criteria for the Alteration, Modification, and Expansion of Nonconforming Uses.

Staff: The application is for the expansion of the Portland Water Bureau Treatment and Distribution Facility which must comply with the following parking, loading, and circulation and access criteria.

8.2 MCC 39.6510 CONTINUING OBLIGATION.

The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance or regulation shall be issued until satisfactory evidence in the form of a site development plan, plans of existing parking and loading improvements, a deed, lease, contract or similar document is presented demonstrating that the property is and will remain available for the designated use as a parking or loading facility.

Staff: This is not applicable to this application.

8.3 MCC 39.6515 PLAN REQUIRED.

A plot plan showing the dimensions, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit.

Staff: The applicant has provided a site plan showing parking, maneuvering and all other required elements (Exhibits A.4) as part of their application. Parking has been provided on site since the previous land use permits listed in Finding #2 above were reviewed and approved. The current request increases the intensity of use of the property and will be reviewed for a need of additional parking spaces and/or loading spaces based on the square footage of the proposed building. *This criterion is met.*

8.4 MCC 39.6520 USE OF SPACE.
(A) Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.

(B) No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.

(C) 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.

(D) Except for residential and local commercial base zones, loading areas shall not be used for any purpose other than loading or unloading.

(E) In any base zone, it shall be 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.

Staff: Based on review of previous decisions, the applicant's narrative (Exhibit A.2), the submitted site plans specific to parking and circulation (Exhibit A.14) the use of space indicated on subsections MCC 39.6520 (A)-(E) have been satisfied. The main change in use of space is for the delivery of soda ash and liquid carbon dioxide, which require new paving to accommodate large truck delivery traffic and maintain emergency vehicle circulation. *With conditions, criterion has been met.*

8.5 MCC 39.6525 LOCATION OF PARKING AND LOADING SPACES.
(A) Parking spaces required by this Subpart shall be provided on the lot of the use served by such spaces.

(B) Exception - The Planning Director may authorize the location of required parking spaces other than on the site of the primary use, upon a written finding by the Director that:
(1) Parking use of the alternate site is permitted by this Chapter;
(2) The alternate site is within 350 feet of the use;
(3) There is a safe and convenient route for pedestrians between the parking area and the use;
(4) Location of required parking other than on the site of the use will facilitate satisfaction of one or more purposes or standards or requirements of this Chapter; and,
(5) There is assurance in the form of a deed, lease, contract or other similar document that the required spaces will continue to be available for off-street parking use according to the required standards.
(C) Loading spaces and vehicle maneuvering area shall be located only on or abutting the property served.

Staff: All parking spaces are proposed on the subject lot. No marked loading spaces are required as noted in Section 8.24 of this Final Order. *The criterion is met.*

8.6 MCC 39.6530 IMPROVEMENTS REQUIRED.
(A) Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy under MCC 29.014, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.

Staff: Through a condition of approval, required parking and loading areas will need to be approved prior to the grant of a Certificate of Occupancy under MCC 29.014. *With conditions of approval, this criterion can be met.*

(B) Any such bond shall include the condition that if the improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited.
Any bond filed hereunder shall be subject to the approval of the Planning Director and the County Attorney.

Staff: All improvements will be completed prior to occupancy or completion will be guaranteed by appropriate assurances. *This standard is met through a condition of approval.*

8.7 MCC 39.6535 CHANGE OF USE.

(A) Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this Subpart shall be unlawful unless the additional spaces are provided.
(B) In case of enlargement or change of use, the number of parking or loading spaces required shall be based on the total area involved in the enlargement or change in use.

Staff: The proposed expansion does not increase the number of parking spaces required. Therefore, *this criterion is met.*

8.8 MCC 39.6540 JOINT PARKING OR LOADING FACILITIES.
(A) In the event different uses occupy the same lot or structure, the total off-street parking and loading requirements shall be the sum of the requirements for each individual use.

(B) Owners of two or more adjoining uses, structures, or parcels of land may utilize jointly the same parking or loading area, when approved by the Planning Director, upon a finding by the Director that the hours of operation do not overlap and provided satisfactory legal evidence is presented to the Director in the form of a deed, lease, contract or similar document, securing full access to such parking or loading areas for all the parties jointly using them.

Staff: There are no other uses proposed. *This standard is not applicable to the proposal.*

8.9 MCC 39.6545 EXISTING SPACES.
Off-street parking or loading spaces existing prior to July 26, 1979 may be included in calculating the number of spaces necessary to meet these requirements in the event of subsequent enlargement of the structure or change of use to which such spaces are accessory. Such spaces shall meet the design and improvement standards of this Section Subpart.

Staff: There is no off-street parking as part of this application. *This standard is not applicable to the proposal.*

8.10 MCC 39.6550 STANDARDS OF MEASUREMENT.
(A) Square feet means square feet of floor or land area devoted to the functioning of the particular use and excluding space devoted to off-street parking and loading.

(B) When a unit or measurement determining the number of required off-street parking or off-street loading spaces results in a requirement of a fractional space, any fraction up to and including one-half shall be disregarded, and any fraction over one-half shall require one off-street parking or off-street loading space.

Staff: *The standard is met*.

8.11 MCC 39.6555 DESIGN STANDARDS: SCOPE.

(A) The design standards of this Subpart shall apply to all parking, loading, and maneuvering areas except those serving a single family dwelling on an individual lot in a rural base zone and except those serving a single family or a two-family dwelling in an urban base zone. Any non-residential use approved on a parcel containing a single family dwelling shall meet the design standards of MCC 39.6560 through 39.6580.
(B) All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires a vehicle to back into the right-of-way of a public street.

Staff: *The standard is met.*

8.12 MCC 39.6560 ACCESS.

(A) Where a parking or loading area does not abut directly on a public street or private street approved under Part 9 of this Chapter, there shall be provided an unobstructed driveway not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.

Staff Access to the site is provided via a primary driveway from SE Cottrell Road and an emergency access from SE Lusted Road. The existing road and access arrangement were found to provide reasonable and practical access in 1995 and 2008, through community service use and design review approvals. As explained in Section 1, no additional traffic impacts (trips or employees) are anticipated beyond the levels approved in 1995. The existing building is located over 200 feet from Cottrell Road. As shown on Sheet 3, the proposed development occurs on the east side of the existing building and is therefore also over 200 feet from Cottrell Road. *Therefore, this criterion is met*.

(B) The Approval Authority may permit and authorize a deviation from the dimensional standard in paragraph (A) of this section upon finding that all the following standards in subparagraphs (1) through (4) are met:
(1) The authorized provider of structural fire service protection services verifies that the proposed deviation complies with such provider's fire apparatus access standards, or, if there is no such service provider, the building official verifies that the proposed deviation complies with the Oregon Fire Code;

Staff: The fire department has verified fire apparatus access standards are met but have also included a condition to verify in final review. *With condition of approval, this criterion is met.*

(2) The County Engineer verifies that the proposed deviation complies with the County Road Rules and the County Design and Construction Manual Standards;

Staff: There is no proposed deviation. *Criterion is met*.

(3) Application of the dimensional standard would present a practical difficulty or would subject the property owner to unnecessary hardship; and

Staff: There is no proposed deviation. *Criterion is met*.

(4) Authorization of the proposed deviation would not:
(a) be materially detrimental to the public welfare;
(b) be injurious to property in the vicinity or in the base zone in which the property is located; or
(c) adversely affect the appropriate development of adjoining properties.

Staff: There is no proposed deviation. *Criterion is met.*

(C) Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this Subpart. Required spaces may be located in a private street when authorized in the approval of such private street.

Staff: Parking or loading are not proposed in a public street. This criterion is not applicable as the parking is all on site.

8.13 MCC 39.6565 DIMENSIONAL STANDARDS.

(A) Parking spaces shall meet the following requirements:
(1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.

Applicant: As shown on Sheet 4, the seven parking spaces on site are all slightly over nine feet in width, with a depth of at least 18 feet. None of the spaces are covered**.**

(2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.

(3) For parallel parking, the length of the parking space shall be 23 feet.

(4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.

Staff: *Therefore, (A)(2) above is met.*

8.14(B) Aisle width shall be not less than:
(1) 25 feet for 90 degree parking,
(2) 20 feet for less than 90 degree parking, and
(3) 12 feet for parallel parking.
(4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.

Staff: The applicant's site plan (Exhibit A.4) shows 25 foot aisle widths adjacent to 90 degree parking spaces and 20 foot aisle widths adjacent to parking spaces that intersect the parking aisle at an acute angle. No parallel parking is proposed. *This criterion is met.*

8.15(C) Loading spaces shall meet the following requirements:
(1)

Base zone	Minimum Width	Minimum Depth
All	12 Feet	25 Feet

Staff: As indicated in findings in Section 8.24 below, no loading spaces are required. *This standard is not applicable.*

(2) Minimum vertical clearance shall be 13 feet.

Staff: As shown on Exhibit A.14, loading spaces are approximately 18 feet wide and 67 feet long; vertical clearance is shown on Sheet 8 as at least 15 feet. *This criterion is met.*

8.16 MCC 39.6570 IMPROVEMENTS.

(A) Surfacing - (1) Except as otherwise provided in this section, all areas used for parking, loading or maneuvering of vehicles, including the driveway, shall be surfaced with at least two inches of blacktop on a four inch crushed rock base or at least six inches of Portland cement, unless a design providing additional load capacity is required by the fire service provider.

Staff: A paving section is provided in (Exhibit A.14). Proposed paved areas consist of four-inches of pavement, six-inches of compacted aggregate base, and 12-inches of compacted subgrade. *This criterion is met***.**

8.17(B) Curbs and Bumper Rails

(l) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.

(2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence except as provided in (3) below.

(3) Except for development within the RC, BRC, SRC, PH-RC, OR, OCI and all CFU zones, the outer boundary of a parking or loading area with fewer than four required parking spaces may use a five foot wide landscape strip or yard planted with a near-continuous number of shrubs and/or trees. If the outer boundary of the parking area is within 50 feet of a dwelling on an adjacent parcel, the plant materials shall create a continuous screen of at least four feet in height except at vision clearance areas where it shall be maintained at three feet in height.

Staff: Parking areas on site are adjacent to the existing facility, located at least 90 feet from the nearest right-of-way (Cottrell Road), and separated from Cottrell Road by intervening forested area and a fence, consistent with these standards. As shown on the applicant's site plan (Exhibit A.4) all areas used for parking, loading, and maneuvering of vehicles will be physically separated

from public streets or adjoining property by required landscaped strips or yards. *The criterion is met*.

8.18(C) Marking - All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 39.6515, and such marking shall be continually maintained. Except for development within the RC, BRC, SRC, PH-RC, OR, or OCI zones, a graveled parking area with fewer than four required parking spaces is exempt from this requirement.

Staff: The parking area is for more than four required parking spaces, so this standard applies. The applicant's parking plan (Exhibit A.4) notes that all parking spaces will be marked and as stated above will be continually maintained. A condition of approval will require the marking and continuous maintenance of the proposed parking and maneuvering areas as shown on the parking plan (Exhibit A.14). *As conditioned, the criterion is met.*

8.19(D) Drainage - All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.

