



April 4, 2025

Multnomah County Planning  
Re: T3-2022-16220 Comments

Dear Multnomah County:

Thank you for hosting the remand hearing and this letter is to provide comments on behalf of the Oregon Association of Nurseries (“OAN”). Please include this letter in the record and send me the decision when it is issued.

Our members include many farms which grow valuable crops on high value farmland which is adversely impacted by the proposed water pipelines and treatment facility. The proposal by the City of Portland to site an urban water treatment facility adversely impacts agricultural natural resources including some of the highest quality and most productive agricultural land in the state of Oregon. As proposed, operation of the water treatment facility would displace, cover and convert nearly 95 acres of agricultural natural resources to an urban water treatment facility. Please consider the following comments and concerns in review of the proposed development.

The criterion at issue is MCC 39.7515(B).

“§ 39.7515 APPROVAL CRITERIA.

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

(B) Will not adversely affect natural resources[.]”

LUBA’s remand was very clear that the plain text of MCC 39.7515(B) demonstrates that the county elected to regulate natural resources that are not included in the county’s Goal 5 inventory. This is a very stringent test, as the applicant’s own testimony admits: “Conversely, the conditional use criteria do not allow any adverse impact and express no balancing test and no mitigation.” Rec 232. In other words, the criterion does not allow for adverse impacts to agricultural natural resources if the impacts are mitigated on a different site.

In the new staff report, Multnomah County staff contends that the term “natural resources” should be construed as, “functioning natural systems, such as wetlands or streams, wildlife habitat, material in the environment used or capable of being used for some purpose, minerals, fuels, agricultural resources, and forests.” Staff Report on Remand, page 8. OAN agrees with staff’s classification of agricultural resources as natural resources within the meaning of MCC

39.7515(B). Staff further construes the term “adversely affect” to mean, “whether the use impairs any functioning natural system as a result of damage by weakening or loss of some property, quality, or capability of such system.” *Id.* at 8.

This definition is appropriate as it recognizes and protects high value farm soils which are the agricultural resource of primary importance to OAN. Those soils are material in the environment used for the purpose of producing crops. Pursuant to the definitions of natural resources and adversely affect, it is clear that the treatment facility and associated pipe infrastructure adversely impact the agricultural natural resources on the treatment facility site, including the agricultural land and soils that comprise the majority of the site, because those soils are literally lost, due to their removal from the treatment facility site as detailed in the record.

By way of background, we note that ORS 215.110(1)(d) authorizes the “conservation of the natural resources of the county” through the county zoning ordinance.

Similarly, ORS 215.243(1), the legislature’s agricultural land use policy also characterizes open land in agricultural use—which the water treatment facility site was before soil removal began—as a natural resource.

“Open land used for **agricultural use is an efficient means of conserving natural resources** that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.” (Emphasis added.)

In other words, OAN’s members conserve agricultural natural resources by using their open land and native soils for growing crops. Agricultural land is a limited natural resource, and as the next legislative policy statement indicates, “(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary[.]” Using high value farmland for agriculture is an efficient means of preserving that limited agricultural natural resource. Converting that land for an urban community services use consumes and thereby adversely effects the soils and related agricultural natural resources.

MCCP Community Service Policy 2.45 also identifies the importance of requiring community facilities like the water treatment facility to avoid adverse impacts on the native soils and agricultural natural resources.

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

It should go without saying that Portland’s water treatment facility does not serve the needs of the rural area where it is sited and where OAN’s members grow their crops. And it is clear that community service uses like the treatment facility must avoid adverse impacts on natural resources, including agricultural soils. Because MCC 39.7515(B) and MCCP Community Service Policy 2.45 implement ORS 215.110(1) and ORS 215.243, these county provisions must be interpreted and applied consistent with those statutes.

High value farmland is a finite natural resource. As the Dept. of Agriculture testified,

“The proposed facilities would be located amongst and upon lands that are highly suitable for agriculture and have been in agricultural production for decades. Most of the soils contain prime or other high-value agricultural soils. Much of the immediate area contains Class II soils, some of the best agricultural soils in the United States. It is important to note that these capability ratings are regardless of irrigation. The area soils are high quality with or without irrigation.” Rec 3624.

First, the comprehensive plan itself emphasizes the importance of land quality as a resource to be protected. The applicant’s testimony anticipated the remand and explained the applicant’s interpretation of what qualifies as a natural resource outside of the identified Goal 5 resources.

“[W]hat qualifies as a “natural resource” under the standard under a broader interpretation must be guided by the Multnomah County Comprehensive Plan chapter on Natural Resources, Chapter 5.” Rec 233.

The referenced Chapter 5 identifies land as a natural resource.

