

June 30, 2022

By electronic mail

Multnomah County Hearings Officer
Multnomah County Community Services, Land Use Planning
1600 SE 190 Ave
Portland, OR 97233
LUP-Hearings@multco.us

Re: Application for drinking water filtration facility at 35319 SE Carpenter Lane, Gresham, and related pipelines, Case File T3-2022-16220, Applicant Bonita Oswald, Portland Water Bureau

On behalf of 1000 Friends of Oregon, please accept the following statement for the record in the proceedings for T3-2022-16220, described above. Please include me in any subsequent notice related to proceedings in this matter and any notice of decision. Communication by email is preferred at andrew@friends.org, and my mailing address is 1000 Friends of Oregon, PO Box 40367, Portland, OR 97240.

MCC 39.7515(C)

Many area farmers and nursery operators as well as the Oregon Department of Agriculture have described how the applicant's proposal, especially its construction, but also its operation, will affect their farm operations. The testimony describes how the construction required to establish the use will "force a significant change in accepted farm... practices on surrounding lands" and "significantly increase the cost" of those practices on those lands. MCC 39.7515(C); *see also* ORS 215.296. The immediate area around the facility and its proposed pipelines (the "facility") is characterized by small farm roads, which are not designed to handle the proposed construction required and also facilitate the customary traffic required by the areas' farm and nursery operations. The extent and duration of construction, which includes road closures, will result in significant changes and significant increases in costs of doing business. For some nurseries, this includes a loss of customers.

As far as 1000 Friends can determine, the applicant has failed to address these issues and the county has not proposed conditions of approval that would ensure that farm operations can continue without significant changes or costs to area growers. Unsupported assertions by the applicant that impacts will be addressed are not substantial evidence. It is unclear how exactly

the applicant proposes to maintain farm and field access during full and partial road closures, what kinds of delays will be imposed on that access, or the total duration of these closures.

MCC 39.7515(A), (D)

The proposal's impacts to area farms demonstrates why the proposed use is not "consistent with the character of the area" and the off-site construction demonstrates that the proposal "requires public services other than those existing or programmed for the area." MCC 39.7515(A), (D). First, the proposal is nothing like the surrounding agricultural and residential uses. The applicant's and staff's analysis fails to address relevant differences. One of the main differences between the applicant's proposal and area farm uses is that the facilities on the subject property on Carpenter lane require a host of off-site construction for pipelines and access roadways. These are not consistent with the character other uses in the area.

The fact that the proposed use will result in significant disruption to the local roadways demonstrates that it is not "consistent with the character of the area." The local network of roadways that serve area farms and residents are not constructed to accommodate a facility of this scale while also ensuring adequate access for the area's farms. As demonstrated by the requirement to fully close roadways, the local transportation facilities were not designed to facilitate access required for farm uses and facilitate extended construction required to build the pipelines required for the treatment facility.

Although area farm uses have large structures and greenhouses, the construction required to establish those uses is significantly less than what the applicant proposes. *See Staff Report at 47* (MCC "states that the terms 'development' and 'use' are synonymous," which means "the act of improving land is part of the use."). The surrounding farm uses and their buildings do not require large amounts of earthmoving for berms and treatment ponds. They also do not require pipelines to be buried across neighboring properties and in roadways. The applicant's facility is akin to an industrial use, requiring specialized equipment, off-site facility development and upgrades, and corporate style office buildings that more closely resembles manufacturing facility or chemical plant than the greenhouses and equipment storage buildings that are found on nearby farm operations. Simply put, although nurseries and area farms may construct large greenhouses, those farm operations do not require extensive off-site infrastructure, require construction that "will take significantly more time than the average construction project within the county's jurisdiction," or result in pipelines that block access to area roadways for long periods of time. In comparison, construction for the existing farm uses in the area is minimal and does not interfere with nearby uses. These differences demonstrate that the applicant's proposed use is not

consistent with the character of the area, which does not currently include this scale of industrial/utility use.