Staff: As described in detail in Section 6.2 above, the applicant has provided a completed Multnomah County Stormwater Certificate (Exhibit A.7) certifying the proposed stormwater plan and that surface water will be disposed of on site. Grading and drainage drawings and the stormwater report prepared by the civil engineer show the grading and drainage proposed, and provisions for disposal of all surface water on site. (Exhibit 9). A condition of approval will require the implementation of the proposed stormwater plan. *As conditioned, the standard is met.*

8.20(E) Covered Walkways - Covered walkway structures for the shelter of pedestrians only, and consisting solely of roof surfaces and necessary supporting columns, posts and beams, may be provided. Such structures shall meet the setback, height and other requirements of the base zone which apply.

Staff: There are no covered walkways proposed for the shelter of pedestrians only, but there is a covered canopy proposed for truck deliveries. As shown in Exhibit A.4 the canopy structure meets the setback, height and other requirements of the CFU zone**.** *This criterion has been met.*

8.21 MCC 39.6575 SIGNS.
Signs, pursuant to the provisions of this subpart shall also meet MCC 39.6780.

Staff: No new signs are proposed. *This criterion is met.*

8.21 MCC 39.6580 DESIGN STANDARDS: SETBACKS.

(A) Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street perpendicularly.

Staff: As shown on the applicant's site plan (Exhibit A.4), no parking or loading areas are proposed within 30 feet of Cottrell or Lusted Roads, or within 130 feet from the south or east lot lines. Main and emergency access drives connect to Cottrell and Lusted Roads perpendicularly. *This criterion is met.*

8.22 MCC 39.6585 LANDSCAPE AND SCREENING REQUIREMENTS.

(A) The landscaped areas requirements of MCC 39.8045(C)(3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 39.6555(A).

Staff: As noted in Section 8.9 above, the proposed parking and maneuvering areas are within the scope of the design standards implicated by way of MCC 39.6555(A); therefore, the landscape area requirements of MCC 39.8045(C)(3) to (7) apply. As found in Sections 8.13 through 8.17 above, the standards of MCC 39.8045(C)(3) to (7) are met or will otherwise be met through conditions of approval. Based on review of (Exhibit 11), all parking, loading and maneuvering areas within the scope of the design standards of MCC 39.6555(A) are proposed to be improved consistently with the landscaping requirements. *This criterion is met*.

8.23 MCC 39.6590 MINIMUM REQUIRED OFF-STREET PARKING SPACES.

(F) Unspecified Uses. Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.

Applicant: MCC Section 39.6590 provides standards for minimum required off-street parking spaces. A WTF use is not specifically listed and provided a standard, and this was discussed in the pre-application conference. As explained by County Staff, the WTF use most closely resembles (a) warehouse industrial (or "storage") for most of the facility and (b) office for the operator-occupied office portion. "Storage" requires "one space for each 5,000 square feet of storage area for the first 20,000 square feet, plus one additional space for each additional 50,000 square feet."

Office requires "One space for each 300 square feet of gross floor area."

The existing building contains approximately 840 square feet of space for the "control room" and "resource/work area", which can be considered comparable to "office" space. The remainder of the existing building, approximately 3,770 square feet, contains chemical storage, the drive-through loading area and water quality machinery.

The existing building would therefore require four parking spaces. It would not be typical or reasonable to assign additional parking need to utility structures such as the proposed generator, propane tank, electrical enclosure, soda ash silos, CO2 storage tank, or pump station. The proposed chemical building contains approximately 1,600 square feet that can be classified as similar to industrial storage.

Therefore, the total required parking for the site would be five spaces (840 sq. ft. of "office" and 5,334 sq. ft. of "storage"). There are currently 7 parking spaces on site. Five of these spaces were approved for the WTF operator use and have adequately met on-site parking needs for 22 years. Two additional spaces were required by T2-07-057 to meet parking requirements for communications towers. No additional employees are expected related to the proposed corrosion control improvements.

Staff: As shown on the applicant's parking plan (Exhibit A.4); the proposed parking plan includes seven parking spaces – all adjacent to the WTF facility – including a graveled space adjacent to

the communications tower for a tower maintenance vehicle. Based on the evidence above the City of Portland Water Bureau has determined, and the hearings officer concurs, that a total of seven parking spaces is more than sufficient to accommodate the projected maximum of six visits (12 vehicle trips) per day for operators using the site after construction is completed. Therefore, parking standards continue to be met. *This criteria is satisfied.*

9.0 Significant Environmental Concern for Wildlife Habitat (SEC-h) Criteria:

9.1 MCC 39.5550- EXISTING USES IN THE WEST OF SANDY RIVER PLANNING AREA.

(A) Uses that legally existed in the West of Sandy River Planning Area on January 1, 2003, that are not included as Exceptions in MCC 39.5515, may utilize the provisions of this section. This section is intended to define the circumstances under which existing development can be improved or replaced under limited requirements in recognition of the preexisting status. The SEC provisions are also not intended to make existing uses non-conforming. However, approval of proposals for alteration of uses that were non-conforming prior to January 1, 2003, must obtain an SEC permit in addition to demonstrating compliance with the non-conforming use provisions of MCC 39.8300 through 39.8315.

Staff: The subject property is located within the West of Sandy River Planning area and has been in legal existence since 1991. This review will be used to determine the most appropriate location, size, and scope of the proposed development as required by MCC 39.5550(A) and (B). As stated in MCC 39.5550(B), the SEC provisions are not indented to prohibit a use. Findings below address applicable provisions of MCC 39.5850-MCC 39.5860. There is an SEC-h overlay that covers the majority of the subject properties, but the majority of the work will happen in the cleared areas. After the work is completed, vegetation that has been disturbed during construction will be reestablished and rehabilitated. To ensure that these measures are in place and followed, a condition will be required. *As conditioned, this criterion is met.*

(B) Change, expansion, or alteration of existing uses in the West of Sandy River Planning Area shall require an SEC permit as provided in MCC 39.5500 through 39.5860, except for changes to a structure as described in subsections (1) through (3) below:

(1) In areas subject to the provisions of the SEC-sw, change, or alteration of existing uses which do not require any modification to the exterior of the structure;

(2) Within the SEC-wr and SEC-h, addition of less than 400 square feet of ground coverage to the structure. This provision is intended to allow a maximum of 400 square feet of additional coverage to the structure that existed on January 1, 2003; and

(3) Within the SEC-h overlay, alteration or expansion of 400 square feet or less of such driveway.

Staff: The proposed expansion does not fall under subsections (1) through (3), therefore an SEC-h permit is required and will be addressed below.

MCC 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.

Staff: The proposed development is in the SEC-h overlay district within the West of Sandy Planning Area. *This criterion is met*.

(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: The drainage and erosion control plans for the proposed development are provided as (Exhibit A.20). The applicant states that the plans represent best management practices and effectively protect soil from erosion. The proposed new buildings are in an area already cleared and level. The proposed buildings will require some minimal grading for the foundation but the area is already relatively level. The amount of grading necessary will require a Grading and erosion control review prior to building permit sign-off. *With condition of approval*, *this criterion is met*.

(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: The applicant notes that the lighting (Exhibit A.10) proposed consists of hooded lights directed downward towards the developed area of the site. A condition of approval will require the owners to submit documentation of what lights they plan to install at the time of building permit sign-off. *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 subject plants are proposed as landscaping. This c*riterion is met*

9.2 MCC 39.5850-SEC-H CLEAR AND OBJECTIVE STANDARDS.
(A) At the time of submittal, the applicant shall provide the application materials listed in MCC 39.5520(A) and 39.5860(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in MCC 39.5860(B)(1) through (4)(a)-(c) and (B)(5) through (7) are met. For development that fails to meet all of the criteria listed above, a separate land use application pursuant to MCC 39.5860 may be submitted.

Staff: The applicant has demonstrated on (Exhibit A.4) and (Exhibit A.16) and via air photos that the proposed development is within non-forested cleared areas as defined but that there will be additional trees removed in order to accommodate portions of the proposed expansion. The proposed two silo buildings, the 1,200 square foot chemical building, 400 square foot electrical

equipment including standby generator, and 11,400 square feet of increased paving and covered offloading facility will require some grading but the area is already relatively level. The amount of grading necessary will require an Erosion and Sediment Control permit review at the time of building permit sign-off. *With condition of approval, this criterion is met.*

(B) The proposed development shall meet the applicable stormwater and grading and erosion control requirements of MCC 39.6200 through 39.6235. Ground disturbance within 100 feet of a watercourse as defined by MCC 39.2000 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.

Staff: The proposed development is not within 100 feet of a watercourse. *This criterion is not applicable.*

(C) The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.

Staff: A condition of approval will require the owner to keep the development area free from the listed nuisance plants. *This criterion is met.*

Table 1
Nuisance Plant List:

Common Name	***Scientific Name***	**Common Name**	***Scientific Name***
Lesser celandine	***Chelidonium majus***	**Fall Dandelion**	***Loentodon autumnalis***
Canada Thistle	***Cirsium arvense***	**Purple Loosestrife**	***Lythrum salicaria***
Common Thistle	***Cirsium vulgare***	**Eurasian Watermilfoil**	***Myriophyllum spicatum***
Western Clematis	***Clematis ligusticifolia***	**Reed Canary grass**	***Phalaris arundinacea***
Traveler' s Joy	***Clematis vitalba***	**Annual Bluegrass**	***Poa annua***
Poison hemlock	***Conium maculatum***	**Swamp Smartweed**	***Polygonum coccineum***
Field Morning-glory	***Convolvulus arvensis***	**Climbing Binaweed**	***Polygonum convolvulus***
Night-blooming Morning-glory	***Convolvulus nyctagineus***	**Giant Knotweed**	***Polygonum sachalinense***
Lady' s nightcap	***Convolvulus seppium***	**English, Portuguese Laurel**	***Prunus laurocerasus***

Common Name	*Scientific Name*	Common Name	*Scientific Name*
Pampas grass	***Cortaderia selloana***	**Poison Oak**	***Rhus diversiloba***
Hawthorn, except native species	***Crataegus sp. except C. douglasii***	**Himalayan Blackberry**	***Rubusdiscolor***
Scotch broom	***Cytisus scoparius***	**Evergreen Blackberry**	***Rubus laciniatus***
Queen Ann' s Lace	***Daucus carota***	**Tansy Ragwort**	***Senecio jacobaea***
South American Waterweed	***Elodea densa***	**Blue Bindweed**	***Solanum dulcamara***
Common Horsetail	***Equisetum arvense***	**Garden Nightshade**	***Solanum nigrum***
Giant Horsetail	***Equisetum telemateia***	**Hairy Nightshade**	***Solanum sarrachoides***
Crane' s Bill	***Erodium cicutarium***	**Common Dandelion**	***Taraxacum otficinale***
Robert Geranium	***Geranium roberianum***	**Common Bladderwort**	***Ultricularia vuigaris***
English Ivy	***Hedera helix***	**Stinging Nettle**	***Utica dioica***
St. John' s Wort	***Hypericum perforatum***	**Periwinkle (large leaf)**	***Vinca major***
English Holly	***llex aquafolium***	**Periwinkle (small leaf)**	***Vinca minor***
Golden Chain Tree	***Laburnum watereri***	**Spiny Cocklebur**	***Xanthium spinoseum***
Duckweed, Water Lentil	***Lemna minor***	**Bamboo sp.**	***various genera***

(D) For development that fails to meet all of the standards listed in this section, a separate land use application pursuant to MCC 39.5860 may be submitted.