“[T]he County’s Goal 5 process is articulated in its Comprehensive Plan

Chapter 5 entitled Natural Resources. In Chapter 5, the County defines “natural resources” as those that are regulated by the Goal 5 process and are subsequently protected in the MCC through the application of the Significant Environmental Concern (“SEC”) Overlay: “Goals 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and 6 (Air, Water, and Land Resources Quality) of Oregon’s statewide planning goals require cities and counties to plan for the management and protection of natural resources, including maintaining air, land, and water quality[.]” Rec 230. (Emphasis original.)

The record includes other examples of testimony that the agricultural land consumed and displaced by the water treatment facility is a natural resource within the meaning of MCC 39.7515(B). The applicant testified regarding the agricultural use of the treatment facility site consistent with ORS 215.243(1). “The filtration facility site was previously leased to neighboring farmers and was used for nursery crop production with crop rows generally oriented in a north/south direction[.]” Rec 236. In discussing emergency vehicle access, the application stated: “the Water Bureau prioritized placement of the pipelines within the right-of-way where possible to preserve surrounding farmland and natural resources where feasible.” Rec 346. In other words, where the applicant deemed that preservation of farmland and agricultural natural resources was not feasible, such as on the treatment facility site, those resources were not preserved. The applicant therefore admits that adverse impacts to natural resources are occurring. As Cottrell CPO observed: “PWB’s application materials do not provide analysis of natural resource impacts. Instead, PWB asserts they will use Best Management Practices (BMPs) and mitigate for their impacts during construction and operation of the facility.” Rec

1190. Cottrell, consistent with the new staff report, also expressly identified high quality agricultural soil as a natural resource. Rec 1194.

The abstract is succinct about adverse impacts to agricultural natural resources along the pipeline route. “Degradation of natural resources, including increased soil compaction, soil horizon mixing, and decreased crop yields have been common outcomes of underground pipeline installation.” Rec 1261; 2911. The operation of the pipeline degrades agricultural resources and is an adverse impact to natural resources where the underground pipeline traverses agricultural land.

As Lauren Courter testified:

“This proposal will convert the current parcel of farmland, designated by the State of Oregon as ‘farmland of statewide importance,’ to industrial, non-agricultural use for the Bull Run Water Filtration facility. Conversions of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use as defined under the Farmland Protection Act U.S.C. 4201 et seq.

“The proposed site for the filtration facility is located on 90+ acres of existing farmland with active, productive farming \*\*\* If this proposal is approved, this land will be converted from residential-agriculture use under MUA-20 to industrial use. This would be a significant and devastating impact to farming productivity spanning two counties.

“According to the United States Department of Agriculture, over 95% of the proposed site contains Class 2 soil. The State of Oregon considers Class 2 soil “High-Value Farmland” and Farmland of Statewide Importance” (OAR§660-033-0020 (8)(a)). Prior to construction, the City estimates approximately 1,225,000 cubic yards of soil to be removed, of which it is estimated 245,200 cubic yards of High-Value Class 2 topsoil will be removed across 75 to 80 acres. Similarly, approximately 4 miles of proposed pipeline routes for both the raw and treated water spans through high value soils of existing farmland. Furthermore, it will negatively impact and permanently destroy future farmland production in these areas. Local farmers and soil scientists with the Oregon Department of Agriculture agree that the valuable topsoil will not recover from the dredging of trenches, construction, and heavy equipment needed to establish the connectivity of redundant 7-9 foot diameter pipes. As a result, the raw and treated water pipeline alone will destroy approximately 10-15 acres of valuable soil across two counties. Maps provided in Figure 5 and Figure 6 illustrate the spatial extent of high value farmland within the agricultural community which the City wishes to build the facility and its pipeline network.” Rec 3659.

These and other examples from the record demonstrate operation of the water treatment facility and associated pipelines will adversely impact the agricultural natural resources on the treatment facility site itself and on the pipeline properties. Operating the treatment facility alone will displace over 80 acres of high value soils and agricultural resources, including 245,200 cubic yards of High-Value Class 2 topsoil that will be lost and unavailable for future agricultural use. That is an adverse and truly terrible impact, and the polar opposite of conserving natural resources by using open, high value farm land used for agricultural use. MCC 39.7515(B) is not and cannot be satisfied, because the project adversely impacts agricultural natural resources which are slated for irretrievable loss.

The Oregon Association of Nurseries urges the county to preserve agricultural natural resources, deny the application, and compel this urban use to locate within the urban growth boundary. This is clearly an urban facility being sited in a rural area which was specifically designated as a rural reserve by Multnomah County. To convert agricultural natural resources to support urban uses is an abuse. Urban facilities should be located within urban growth boundaries. The only exception is if no alternative sites are available and that has not been shown.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J Stone', with a stylized flourish at the end.

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