The actual treatment facility on the subject property on Carpenter lane violates MCC 39.7515(D). In order to function, the facility requires “public services other than those existing or programmed for the area.” The treatment facility requires the extension of public services, which include the pipelines and emergency access road. As far as 1000 Friends can determine, the applicant has not demonstrated that these pipelines, roadway closures, roadway improvements, or the filtration facility itself appear in the requisite county facility and transportation plans or are otherwise “programed” for the area. *See* Goals 11 and 12, OAR 660-011 (explaining that water systems such as the pipelines and treatment system proposed are public facilities and requiring inclusion in adopted facility plan), OAR 660-012. The staff report’s fails to determine whether or how the applicant’s proposed facilities have been programmed for the area or evaluate the relevant Portland, Metro, or County facility and transportation plans.

MCC 39.7515(G) and County Comprehensive Plan

The Portland Water Bureau has failed to comply with MCC 39.7520 and 39.7515(G), which require the applicant demonstrate that the proposal “will satisfy the applicable polices of the Comprehensive Plan.” In this case, the proposed facility, including its pipelines, and associated construction, fail to comply with policies 3.14, 3.15, 3.16, 11.1, 11.2, 11.3, and 11.10.

The applicant’s proposal fails to comply with policies 3.14 and 3.15. The applicant fails to demonstrate that the facilities and pipelines are “compatible with exclusive farm use areas” given the level of disruption required to the surrounding agricultural operations. Policy 3.14. For similar reasons, the applicant fails to provide measures that “protect farm land from adverse impacts.” Policy 3.15. As explained above, the project will adversely impact nearby farm land and farm operations. The applicant fails to provide conditions of approval that protect farm land from the impacts or ensure protection of farm land should the applicant’s assumptions regarding impacts from road closures, dust, and levels of chemicals that could be introduced to the water, environment, and bystanders prove to be incorrect.

For example, the applicant fails to establish that “equivalent safe distances,” which the EPA developed to determine the safe distance for exposure to bystanders, applies equally to chemical exposure of water in a water treatment facility. There is also the possibility that EPA standards for chemical concentrations in water could change. Even accepted farming practices that are designed to protect humans and the environment, could still result conflicts with a water

treatment facility. Those conflicts—to the extent that they change farming practices or impose liability on farmers—could result in adverse impacts.

Both the farm impacts test at MCC 39.7515(C) and Policy 3.15 require the applicant to bear the risk of ensuring that farm practices and farm land are protected from adverse impacts. *See e.g.* ORS 215.296(3) (providing a process for farmers to obtain ongoing enforcement of measures intended to prevent significant impacts). Policies like the farm impacts test and Policies 3.14 and 3.15 ensure that the non-farm use, not farmers, bears the risk of impacts into the future. The applicant proposes no conditions of approval that ensure that farm land and the continued ability to farm remains protected, should the applicant’s assumptions about road closures, dust, pesticide drift, water quality standards, and bystander impacts not hold true. By failing to provide conditions of approval the place the burden on the applicant—as opposed to area farmers—to ensure that accepted farm practices and farm land are not adversely affected by the utility facility, the applicant fails to demonstrate compliance with policies 3.14 and 3.15.

The applicant and staff fail to comply with Policy 3.16, which applies to the applicant’s proposed use. The water treatment facility may be part of a utility, but that utility is also a business. Just like any other business, the applicant provides a service to paying customers. In this case, the proposed facilities are not “limited in scale and type to service the needs of the local rural area.” Policy 3.16. Instead the facility is designed to primarily if not entirely serve Portland area residents, inside the urban growth boundary. The scale of the applicant’s facility is too large and not sufficiently limited to comply with Policy 3.16.

The applicant’s proposal also violates policies 11.1, 11.2, and 11.3. By locating a treatment facility that primarily, if not nearly entirely, serves urban residents and customers on rural land outside the UGB, the county’s decision fails to “ensure a timely and efficient arrangement of public facilities and services that serves as a framework for appropriate levels of development of land within the County’s jurisdiction.” Policy 11.1. The facility’s location outside of the UGB is not efficient, nor is the scale appropriate for levels of development within the county’s jurisdiction.