Staff: As noted in the findings below, the application does not meet the clear and objective standards of this section because the structures are over 200 feet from a roadway, therefore, a separate land use application addressing MCC 39.5860 is required.

9.3 MCC 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 has provided the required area map. *This criterion is met*.

9.4(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.

Applicant: Cleared areas as defined in MCC 39.5860(A) (1) were mapped by Winterbrook Planning. Winterbrook staff conducted a reconnaissance level survey of habitat conditions and forested/non-forested areas of the site on January 4, 2019. Previous Winterbrook field surveys were conducted in 2012 and 2017. The field study area included the utility corridor, proposed facility improvement area, and existing cleared areas (mitigation opportunity areas). Cleared areas in relation to existing trees are shown on Sheets 5, 6 and 16.

Staff: Most of the proposed improvements will be located within the existing developed and cleared area of the site. However, the carbon dioxide storage tank, some of the paved vehicle circulation area, and some of the proposed piping and related facilities will need to extend into forested areas. Therefore, this development standard is not met and a Wildlife Conservation Plan (Exhibit A.8) has been prepared consistent with MCC 39.5860(C). *This criterion is met.*

9.5(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: As shown on the submitted plans (Exhibit A.4) The existing building is located over 200 feet from Cottrell Road. As shown on Sheet 3, the proposed development occurs on the east side of the existing building and is therefore also over 200 feet from Cottrell Road. Therefore, this development standard is not met, and a Wildlife Conservation Plan has been prepared consistent with MCC 39.5860(C). *This criterion is met*

9.6(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Staff: The existing driveway to the facility will be used to serve all existing and proposed development on site. The existing driveway from Cottrell Road to the developed area of the site is approximately 90 feet in length. (Exhibit A.11). *This criterion is met.*

9.7(4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

Staff: The existing driveway on Cottrell Road is not subject to this standard because it already exists. This standard applies only to new driveways. *The criterion is inapplicable.*

9.8(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 As shown on the site plan (Exhibit A.4), Tax lot 300 is approximately 600 feet wide. As shown on Sheet 3, proposed new paving is within 200 feet of the north and south property lines. Adjacent properties to the north and south have structures within 200 feet of the property line. *This criterion is met.*

9.9(6) Fencing within a required setback from a public road shall meet the following criteria:

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

Staff: Fencing is shown on the existing site plan (Exhibit A.3), and is needed for security of utility facilities, which is consistent with MCC 39.5860(B)(6)(f). *This criterion is met.*

9.10(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: As required by this section none of the plants in Table 1 can be used for landscaping. The applicant shall remove and keep removed from cleared areas the nuisance plants referred to in this criterion. To ensure compliance with this requirement, a condition will be required that the applicant shall remove and keep removed the plants listed in the table above. *As conditioned, this criterion is 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: The corrosion control treatment project includes pipelines that must cross the site and treatment facilities that must be located adjacent to the existing Lusted Hill facility, which is more than 200 feet from a public road. The large size and steep topography of the site, combined with the operation requirements of the facility, mean that at least one development standard cannot be met. Thus a Wildlife Conservation Plan (Exhibit A. 8) for the Corrosion Control Improvements Project has been prepared by Tim Brooks, ASLA and Anita Smyth, PWS, MS, provided as Appendix E to the application. *This criterion has been satisfied.*

(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).

Applicant: The remaining improvements are located within cleared areas to the extent possible given the operational needs of the facility and the spatial constraints of the existing developed site. The limited proposed forest area encroachment include:

• Paving/circulation – To facilitate chemical delivery of soda ash and liquid carbon dioxide.

• Improvements adjacent to circulation areas - Carbon dioxide storage tank, valve vault with submersible pumps, and portions of the stormwater filtration trench and relocated fencing are located immediately adjacent to the circulation areas and across from the new chemical building and silos.

• Water supply/chemical feed piping - Needed piping will be routed within the existing pipeline corridor, underground and parallel to existing pipeline infrastructure. By using the existing utility corridor, creation of separate new cleared areas will not be necessary, and no additional habitat fragmentation will occur.

Staff: To minimize wildlife habitat impacts and tree removal, new infrastructure has been placed in cleared areas to the greatest extent practicable. The proposed Wildlife Conservation Plan includes mitigation measures for limited impacts on forested wildlife habitat. New structures will be screened from existing rural residences by existing facilities and forested areas. This project will generate no additional traffic to and from the facility. Therefore, impacts from this proposal are minimal and can be readily mitigated. *This criterion is met.*

(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: Based on review of the applicants narrative (Exhibit A.2) and mitigation plan (Exhibit A.23); the proposed expansion avoids new fragmentation of forest areas and minimizes encroachment into the forest habitat areas including the higher quality interior forest habitat. The proposal includes effective measures to reduce impacts to forested areas to the minimum necessary to serve the proposed development. Reuse of existing disturbed areas and a compact development layout restrict both the amount of required clearance and length/width of new cleared areas and preserve the greatest amount of forest canopy cover. *This criterion is met*.

(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: Newly cleared areas will be limited to 18,500 square feet, under one acre. *This criterion is met.*

(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: Fencing standards do not apply where needed for security of utility facilities under MCC 39.5860(B)(6)(f). *This standard is inapplicable.*

(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: Extensive reforestation of existing cleared areas is proposed to more than offset any habitat impacts. The native tree and shrub plantings will improve forest habitat connectivity and proposed invasive species management will substantially improve forest health. The Mitigation Plan (Exhibit A.22) shows a total of 18,500 square feet of new cleared areas proposed to allow for construction. A total of 54,582 square feet of existing cleared areas on the property will be managed for invasive species and revegetated with native trees and shrubs to reestablish forest canopy in the cleared areas. This is a revegetation to cleared area ratio of 2.95:1, which well exceeds the standard. *As a condition of approval, criterion is met.*

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

Applicant: There are no streams or riparian areas located within the project site.

10.00 Dark Sky Lighting Standards:

MCC 39.6850 DARK SKY LIGHTING STANDARDS.

(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: As demonstrated on the applicant's lighting plan (Exhibit A.10) the proposed lighting will be shielded. The plan shows that exterior lighting is limited to security and general signage. Existing outdoor lighting meets the standards of this section. New lighting will be similar in design to provide visual continuity. *This criterion is met.*

11.0 Geologic Hazard Permit

GEOLOGIC HAZARDS (GH)
MCC 39.5070- PURPOSES.
The purposes of the Geologic Hazards (GH) Overlay, MCC 39.5070 through MCC 39.5095, are to promote the public health, safety and general welfare, and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated Multnomah County, all in accordance with ORS 215, LCDC Statewide Planning Goal No. 7 and OAR 340– 41– 455 for the Tualatin River Basin, and the Multnomah County Comprehensive Plan policies relating to natural hazards. In addition, the GH is intended to:

(A) Protect human life;
(B) Protect property and structures;
(C) Minimize expenditures for rescue and relief efforts associated with earth movement failures;
(D) Control erosion, production and transport of sediment; and
(E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces; and
(F) Control stormwater discharges and protect streams, ponds, and wetlands within the Tualatin River and Balch Creek Drainage Basins.

MCC 39.5075 PERMIT REQUIRED.
All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the Slope Hazard Map, or on lands with average slopes of 25 percent or more shall obtain a Geologic Hazard Permit as required in the GH, unless specifically exempted in MCC 39.5080(B) The proposed development shall meet the applicable stormwater and grading and erosion control requirements of MCC Chapter 29. Ground disturbance within 100 feet of a watercourse as defined by MCC 29.351 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.

Staff: The applicant has submitted a Geotechnical Engineering analysis as there is a slope hazard identified on the subject property. The proposed development addresses stormwater, grading and erosion control measures. *With conditions criteria met.*

MCC 39.5075 PERMIT REQUIRED.
Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).

Staff: The proposed project is located in a mapped hazard area on the "Geologic Hazard Map." The applicant has submitted a Geologic Hazards Worksheet dated 08/09/2019, and a Geologic Hazards (GH) permit dated 04/02/2019, to authorize the proposed development. The applicant has provided a Preliminary Geotechnical memorandum dated March 22, 2017, completed by, Registered Professional Engineer Nelson Kawamura, PE (Exhibit A.9). The Geotechnical Engineering Report details specific site characteristics that will need to be considered as part of this project. Nelson Kawamura, PE states that the project is based on the review of test pits and soil profile based on prior Fujitani Hilts test pits, which can be used for the seismic design of the pipeline based on those explorations. The only fill area is near the existing pipeline which meets setback and is located within easements on other properties. All of the construction for the project is either on City of Portland's land or in an easement. This c*riterion is met.*

MCC 39.5085 GEOLOGIC HAZARDS PERMIT APPLICATION INFORMATION REQUIRED.
An application for a Geologic Hazards Permit shall include two copies of each of the following:
(A) A scaled site plan showing the following both existing and proposed:
(1) Property lines;
(2) Building structures, driveways, roads and right of way boundaries;
(3) Location of wells, utility lines, site drainage measures, stormwater disposal system, sanitary tanks and drainfields (primary and reserve);
(4) Trees and vegetation proposed for removal and planting and an outline of wooded areas;
(5) Water bodies;
(6) Boundaries of ground disturbing activities;
(7) Location and height of unsupported finished slopes;
(8) Location for wash out and cleanup of concrete equipment;
(9) Storage location and proposed handling and disposal methods for potential sources of non-erosion pollution including pesticides, fertilizers, petrochemicals, solid waste, construction chemicals, and wastewaters;
(10) Soil types;
(11) Ground topography contours (contour intervals no greater than 10-feet); and
(12) Erosion and sediment control measures.

(B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). For purposes of this subsection, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: As described and shown in Exhibit (A.8) and Exhibit (A.13) ground disturbance and volume of proposed cut (cubic yards) and fill (cubic yards) have been addressed in the largest land area of multiple properties. *This criterion is met.*

(C) Written findings, together with any supplemental plans, maps, reports or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Geologic Hazards standards in MCC 39.5090. Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater

drainage control, stream protection, erosion and sediment control, and replanting. The written findings and supplemental information shall include:

(1) With respect to fill:
(a) Description of fill materials, compaction methods, and density specifications (with calculations). The planning director may require additional studies or information or work regarding fill materials and compaction.

Staff: As submitted by the applicant (Exhibit A.13 and A.23), fill material consists of fine course aggregate containing no organic material. The compaction method will be through mechanical vibration or impact tampers. As presented by the applicant in the GH worksheet, density specifications of 95-percent compaction is proposed beneath the structures, paved area and rights of way, 90-percent in other areas. Settlement calculations are not typically provided for pipeline backfill when these levels of compaction are specified. No structures are proposed in the Slope Hazard zone.

(b) Statement of the total daily number of fill haul truck trips, travel timing, loaded haul truck weight, and haul truck travel route(s) to be used from any fill source(s) to the fill deposit site.

Staff: Stantec Engineering estimates that up to 30 truck trips a day could be needed for offhaul of excavated material and import of engineered materials. They further state that the probable disposal site and backfill site is Knife River, Gresham. The haul route would be 8.8 miles down Lusted Road to Oxbow Drive then down Oxbow Drive to Division, down to Eastwood Avenue. As a condition of approval, the applicant will be required to confirm weight of trips and travel times. *With condition of approval, criterion is met***.**

(2) A description of the use that the ground disturbing activity will support or help facilitate.

Staff: As stated in the PE report (Exhibit A.9); the new utility pump station and buried pipe will require temporary excavations and will be brought back to about existing grade with properly compacted backfill consisting of on-site materials or imported granular soil. Minor site grading, two to three feet of fill, will be placed for drainage away from the new building. Site grading fill will consist of properly compacted on-site fill materials. *This criterion is met***.**

(3) One of the following:
(a) Additional topographic information showing the proposed development to be on land with average slopes less than 25 percent and located more than 200 feet from a landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

Staff – The proposed development is on slopes that range from two-percent to five-percent in the area of the WTF. *This criterion is met*.

(b) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,

Staff: There is a PE report stating that the site is suitable for proposed development but there is not a geotechnical report. *This criterion is met as only one of the options listed is required to be submitted.*

(c) A GHP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with their stamp and signature affixed indicating that the site is suitable for the proposed development.

Staff: The applicant has submitted a GHP form that is signed and certified by a Certified Engineering Geologist or Geotechnical Engineer

(i) If the GHP Form– 1 indicates a need for further investigation, or if the director requires further study based upon information contained in the GHP Form– 1, a geotechnical report as specified by the director shall be prepared and submitted.

Staff: The applicant has requested a Grading and Erosion Control permit (Exhibit A.9) as required in MCC Chapter 39.5070. The applicant has also included a Geologic Hazards Worksheet, completed by Mark Graham, P.E. of Stantac Engineering, dated August 9, 2019, (Exhibit A.23) and the GH Permit (Exhibit A.9) dated April 2, 2019, submitted by Nelson Kawamura, PE and John Worthen, PE, which outlines the conditions of the properties, stating that there was no sign of instability and that two inactive landslides were observed south of the new buried pipeline. Staff finds that there is no need for further investigation. *This criterion is met*.

[a] A geotechnical investigation in preparation of a geotechnical report shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The report shall include specific investigations required by the director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from landslide hazards.

[b] Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the geotechnical report to ensure safety of the proposed development.

Staff: No corrections are recommended.

[c] Observation of work required by an approved geotechnical report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the director prior to issuance of the permit.

Staff: Based on site plans and GH permit submitted staff does not find that an evaluation of report is required. *This criterion has been met*.

[d] The director, at the applicant's expense, may require an evaluation of GHP Form– 1 or the geotechnical report by another Certified Engineering Geologist or Geotechnical Engineer.

Staff: Based on site plans and GH permit submitted staff does not find that an evaluation of report is required. *This criterion has been met*.

(4) Documentation of approval by each governing agency having authority over the matter of any new stormwater discharges into public right-of-way.

Hearings Officer: No new stormwater discharges into public right-of-way are proposed. All stormwater will be accommodated on site. *This criterion is inapplicable.*

(5) Documentation of approval by the City of Portland Sanitarian and any other agency having authority over the matter of any new stormwater surcharges to sanitary drainfields. (Ord. 1271, Amended, 03/14/2019)

Staff: Multnomah County Land Use Planning and City of Portland Sanitarian will review prior to final sign off on Building Permit. *With condition of approval, criterion met*.

§ 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards: ***Approval of development plans on sites subject to a Geologic Hazard Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:***

Staff: - Geologic Hazards Permit **(**Exhibit A.23), prepared and stamped by Nelson Kawamura, PE dated March 22, 2019, addresses these standards and finds the proposed earthwork and development will not cause potential stability problems for the subject or adjacent properties, and no additional geotechnical studies are required**.** *This criterion has been met.*

(A) Design Standards For Grading and Erosion Control
(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. For purposes of this provision, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: This criterion is met

(B) Fill shall be composed of earth materials only.

Staff: This criterion is met**.**

(C) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal: 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development.

Staff: Applicant has submitted Geologic Hazards Permit (Exhibit A.9) and engineering analysis (Exhibit A.20) as there is a slope hazard identified on the subject properties. However, the work is in an area that does not exceed 33-percent grade. The proposed development addresses stormwater, grading and erosion control measures. *With conditions, approval met*.

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

Staff: The applicant has requested a Geologic Hazards permit as required in MCC Chapter 39.5090 and provided necessary documentation. A Geotechnical Reconnaissance and Stability Preliminary Study completed Nelson Kawamura, PE and John Worthen, PE dated March 22, 2019 shows the geology and subsurface conditions of the area surrounding the new buildings and associated gently slopes to the west (two- and five-percent). The analysis explains that the ground surface starts to slope about 300 feet east of the new buildings and slopes down to SE Lusted Road (33-percent slope). The slope continues downhill on the east side of SE Lusted Road (20-percent slope). The new buried utility will be constructed along these steeper slopes and will be installed adjacent and parallel to existing pipelines. *This criterion is satisfied.*

(E) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies in writing that the altered portion of the waterbody will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

Staff: There will be no fill that encroaches on a water body. *This criterion is met.*

(H) Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

Staff: The Geologic Hazards Permit (Exhibit A.9) indicates that the stripping of vegetation, grading, and other soil disturbance shall be limited to an area near the proposed facility and within existing easements (Exhibit A.4). The site plan illustrates the location of construction fencing, bio-filter bags, and staked fiber wattles (Exhibit A.20). To ensure that erosion control is managed on the properties, a condition will be required that these measures be installed prior to land disturbing activities. Based on the mitigation plan for the whole site it is evident that the proposed work shall be done in a manner which will minimize soil erosion and return the site back to existing conditions as quickly as possible. There will be no permanent environmental impact for the pipeline improvements because the new pipes will be constructed at the same locations of the existing pipe and vegetation that has been disturbed during construction will be rehabilitated (reestablished). *As conditioned, this criterion is met*

(I) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

Staff: The site plan and Grading and Erosion Control worksheet indicates that the proposed development will result in approximately 1,500 within overlay and 4,500 cubic yards total. *As conditioned, this criterion is met*

(J) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.

Staff: This standard can be met with a condition requiring that temporary vegetation and/or mulching be used to protect exposed areas during development. The mitigation plan (Exhibit A.22) states that temporary vegetation and/or mulching shall be used to protect exposed critical areas during development. *As conditioned, this criterion is met*.

(K) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

Staff: The applicant's site plans (A.4, A15, A.16) and Narrative (A.2) show that the intent of the proposal is to retain and replant natural vegetation whenever feasible. *This criterion has been met.*

(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

Staff: The proposal is not near a stream.

(2) The buffer required in subsection (K)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).

Staff: The site is not within the boundaries of the Tualatin River drainage basin.

(L) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: This standard can be met with a condition requiring that temporary vegetation and/or mulching be used to protect exposed areas during development. *As conditioned, this criterion is met*.

(M) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

Staff: The site plan includes erosion control devices and measures which indicate that there will be construction fencing, bio-filter bags and staked fiber wattles installed prior to land disturbing activities (Exhibit A.20). These erosion measures will ensure that pollution discharges will be prevented. *These criterion are met.*

(N) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

Staff: A condition will require that disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures. *As conditioned, this criterion is met*.

(O) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

Staff: To ensure that stormwater, grading, and erosion control requirements are met, a condition will be required that the applicant obtain an Erosion and Sediment Control (ESC) permit from the County prior to undertaking ground disturbance activities. *As conditioned, this criterion is met*

(P) All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

Staff: As conditioned, these criteria are met.

(Q) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.

Staff: The site plan includes erosion control and indicates that there will be construction fencing, bio-filter bags and staked fiber wattles installed prior to land disturbing activities (Exhibit A.20). To ensure that these erosion measures are in place, conditions will be added to ensure that, if necessary, additional provisions shall be made to structurally impede surface runoff through the use of debris basins, silt traps, and other measures to effectively accommodate increased runoff and prevent surface water from damaging the cut face of excavations. Permanent plantings and seeding of bare areas shall be done as soon as practical. *As conditioned, these criteria are met*.

(R) Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

Staff: The stormwater report (Exhibit A.13) includes details addressing these requirements. *This criterion is met*.

(1) Energy absorbing devices to reduce runoff water velocity;

Staff: The stormwater report (Exhibit A.13) includes details addressing these requirements. *This criterion is met*.

(2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

Staff: The stormwater report (Exhibit A.13) includes details addressing these requirements. *This criterion is met*.

(3) Dispersal of water runoff from developed areas over large undisturbed areas.

Staff: The application submittal included a stormwater report (Exhibit A.8) that provides technical justification for R above. *This criterion is met.*

(S) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures;

Staff: A condition will be required that disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures. *As conditioned, this criterion is met*.

(T) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, and continuous site monitoring and clean-up activities.

Staff: A condition will be required that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. *As conditioned, this criterion is met*.

(U) On sites within the Balch Creek drainage basin, erosion, sediment, and stormwater control measures shall be designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. All ground disturbing activity within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

Staff: The subject property is not located within the Balch Creek Drainage Basin. *This criterion is inapplicable*.

(V) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual.

Staff: A condition will be required that whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. *With condition of approval, criterion is met.*

(W) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

Staff: The County Transportation Division has reviewed the overall project. The details of the haul trips have not been reviewed by Transportation Department. The transportation impact will need to be evaluated by the Transportation Department to make a determination on impact and mitigation. *As a condition of approval, Transportation Department will need to sign off on request.*

(X) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

Staff: As a condition of approval the applicant will be required to provide details of fill and truck management. *With condition of approval, criteria will be met.*

(Y) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill. (Ord. 1271, Amended, 03/14/2019)

Staff: Property owner will not be compensated for the receipt or placement of fill.

11.0 Other Issues

Contrary to neighbors' testimony, the applicant is not relocating the proposed treatment facility from Carpenter Lane. The Carpenter Lane facility is a separate facility that is currently being designed and will be subject to separate review. The facility proposed in this application is an interim facility that is intended to provide needed treatment until the Carpenter Lane facility is completed.

The Code does not require that this project be reviewed in conjunction with the Carpenter Lane project. The facilities proposed in this application are separate and independent from the Carpenter Lane project.

Allegations that the Water Bureau lacks eminent domain authority are not relevant to this application. No property is proposed to be acquired through eminent domain for this project.