The applicant fails to demonstrate that the proposed facility has been developed within or otherwise implements the county’s public services and facilities plans. Policy 11.2. The applicant’s proposal does not appear to be the result of the coordination that results in the “provision of appropriate types and levels of public facilities.” *Id.* (11.2.1, 11.2.2). The applicant also fails to demonstrate that the facility “adequate” for “existing uses.” Instead of being “adequate,” the facility is oversized and serves uses outside the county’s jurisdiction. *Id.* (11.2.3). Next, the applicant’s proposal does not protect “rural areas.” *Id.* (11.2.4). Instead the

proposal would take up valuable and viable farm land for the purpose of serving users inside the UGB.

The proposal violates policy 11.3 because the county would approve a public facility and services that are not “appropriate to the needs of rural areas” and which fail to “avoid[] adverse impacts to farm... practices.” 1000 Friends and other commenters have already explained the facility’s adverse impacts to farming. The facility is designed to meet the needs of urban, not rural areas, and is oversized to meet the needs of the surrounding community. For that reason, the facility is not “appropriate to the needs of rural areas.” Policy 11.3.

Finally, the applicant’s proposal violates Policy 11.10. The project is designed and intended “solely” to “serve uses within the urban growth boundary.” By locating the facility’s storage tanks and reservoirs “outside the urban growth boundary,” the project fails to comply with Policy 11.10. The applicant does not demonstrate “that there is no practical alternative site within the urban growth boundary that can reasonably accommodate the use.” Policy 11.10. The fact that the system may serve the local water district does not demonstrate that the project’s intent is to do anything other than serve urban residents. Moreover, the relative service provided to the local districts is *de minimus* when compared to the scale of the service provided inside to customers inside the UGB. If the facility were located at alternate proposed locations, it is not clear that it would serve the Pleasant Home or Lusted Water Districts. The fact that the proposed system will provide some service to two local districts appears to be an artifact of the site selection, not the intent of the system.

ORS 215.275

The facility fails to meet the criteria in ORS 215.283(1)(c)(A) and ORS 215.275. For the purpose of complying with ORS 215.275, the applicant cannot separate the treatment facility from the pipelines required to connect the facility to the existing water system. The treatment facility and its pipes are a single facility because the pipelines are required to connect the treatment part of the facility to the larger water system. For that reason, the proposed facility is located on both EFU and MUA-20 land. The applicant must consider alternatives in which the entire facility can be located outside of EFU designated lands.

In this case, the applicant’s analysis of alternative pipeline routes is not sufficient and fails to comply with the alternatives analysis required by ORS 215.275. There are other alternatives in which the facility would not be located on EFU land at all and would not require any pipes to cross EFU land in order to connect to the existing water system. For that reason, the applicant has not shown that the facility “must be sited in an exclusive farm use zone” due to the factors



outlined in ORS 215.275(2). *See also* ORS 215.275(3). The applicant's initial analysis of alternative sites showed that locations within the UGB exist, are available, are technically feasible, meet the project's locational requirements, and comply with public health and safety concerns. The applicant's proposal violates ORS 215.275.

For those reasons, 1000 Friends requests that the Hearings Official deny the applicant's request.

Respectfully,

A handwritten signature in black ink, appearing to read "Andrew Mulkey".

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1000 Friends of Oregon is a non-profit organization founded by Governor Tom McCall shortly after the Legislature passed Senate Bill 100, which created the land use planning rules that shape Oregon's communities. Since its founding in 1975, 1000 Friends has served Oregon by defending Oregon's land use system—a system of rules that creates livable communities, protects family farms and forestlands, and conserves the natural resources and scenic areas that make Oregon such an extraordinary place to live. 1000 Friends accomplishes this mission by monitoring local and statewide land use issues, enforcing state land use laws, and working with state agencies and the Legislature to uphold the integrity of the land use system.