12.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Conditional Use Permit Community Service Permit to expand the water treatment facility in the CFU zone. This approval is subject to the conditions of approval established in this Final Order.

13.0 Exhibits

'A' Applicant's Exhibits
'B' Staff Exhibits
'C' Procedural Exhibits

'H' Hearing Exhibits
'I' Post-Hearing Exhibits received during the first open record period

All exhibits are available for review in Case File T3-2019-11784 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Appendix A: Completed Land Use Application Form	04.02.2019
A.2	68	City of Portland Water Bureau Lusted Hill Water Treatment Facility Expansion Narrative	04.02.2019
A.3	1	Site Plan – existing conditions	04.02.2019
A.4	1	Site Plan – Proposed improvements (11" x 17")	04.02.2019
A.5	51	Appendix B: Preliminary Title Reports an Lot of Record Information	04.02.2019
A.6	14	Appendix C: Pre-Application Conference Notes (November 29, 2018)	04.02.2019
A.7	15	Appendix D: Service Provide Forms: Water, Transportation, Sanitary, Fire	04.02.2019
A.8	6	Appendix E: Wildlife Conservation Plan	04.02.2019
A.9		Appendix F: Geologic Hazards Permit	04.02.2019
A.10	27	Appendix G: Lighting Plan and Cut Sheets	04.02.2019
A.11	8	Appendix H: Water Bureau Letter and Easements	04.02.2019
A.12	1	Appendix I: PWB Deed Restriction Limiting Forest Practice Claims	04.02.2019
A.13	37	Appendix J: Stormwater Report	04.02.2019
A.14	1	Utilities, Parking, Loading, Circulation, and Drainage Plan	04.02.2019
A.15	1	Site Preparation, Construction Limit and Tree Removal Plan - I	04.02.2019
A.16	1	Site Preparation, Construction Limit and Tree Removal Plan - II	04.02.2019
A.17	1	Architectural Floor Plan	04.02.2019
A.18	2	Architectural Elevations – I and II	04.02.2019
A.19	1	Architectural – Sections – 1	04.02.2019
A.20	5	Erosion and Sediment Control Plans	04.02.2019
A.21	1	Existing Landscaping Plan	04.02.2019

A.22	1	Mitigation Plan	04.02.2019
A.23	8	Email correspondence from Jesse Winterowd of Winterbrook Planning about truck trips and GH worksheet	08.09.2019
'B'	#	Staff Exhibits	Date
B.1	5	Department of Assessment, Records and Taxation (DART): Property Information	
B.2	1	Department of Assessment, Records and Taxation (DART): Map	
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter	
C.2	6	Notice of Public Hearing & mailing list	
C.3	2	Oregonian Ad	
'H'	#	Hearing Exhibits	Date
H.1	7	Applicant's PowerPoint presentation	8.23.2019
H.2	2	Staff submitted Chapter 39 Geologic Hazards Permit Standards	8.23.2019
H.3	9	Letter w/attachments dated 8.22.19 from Kelly Hossaini, Miller Nash Graham & Dunn, representing Lusted Road Farms, LLC	8.23.2019
H.4	22	Applicant submitted first reading and attachments of Portland City Council Agenda Item #693 dated 7.24.19	8.23.2019
H.5	1	Applicant submitted handwritten proposed language for Condition #14	8.23.2019
H.6	1	Applicant submitted Oregon Health Authority (OHA) deadline	8.23.2019
H.7	2	Hearing sign-in sheet	8.23.2019
'I'	#	Post Hearing Exhibits	Date
I.1	68	Letter dated 8.30.19 from Zoee Powers, Radler White Parks & Alexander, representing City of Portland Water Bureau granting 150-day extension and Appendices 1 through 4.	8.30.2019
I.2	15	Letter w/attachments dated 8.30.19 from Kelly Hossaini	8.30.2019
I.3	5	Final argument from Zoee Powers dated 9.13.19	9.13.2019

Department of Community Services
Land Use and Transportation Planning Program
www.multco.us/landuse

Multnomah County

1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

DECISION

Community Service Conditional Use and Design Review

Case File: T3-2013-2935

Hearings Officer: Liz Fancher

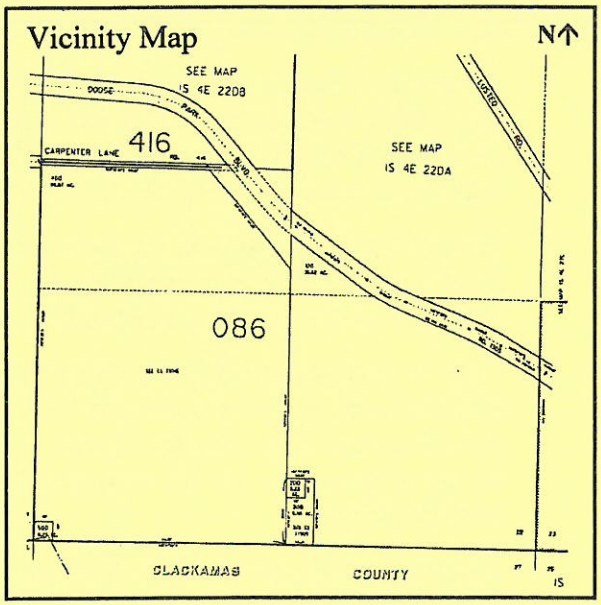
Hearing Date, Time, & Place:

Friday, December 13, 2013, at 10:00 am

Room 103 at the Land Use Planning Division office located at 1600 SE 190th Avenue, Portland, OR 97233

Base Zone: Multiple Use Agriculture – 20

Overlays: n/a



Location: 35524 SE Carpenter Lane
Tax Lot 200 & 300, Sec 22D, T 1 South, R 4 East, W.M.
Tax Account # R994220290 and R994220930

Applicant(s): Lael Alderman
Murray, Smith & Associates

Property Owner(s): Pleasant Home Water District
c/o Cassandra Lashbaugh

Summary: Pleasant Home Water District is requesting to add a 750,000 gallon steel water storage reservoir to the site and complete seismic upgrades to the existing water storage reservoir on the same property. A community service conditional use permit is required to authorize a Utility Facility in the Multiple Use Agriculture -20 zone. In addition, a Design Review approval to consider the design and layout of the facility will be considered concurrent with the conditional use application.

Site Size: 1.20 acres

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): *Community Service Conditional Use* - MCC 36.6000 through 36.6020; *Conditional Uses*, MCC 36.2830(A) & 36.2855(C) – (G); *Lot of Record*, MCC 36.270 & 36.005; *Off-Street Parking and Loading*, MCC 36.2880.Multnomah County Comprehensive Plan, Policies 31, 37 and 38

Multiple Use Agriculture – 20 zone – MCC 36.2870 Various MUA-20 requirements

Design Review - MCC 36.7000 through 36.7060 Design Review, MCC 36.4100 through 36.4195, Off-Street Parking and Loading.

Hearings Officer Decision:

The Hearings Officer approves the Community Service application and Design Review to add a second storage reservoir to an existing facility and allow for seismic upgrades of the existing tank subject to compliance with the following conditions of approval:

1. 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 and as modified by these conditions. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Prior to land use approval for the building permits, Pleasant Home Water District shall apply to Land Use Planning to consolidate tax lots 200 and 300, 1S4E22D into a single parcel and complete the necessary lot consolidation process pursuant to MCC 36.7794.
3. Prior to commencement of construction, the trees and their root zones on Tax Lot 200, 1S4E22D shall be marked by the contractor as a "No Parking or Equipment" zone. Orange fencing shall be placed around the perimeter of their root zones to prevent vehicle parking or placement of spoils on top of the roots. No fill or spoils shall be deposited or stored within the root zone. [MCC 36.7050(A)(4)]
4. Prior to land use approval for the building permits, Pleasant Home Water District or their representative shall show compliance with the County's Grading and Erosion Control ordinance found in Chapter 29. [MCC 36.2855(G)]
5. Prior to use of the 750,000-gallon reservoir tank, Pleasant Home Water District shall widen any and all areas of the access drive below 15 feet in width from the end of pavement on SE Carpenter Lane to the gravel parking area. In addition, 4-inches or more of gravel shall be placed on top of the access drive to make an all-weather access for the fire service agency, maintenance trucks and sheriff department. [MCC 36.4170(A)]
6. Prior to use of the 750,000-gallon reservoir tank, the 20-foot wide access gate to the site shall have a Kidde Lock Box installed pursuant Gresham Fire and Emergency Services requirements (Exhibit A.9). [Policy 38 & MCC 36.6010(H)]

Dated this 26th day of December, 2013.

Liz Fancher, Hearings Officer

Findings of Fact

FINDINGS: Written findings 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. Staff comments may include a statement in *italic*. The Hearings Officer adopts the findings of Staff. Where staff findings have been revised and adopted by the Hearings Officer the findings are identified as '**Hearings Officer:**'

1.00 Project Description:

Staff: The Pleasant Home Water District (Pleasant Home) is proposing to construct a 750,000 gallon steel water storage reservoir adjacent to its existing 600,000 gallon storage reservoir on its property known as Tax Lots 200 and 300, 1S4E22D (Tax Lot 200 and 300). A chain-link fence will be constructed around the facility. Parking will be available within a graveled area adjacent to the tanks. After the construction of the new storage tank, the existing 600,000 gallon storage reservoir will undergo seismic upgrades to meet current standards as well as interior and exterior sandblasting and recoating of all surfaces. Both tax lots are zoned Multiple Use Agriculture – 20 (MUA-20). Utility Facilities are allowed in the MUA-20 zone when granted approval of a community service conditional use. In addition, the applicant has consolidated the Type II review for a Design Review application with the Type III conditional use review.

2.00 Property Description & History:

Staff: Tax Lot 200 and 300 are landlocked and take access via an easement which originates from SE Carpenter Lane. The 15-foot dirt access road travels first through existing public right-of-way and then continues via an easement to the site. The property is adjacent to the county's boundary with Clackamas County immediately to the south. Tax Lot 300 has an existing water storage reservoir on it which was approved in 1975 via land use case CS 11-75. The adjacent Tax Lot 200 is also owned by Pleasant Home and has associated water district improvements on it.

The project site is surrounded by large parcels being used to grow nursery stock. The subject parcel and surrounding lands in Multnomah County are zoned Multiple Use Agriculture – 20. The lands in Clackamas County are also being used to grow nursery stock.

2.01 MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

Staff: There are no open code compliance issues identified for the subject property. Tax Lot 200 and 300 needs to be consolidated to make one lawful parcel. See additional findings under Section 3.05 below.

3.00 Multiple Use Agriculture – 20 Criteria:

3.01 MCC 36.2830 CONDITIONAL USES.

The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:

(A) The Community Service Uses listed in 36.6015 pursuant to the provisions of MCC 36.6000 through 36.6230.

MCC 36.6015 USES.

(A) Except as otherwise limited in the EFU, CFU and OR districts, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority

(6) Utility facilities, subject to the approval criteria in Section 36.6010(A) through (H).

Staff: The Pleasant Home Water District (Pleasant Home) is proposing to construct a 750,000 gallon steel water storage reservoir on the subject property. Pleasant Home provides drinking water to approximately 2,020 agricultural and rural residential customers in unincorporated Multnomah and Clackamas Counties. The proposed project qualifies as a Utility Facility. A Community Service Conditional Use permit must be approved to allow the use. Provided the Hearings Officer finds the project is in compliance with the applicable community service criteria, once the conditional use is approved the expansion may move forward.

3.02 MCC 36.2855 Dimensional Standards and Development Requirements.

All development proposed in this district 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

(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: The applicant's Site Plan (Exhibit A.4) shows the proposed reservoir at least 42 feet from all property lines. The reservoir tank will be approximately 89 feet from existing grade to top of tank (Exhibit A.10). *Criterion met.*

3.03 (F) 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: The proposed reservoir will not have any restroom facilities requiring a on-site sewage disposal system. A stormwater system currently exists on the site and will be upgraded to handle the additional water created from the new impervious surface of the tank (Exhibit A.7). *Criterion met.*

3.04 **(G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Hearings Officer: The Hearings Officer has included a condition of approval that requires Pleasant Home Water District to demonstrate compliance with the County's Grading and Erosion Control ordinance prior to building plan check. *Criterion to be met by compliance with condition.*

3.05 **MCC 36.2870 LOT OF RECORD.**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, SR zone applied;

(2) July 10, 1958, F-2 zone applied;

(3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;

(5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;

(6) May 16, 2002, Lot of Record section amended, Ord. 982.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

(1) An area of land described as a tax lot solely for assessment and taxation purposes;

(2) An area of land created by the foreclosure of a security interest.

(3) An area of land created by court decree.

MCC 36.0005 Definitions

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC

36.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

Hearings Officer: Tax Lot 200 was created by a deed dated October 7, 1937 and recorded at Book 433 page 319 of the records of the Multnomah County Clerk (Exhibit A.5; Attachment C 10 ft easement). It is a 10,000 square-foot lot (100' x 100') that is a lot of record as no land use or land division rules were in effect when the lot was created. Tax Lot 300 was created on January 27, 1975 when a deed describing an area 0.98 of an acre was recorded (Exhibit A.5; Attachment C Property Deed). This deed removed this area from land shown on Exhibit B.3 as Lot '29.' Lot 29 was described as being 37.83 acres in size and it had road frontage on a public road, Dodge Park Boulevard. The zoning on January 27, 1975 was F-2 (Agricultural). Both Tax Lots 200 and 300, 1S4E22D are accessed via easement from Carpenter Lane. The F-2 zone had a two-acre minimum lot size at the time. There was no minimum road frontage requirement in the F-2 district at the time. The recorded survey 37909 (Exhibit B.5) shows the subject property and the adjoining tax lot 1S4E22D -00200 as one 1.20-acre parcel. This indicates that it was the intent of the property owners to increase the size of the 10,000-square foot lot of record rather than to make Tax Lot 300 as separate lot. Tax Lot 300 at its present size did not meet the minimum lot size of 2 acres when it was created in January 1975.

Tax Lot 200 is shown on the 1962 zoning map. At present, County staff has been unable to

find the case file for CS 11-75 as the microfiche has been misplaced. Staff believes that it was likely that the community service approval, CS 11-75 granted a smaller parcel for the utility facility and that survey 37909 represents that lot size exception. The Hearings Officer believes it is more likely that the boundary line adjustment law at the time allowed this adjustment as the lot being reduced in size by the adjustment exceeded the minimum lot size after it was adjusted. In such a review, if a law similar to the present law applied, the lot being increased in size was not required to comply with the minimum lot size of the F-2 zone. Staff believes the combined tax lots are the legal parcel as there are existing utility improvements on Tax Lot 200 (Exhibit A.4) and the Hearing Officer agrees. Planning staff is recommending a condition of approval (Condition No. 2) requiring that Tax Lot 200 and 300, 1S4E22D be aggregated through the County's Type I Lot Consolidation process. Staff believes that the two tax lots together make one Lot of Record. The Hearings Officer agrees and has included the condition of approval recommended by Staff.

3.06 MCC 36.2880 OFF-STREET PARKING AND LOADING.

Off-Street parking and loading shall be provided as required by MCC 36.4100 through 36.4215.

Staff: The proposed facility has met the off-street parking and loading requirements. Please see Section 7 for additional findings to support this conclusionary statement. *Criterion met.*

4.00 Community Service Conditional Use Criteria

4.01 MCC 36.6010 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 36.6100 through 36.6125, wireless communications facilities, subject to the provisions of MCC 36.6176, and except for regional sanitary landfills which shall comply with MCC 36.6200 through 36.6230.

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

Staff: The proposed reservoir tank will be located within the utility facilities compound. The existing facility contains a 600,000 gallon reservoir tank, various waterlines and valves, and a stormwater system. The proposed 750,000 gallon reservoir will be constructed within 35 feet of the existing tank. A 6-foot tall chain link security fence (Exhibit A.14) will enclose the two tanks, gravel parking area and various vaults and monitoring equipment. The tanks will be painted a medium green shade (Exhibit A.15) called Brahm Grass 90GN.

The land around the proposed reservoir project is being utilized for growing nursery stock. The nearest dwelling to the project site is approximately 1,150 feet to the east. The proposed reservoir facility will not alter or influence the farm character of the surrounding area. The proposed expansion is consistent with the character of the area. *Criterion met.*

4.02 (B) Will not adversely affect natural resources;

Staff: The proposed reservoir will be added to an existing use. The site does not contain any protected streams, wetlands or significant wildlife habitat. The soils on the surrounding properties will not be impacted and may continue to be used for agricultural purposes. The proposed project will not adversely affect natural resources. *Criterion met.*

4.03 (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: The proposed reservoir is surrounded by nursery stock. The general manager of Surface Nursery Inc. has provided a letter (Exhibit A.6) indicating that the proposed utility facility will not affect their operation. No forestland is within 700+ feet of the subject site. The proposed project will not increase costs or significantly change farm or forest practices on surrounding lands. *Criterion met.*

4.04 **(D) Will not require public services other than those existing or programmed for the area;**

Staff: The subject property is currently served by the local fire district (Exhibit A.9), County Sheriff (Exhibit A.8) and has electricity. No septic system is needed as no restroom facilities will be built as the site is typically unmanned. No new public services are requested for the area other than those already existing. *Criterion met.*

4.05 **(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;**

Staff: The area of the subject site has not been identified as a big game winter habitat by the Oregon Department of Fish and Wildlife. *Criterion met.*

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

Staff: Two hazardous conditions could be created by the proposed facility. The first is flooding should the tank need to be rapidly drained or fails. The second is failure due to seismic activity. The location of the existing and proposed reservoir tanks in the middle of farm land helps to limit the hazards as there is significant distance to populated areas and structures. For the need to drain the tank, the applicant has designed the stormwater system to handle the additional water and then direct it into a roadside ditch leading to Johnson Creek in Clackamas County. Clackamas County (Exhibit A.11) has granted authorization to Pleasant Home to allow the discharge within their roadside ditches. Johnson Creek is a salmon-bearing stream. The water in the tanks is chlorinated. The National Marine Fisheries Service has reviewed the effects this water may have on salmon and steelhead and has determined that the potential exposure would likely be below thresholds that could cause effect (Exhibit A.17).

Regarding seismic hazards, the new reservoir would be constructed to the latest standards for the facility. Once constructed, the existing reservoir will be seismically updated (Exhibit A.13). Failure of either of these structures would probably only injure surrounding nursery stock. The proposed and upgraded reservoirs should not create any hazardous conditions. *Criterion met.*

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

Staff: Three comprehensive plan policies are applicable to the proposed project – Comprehensive Plan Policies 31 (Community Facility and Uses), 37 (Utilities – Site Drainage), 38 (Facilities – Fire and Police Protection). Each of these applicable policies is addressed in Section 5.01 through 5.03. Based on these additional findings, the above criterion has been satisfied. *Criterion met.*

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

Staff: The applicant has demonstrated compliance with all the applicable approval standards of the Community Service code section. *Criterion met.*

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

Staff: The applicant has provided information regarding their service boundaries in unincorporated Multnomah and Clackamas Counties (Exhibit A.3). The applicant has indicated that all properties are located outside the Urban Growth Boundary (UGB) (Exhibit A.2, page 4 narrative supporting MCC 36.6010(I)). Staff has verified that all properties in unincorporated Multnomah County are located outside the UGB. Since the majority of the district's served properties are located in Multnomah County, Pleasant Home primarily serves the needs of the rural area. The proposed tower will improve their service to these rural uses. *Criterion met.*

4.10 **MCC 36.6020 RESTRICTIONS.**

A building or use approved under MCC 36.6015 through 36.6050 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, MUA-20, RR, OCI, OR and PH-RC, Districts:

(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 district.

Staff: The property is zoned Multiple Use Agriculture – 20 (MUA-20). The proposed reservoir tank is 42 feet from the west property line, 53 feet from the east property line, 129 feet from the south property line and 182 feet from the north property line (Tax Lots 200 and 300 combined). The rear yard requirement in the MUA-20 district is 30 feet. *Criteria met.*

4.11 **(C) Minimum Site Size:**

(1) A day nursery or kindergarten shall provide not less than 100 square feet per child, of outdoor play area located other than in a required front yard.

(2) Primary (kindergarten through fourth grade), private and parochial schools shall be on sites of one acre for each 90 pupils or one acre for each three classrooms, whichever is greater.

(3) Elementary public schools shall be on sites of one acre for each 75 pupils or one acre for each two and one-half classrooms, whichever is greater.

(4) Churches shall be on sites of 15,000 square feet.

Staff: The proposed utility facility is not listed above and therefore is not subject to a minimum site size. *Criteria met.*

4.12 **(D) Off-street parking and loading shall be provided as required in MCC 36.4100 through 36.4215.**

Staff: Off-street parking and loading standards are addressed under Section 7 below. *Criterion met.*

4.13 **(E) Signs for Community Service Uses pursuant to the provisions of MCC 36.7400 through 36.7505.**

Staff: Staff is not aware of any proposed signs at this time. *Criterion met.*

4.14 **(F) Other restrictions or limitations of use or development not required under this subsection shall be provided in the district.**

Staff: Please see staff findings under Section 3.0 for the MUA-20 restrictions and limitations. *Criterion met.*

5.00 Comprehensive Plan Policies

5.01 Policy 31

The County's policy is to:

A. Support the siting and development of a full range of community facilities and services by supporting the location and scaling of community facilities and uses meeting the needs of the community and reinforcing community identity.

B. Encourage community facilities siting and expansion at locations reinforcing orderly and timely development and efficient provision of all public services and facilities.

C. Encourage land use development which support the efficient use of existing and planned community facilities.

D. Support the development of a unified approach to long range community facilities planning and capital investment programming in Multnomah County.

E. Classify community facilities according to their function and scale of operations.

Scale	Type of Facilities
Community Service Foundations	Water Storage

F. Locate community facilities on sites with average site grades consistent with a project's scale and impacts, site slope requirements by scale are:

Scale	Average Site Slope Standard
Community Service Foundations	20%

For sites with average slopes steeper than the standard the development must be able to demonstrate that through engineering techniques all limitations to development and the provision of services can be mitigated.

G. Support the location of community facilities on existing transportation systems with volume capacities and modal mix splits available and appropriate to serve present and future scales of operation. Vehicular access requirements by scale of facility are:

Scale	Vehicular Access Standards
Community Service Foundations	Truck traffic will not be routed through local neighborhood streets

H. Restrict the siting of community facilities in locations where site access would cause dangerous intersections or traffic congestion considering the following:

1. Roadway capacities
2. Existing and projected traffic counts

3. Speed limits
4.Number of turning points

I. Support community facilities siting and development at sites of a size which can accommodate the present and future uses and is of a shape which allows for a site layout in a manner which maximizes user convenience, energy conservation, and pedestrian and bicycle access to and within the site.

J. Promote compatible development and minimize adverse impacts of site development on adjacent properties and the community through the application of design review standards codified in MCC 11.05.7805 - 11.05.7865.

K. Provide for the siting and expansion of community facilities in a manner which accords with the other applicable policies of this plan.

Staff: Pleasant Home Water District provides water to both rural residential and agricultural customers. Presently they have only one reservoir and it cannot be taken off-line without disrupting water service to all of its customers. The district's boundaries (Exhibit A.3) are set and no additional lands will be brought in to their service area with this proposal. While lands within its boundaries are rural, enough development has occurred within their boundaries to stress the system's capacity. During peak water usage periods, Pleasant Home has run short of water from its one reservoir. By adding the second reservoir, regular maintenance can be completed and maintain service. In addition, more water will be available to Pleasant Home customers during peak water usage periods and allow for the future meter connections.

The project site is accessed via an easement from SE Carpenter Lane. Once the reservoir tower is constructed, trips to the site will be infrequent with a single, half-ton pick-up or similar maintenance vehicle. The project site is nearly flat with slopes ranging from 0 – 8 percent based on the soil type Cazadero silty clay loam (9B). *Policy met.*

5.02 Policy 37

Drainage

E. Shall have adequate capacity in the storm water system to handle the run-off; or

F. The water run-off shall be handled on the site or adequate provisions shall be made; and

G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Staff: The proposed development will have an enlarged stormwater system to handle the increased impervious surface of the reservoir. In addition, the system is designed to allow for the drawdown of the reservoirs without flooding on adjacent properties (Exhibit A.7). *Policy met.*

5.03 Policy 38

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

Fire Protection

B. There is adequate water pressure and flow for fire fighting purposes; and

C. The appropriate fire district has had an opportunity to review and comments on the proposal.

Police Protection

D. The proposal can receive adequate local Police protection in accordance with the standards of the jurisdiction providing police protection.

Staff: The Fire Service Agency and the County Sheriff have indicated that there are adequate service levels for the development (Exhibit A.8 and A.9). *Criterion met.*

6.00 Design Review Criteria

6.01 MCC 36.7010 DESIGN REVIEW PLAN APPROVAL REQUIRED.

No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this ordinance.

Staff: The applicant has applied for the design review to be reviewed concurrent with the Community Service application.

6.02 MCC 36.7020 APPLICATION OF REGULATIONS.

(A) Except those exempted by MCC 36.7015, the provisions of MCC 36.7000 through 36.7060 shall apply to all conditional and community service uses, and to specified uses, in any district.

(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 36.4205 shall only be subject to the following Design Review approval criteria: MCC 36.7050(A)(1)(a) and (1)(c), (4) and (7), except when located in the PH-RC, OR, or OCI zone districts.

Staff: The applicant has applied for a community service approval for a utility facility and concurrently, Design Review. The proposed improvements only require one parking space, hence only MCC 36.7050(A)(1)(a) and (1)(c), (4) and (7) apply.

6.03 MCC 36.7050 DESIGN REVIEW CRITERIA.

(A) Approval of a final design review plan shall be based on the following criteria:

(l) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

Staff: The proposed improvements are located within a field of nursery stock. An existing reservoir tank with its related valves, pipes and equipment exists on Tax Lots 200 and 300. The proposed reservoir tank will be the same height as the existing tank but will be of a wider diameter. Both tanks will be painted the same shade of green (Exhibit A.15) and have similar materials. The amount of land used for the facility has been limited to protect the surrounding farm lands. The tanks will have a visual relationship with the site as they will look similar to other tanks that are sometimes found on farms (Exhibit A.16). *Criterion met.*

6.04 (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.

Staff: The proposed improvements are designed to serve the Pleasant Home district's

customers for the next twenty years. The scale and height of the new tower will maintain water pressure and will relate to the existing reservoir tank. Both tanks working together will allow for maintenance practices that would otherwise cause the water to be stopped to all the district's customers. The minimum amount of land has been used to provide efficient water service to the Pleasant Home area. *Criterion met.*

6.05 **(4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

Staff: Two trees exist on Tax Lot 200 and will not be disturbed as part of this project. The remainder of the site is chiefly grass or nursery stock (Exhibit A.4). The slopes on the project site fall within the 0 – 10% range. Minimal grading will need to occur to develop the reservoir and parking area. A condition of approval is recommended so that the contractor protects the two trees during construction and does not compact the soil or place spoils over their root zones. *Criterion can be met through a condition.*

6.06 **(7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

Staff: The proposed facility will not receive mail or need trash service. The parking, reservoir tanks and related physical improvements will be contained within a 6 ft high chain link fence. The project site is surrounded by farmland that is presently used to grow nursery stock. The project as designed will not create adverse impacts on the site or to neighboring properties. *Criterion met.*

6.07 **MCC 36.7060 Minor Exceptions: Yard, Parking, Sign, and Landscape Requirements.**

(A) In conjunction with final design review plan approval, the Planning Director may grant minor exceptions from the following requirements:

(2) Dimensional standards for off-street parking as required under MCC 36.4170 and 36.4175;

Hearings Officer: The access drive from Carpenter Lane to the reservoir project site is fifteen feet wide; less than the 20-feet width required by MCC 36.4170. This requirement may, however, be varied through approval of a minor exception

.

6.08 **(B) Except under subsection (A) (5) above, no minor exception shall be greater than 25% of the requirement from which the exception is granted.**

Staff: A 25% reduction in the required 20-foot width would bring the access drive to 15 feet in width.

6.09 **(C) Approval of a minor exception shall be based on written findings, as required in this subpart.**

(2) In the case of a minor exception to the dimensional standards for off-street parking spaces or the minimum required number of off-street parking spaces, the Planning Director shall find that approval will provide adequate off-street parking in relation to user demands. The following factors may be considered in granting such an exception:

(a) Special characteristics of users which indicate low demand for off-street parking (e.g., low income, elderly);

(b) Opportunities for joint use of nearby off-street parking facilities;

(c) Availability of public transit;

(d) Natural features of the site (topography, vegetation, and drainage) which would be adversely affected by application of required parking standards.

Staff: The proposed utility facility does not have daily traffic generated to or from it. Infrequent visits to the site for monitoring and/or maintenance are the only trips to occur. There is a very low trip generation pattern for the facility. The surrounding farm use of nursery stock also has limited vehicle trip generation. There is no need for a two-lane access road as no public will visit the site. The reservoir property is surrounded by Class II soils (Cazadero silty clay loam – 9B). The widening of the access drive to 20 feet would reduce the amount of farmland available to grow crops and would adversely affect the surrounding farm use. In addition, Pleasant Home Water District only has a 15-foot wide easement across the adjacent property to SE Carpenter Lane. Staff recommends approval of the minor exception to allow a 15-foot wide graveled access drive from the project site to SE Carpenter Lane.

Hearings Officer: This application involves an expansion of an established use developed using the 15-foot wide driveway. That driveway has served the needs of the water district for decades. The expansion will not materially change the traffic associated with the use. As a result, it is reasonable to approve an exception to allow the district to continue to use its established driveway.

7.00 Off-Street Parking and Loading Criteria

7.01 MCC 36.4205 Minimum Required Off-Street Parking Spaces.

(E) Unspecified Uses

Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.

Staff: A single maintenance vehicle will be used for infrequent monitoring and maintenance. One 9-foot wide by 18-foot long parking space is required. The site plan shows a gravel access and parking area which can accommodate one to two maintenance vehicles (Exhibit A.4). *Criterion met.*

7.02 MCC 36.4170 Access.

(A) Where a parking or loading area does not abut directly on a public street or private street approved under MCC 36.7700 et seq., the Land Division Chapter, there shall be provided an unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.

Staff: The subject property is landlocked and is accessed via an easement leading from SE Carpenter Lane, a public street. The easement width is 15 feet. The actual driving surface appears to range from 12 to 15 feet in width. The access drive is not paved or graveled. Pursuant to MCC 36.4180(A)(1), the drive from the project site can be surfaced with 4 inches of gravel as the required parking for the project is only one space.

Hearings Officer: A minor exception to this dimension standard has been approved as

allowed by MCC 36.7060(A)(2), above, to allow a 15-foot wide gravel drive to provide access to the project site. The applicant will be required to improve the driveway to a width of 15 feet with gravel to meet all other applicable County standards.

7.03 MCC 36.4180 Improvements

(A) Surfacing

(l) All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds. Parking areas with fewer than four required parking spaces may be surfaced with four inches of gravel.

Staff: Only one parking space is required as discussed under Section 7.01. Gravel may be utilized for the parking and maneuvering areas.

7.04 (B) Curbs and Bumper Rails

(l) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.

(2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence except as provided in (3) below.

(C) Marking - All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 36.4120, and such marking shall be continually maintained. Except for development within the PH-RC, OR, or OCI zones, a graveled parking area with fewer than four required parking spaces is exempt from this requirement.

(D) Drainage - All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.

Staff: The parking area is setback approximately 25 feet from the western property line. The parking area is separated from the access easement by a 6-foot tall chain link fence. No marking is required as only one parking space is required. The gravel parking lot is not an impervious surface area. *Criteria met.*

7.05 MCC 36.4185 Lighting.

Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.

Staff: No lighting is proposed for the parking area. *Criterion met.*

7.06 MCC 36.4195 Design Standards: Setbacks.

(A) Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street perpendicularly.

Staff: The subject property is landlocked. *Criterion not applicable.*

8.00 Exhibits

'A' Applicant's Exhibits
'B' Staff Exhibits
'C' Procedural Exhibits

Exhibits with a "*"after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T3-2013-2935 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date
A.1	1	General Application Form	6.11.2013
A.2	5	Narrative Addressing Approval Criteria	6.11.2013
A.3	1	Attachment A – Vicinity Map Showing Water District Boundary	6.11.2013
A.4	1	Attachment B – Preliminary Reservoir Site Plan dated May 2013	6.11.2013
A.5	4	Attachment C - Property Deed – 1 page a. 10 ft Easement – 1 page b. Widen 10 ft Easement to 15 ft – 2 pages	6.11.2013
A.6	1	Attachment D - Letter from Surface Nursery Inc. dated 6/3/2013	6.11.2013
A.7	15	Attachment F - Storm Water Certificate – 1 page a. Storm Water Certification – Narrative – 1 page b. Preliminary Detention Basin Section – 1 page c. Rational Method Detention Pond Sizing – ODOT – 11 pages d. Watercourse Illustrated – 1 page	6.11.2013
A.8	1	Attachment G - Sheriff Services Review	6.11.2013
A.9	4	Attachment G (2) – Fire Service Agency Review	6.11.2013
A.10	1	Attachment H – Preliminary Reservoir Section	6.11.2013
A.11	2	Clackamas County Development Permit Issued to The Pleasant Home Water District	7.02.2013
A.12	4	Narrative Addressing Additional Information Requested	9.04.2013
A.13	2	Seismic Upgrades to Existing 600,000 Gallon Reservoir	9.04.2013
A.14	6	Site Fencing Details	9.04.2013
A.15	2	Final Exterior Color of Both Tanks – Brahm Grass	9.04.2013
A.16	2	Pictures of Tanks	9.04.2013
A.17	2	NMFS Consent for Project	9.04.2013
A.18	2	Amended General Application Form	9.04.2013
'B'	#	Staff Exhibits	
B.1	4	A&T Property Information for 1S4E22D – 00300 & 00200	11.26.2013
B.2	2	1974 District Lot Sizes	11.22.013

B.3	1	1962 Zoning Map for 1S4E22	11.26.2013
B.4	1	October 5, 1977 Zoning Map for 1S4E22	11.22.2013
B.5	1	Survey 37909 dated December 5, 1974	11.22.2013
B.6	1	Current A&T Map for Tax Lot 200 and 300, 1S4E22D	11.26.2013
'C'	#	Administration & Procedures	
C.1	2	Incomplete Letter	7.05.2013
C.2	1	Applicant's Acceptance of 180 Day Clock	8.09.2013
C.3	1	Complete Letter (Day 1 – September 4, 2013)	9.13.2013
C.4	4	Public Notice	11.22.2013
C.5	16	Staff Report	11.29.2013
'H'	#	Hearings Exhibits	
H.1	1	Sign-in Sheet	12.13.2013

Department of Community Services
Land Use Planning Division
www.multco.us/landuse

Multnomah County

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BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding an application by Ben Schonberger for approval of permits for a sewer line and pump station to serve the existing Sam Barlow High School located at 5105 SE 302nd Avenue in Multnomah County, Oregon	))))	**FINAL ORDER** **T3-2019-11560** **(Barlow Sewer)**

A. FINDINGS AND CONCLUSIONS

1. The applicant, Ben Schonberger, requests approval of Conditional Use (CU), Design Review (DR), and Significant Environmental Concern for Water Resources (SEC-wr) Permits for construction of a sewer line and pump station within the SE Lusted Road right-of-way. The sewer line will serve the existing Sam Barlow High School located on a 37.27-acre parcel at 5105 SE 302nd Avenue; also known as tax lot 100, Section 18, Township 1 south, Range 4 east of the Willamette Meridian; also known as Multnomah County Assessor Parcel R994180780. Additional basic facts about the site and surrounding land and applicable approval standards are provided in the Staff Report to the Hearings Officer (the "Staff Report"), incorporated herein by reference.

2. Multnomah County Hearings Officer Joe Turner (the "hearings officer") held a duly noticed public hearing on June 14, 2019, to receive and consider public testimony in this matter. The record includes a witness list, materials in the casefile as of the close of the record, and an audio record of the hearing. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected relevant testimony offered at the hearing.

3. County interim planning director Adam Barber testified on behalf of the County and summarized the Staff Report. The applicant, Ben Schonberger, accepted the findings and conditions in the Staff Report without exceptions and waived his right to submit a final argument. No one else testified orally or in writing. The hearings officer closed the record at the end of the hearing and announced his intention to approve the application, subject to the conditions in the Staff Report.

4. County staff recommended that the hearings officer approve the application based on the findings and conclusions and subject to conditions of approval recommended in the Staff Report. The applicant accepted those findings and conditions without objections. No one disputed the findings in the Staff Report. The hearings officer agrees with those findings, conclusions and conditions and adopts the findings in the Staff Report as support for this Final Order.

5. Based on the findings and discussion provided or incorporated in this Final Order, the hearings officer concludes that the applicant sustained the burden of proof that the proposed development does or will comply with the applicable criteria of the Multnomah County Code, provided development that

occurs after this decision complies with applicable local, state, and federal laws and with conditions of approval warranted to ensure such compliance occurs in fact. Therefore the application should be approved subject to such conditions.

B. ORDER

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and public testimony and exhibits received in this matter, the hearings officer hereby approves T3-2019-11560 (Barlow Sewer), subject to the following conditions of approval:

CONDITIONS OF APPROVAL

1. A Construction Permit shall be issued by the County Engineer prior to commencement of construction (MCRR 18.200).

2. An Erosion and Sediment Control Permit shall be issued by County Land Use Planning prior to commencement of construction (MCC 39.4325(J)).

3. Prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by county permits. Such markings shall be maintained until construction is complete (MCC 39.5800(E)(7)).

4. Site mitigation within the Water Resource area shall include removal of any non-native species and reseeding with native grass seed, both activities occurring within an area totaling no smaller than 1,100 square feet (MCC 39.5800(F)(2)). Mitigation shall occur as illustrated on plan sheet C300 and additional mitigation necessary to meet this condition of approval shall occur within degraded or marginal areas as close as possible to the middle fork of the Beaver Creek drainage located west of the pump station (MCC 39.5800(F)(2)(d)).

DATED this 20th day of June, 2019.

Joe Turner, Esq., AICP
Multnomah County Land Use Hearings Officer

BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use	)	**Case File No.**
Permit to Establish a Twelve Acre Photovoltaic	)	**Z0384-18-C**
Solar Power Facility.	)	**(Sulus Solar 29)**

A. SUMMARY

1. The applicant is Sulus Solar 29. The owner is Arnold Heiman.
2. The subject property is located at 36461 Southeast Proctor Road, Boring, Oregon 97204. The legal description is T1S, R4E, Section 26, Tax Lots 4800, 4900, and 5000, W.M. The subject property is approximately 34.42 acres and is zoned EFU – Exclusive Farm Use.
3. On October 4, 2018, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this application on October 4, 2018. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Clay Glasgow discussed the staff report and recommended approval of the application.
3. Enda Grogan testified in support of the application.
4. No one testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer closed the record.

C. FACTS

The subject property is an approximately 34.42-acre parcel zoned EFU. The property is located at 36341 Southeast Proctor Road, Boring, OR 97204, on the east side of Southeast Bluff Road in the Sandy area. The subject property is generally in an area of EFU-zoned properties in agricultural use. There are scattered rural residential uses, and there is a grade school to the south. The property is in farm use along with timbered areas, and there is a residence and outbuildings. The application seeks a conditional use permit to construct and operate a 12-acre photovoltaic solar power generation facility, which would be located in the northwestern portion of the property.

D. DISCUSSION

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. The findings in the staff report are not challenged. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the findings in the staff report and agree with those findings. Therefore, I adopt and incorporate the findings in the staff report in this decision.

All of the applicable approval criteria are satisfied.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0384-18-C, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

I. General Conditions:

1) Approval of this land use permit is based on the submitted written narrative and plan(s) dated August 8, 2018. The application was deemed complete on August 15, 2018. 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 this document(s) and the limitation of approval described herein.

2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you'd like to take advantage of this meeting please contact Deana Mulder, at (503) 742-4710 or at deanam@co.clackamas.or.us.

3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Development Agency. Wendi Coryell can be contacted at 503-742-4657, or wendicor@co.clackamas.or.us. The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.

4) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:

   a) A building permit for a new primary structure that was part of the conditional use approval; or
   b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.

5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

6) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

II. Planning and Zoning Conditions: Clay Glasgow, (503) 742-4520, clayg@clackamas.us

1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County

Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.

2) Prior to commencement of use the project owner shall sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

3) Developer/owner is responsible for retiring the facility. At the end of the life of facility all non-utility owned equipment, conduits, structures, and foundations will be removed to a depth of at least three feet below grade.

4) Applicant to implement soil compaction and weed control plans, as submitted with application.

III. <u>Building Code Division Conditions:</u> Andy Anderson, (503) 742-8742, aanderson@clackamas.us

1) All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.

2) Compliance with the following conditions is required prior to the commencement of any new use or occupancy:
   a. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.
   b. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.
   c. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.
   d. All necessary permits and approved plans must be issued and maintained onsite as required.
   e. All required inspections, corrections, and final approval must be obtained.

IV <u>Engineering Division Conditions:</u> Ken Kent; (503) 742-4673, kenken@clackamas.us

1) All frontage and onsite improvements shall be in compliance with *Clackamas County Roadway Standards*.

2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.

3) The applicant shall design and construct a minimum 12-foot wide paved driveway approach onto SE Proctor Road in conformance with Roadway Standards Drawing D500. Storm water runoff shall not be permitted to flow over the paved approach onto SE Proctor Road.

4) The applicant shall provide minimum intersection sight distance at the driveway serving the solar facility. Minimum sight distance at the proposed access point on SE Proctor Road shall be 665 feet in both directions. In addition, no plantings at maturity, retaining walls, embankments, fences or any other objects shall be allowed to obstruct vehicular sight distance. Sight distance can be measured 14.5 feet back from the edge of pavement at a height of 3.5 feet to an object height in the center of the oncoming travel lane.

5) If the applicant chooses to gate the driveway approach serving the solar facility, the applicant shall design and construct the gate a minimum of 30 feet from the edge of pavement of SE Proctor Road.

6) The applicant shall design and construct a minimum 12-foot wide perimeter access road with turnouts approximately every 400 feet. If a minimum 20-foot wide access road is constructed, turnouts are not required. If a turnaround is necessary, it shall be designed and constructed per Standard Drawing C350 or C300. Turn and curve radii shall comply with local Fire District requirements. The perimeter access road shall comply with ZDO subsection 1015.03 C and Roadway Standards Drawing R100 in regards to structural section and the required surfacing with screened gravel or better.

7) The applicant shall provide a copy of the storm water management plan details to DTD Engineering. The storm water management plan shall comply with the requirements of Roadway Standards, Chapter 4.

8) The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to use the solar facility. A minimum 24-foot deep backing area shall be provided for each parking stall.

9) Parking spaces for the solar facility shall meet *ZDO* section 1015 dimensional requirements.

10) Prior to the issuance of a building permit or the initiation of any construction activities associated with the solar facility, the applicant shall submit to Clackamas County Engineering Office:

a) Written approval from the local Fire District for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.

b) A set of site improvement construction plans, for review, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

   i) The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.

   ii) The fee for the Development Permit will be calculated in accordance with the current fee structure existing at the time of the Development Permit application.

The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.

DATED this 22nd day of October, 2018.

Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).