

Appendix

Background of proposal:

On July 16, 2015, The Port Orford City Council voted to authorize the modification of the city's NPDES permit, such that a second outfall pipe for the city's wastewater treatment facility could be added. Following this general conceptual authorization to add a second outfall pipe, Elk River Property Development LLC is now seeking DEQ authorization for a new force-main pipeline that would deliver treated effluent from the wastewater treatment facility to the Knapp Ranch, outside of the city limits. The current DEQ permitting review will analyze if the proposed pipeline is consistent with applicable DEQ regulations governing Water Pollution Control Facilities ("WPCFs"). Once DEQ issues the WPCF permit, the applicant will be required to return to the city for local approval, which may include conditional use permit approval in some situations.

Before DEQ can approve this request, the city must first provide a Land Use Compatibility Statement demonstrating that the proposal is consistent with local law, as governed by OAR 660-031-0020. At the present juncture, in order for DEQ to process the application for the WPCF, the relevant question is if any local regulation *prohibits* the proposal. Final city review and approval may be deferred until DEQ issues the WPCF.

The proposal involves three basic components that will be built inside the city of Port Orford. First, it would involve the construction of a forcemain pipe that originates on the grounds of the city's wastewater treatment facility. The head of this pipe will also include a diversion point, where it ties into the city's existing outfall pipe, and a pump station. Figure 1.0 in the attached documents shows this new pipeline originating at the point labeled "diversion manhole," immediately downstream of the existing UV disinfection station. This figure also shows the pipeline passing through a pump station before it leaves the city's wastewater treatment facility.

The second basic component of the proposal is the short distance in which the force main will cross a 15' easement across a private parcel of residentially zoned land. Figure 1.0 in the attached documents shows this easement across tax lot 1011.

The third component of the proposal involves routing the pipeline inside public right of ways on a path that leads outside of the UGB on the north end of the city, where it will cross county-regulated land, and ultimately arrive at its final destination, where recycled wastewater will be impounded in a pond to be used for irrigation. The proposed routing is depicted in the attached figure 1.1, labeled "recycled water force main preliminary alignment."

The applicant proposes to pay for the construction of the improvements to the wastewater treatment facility, with the exception of the components of this system that will be located at the city's wastewater treatment facility. In that situation, the applicant proposes paying for the construction of the new facilities and granting ownership of the new improvements to the city. For portions of the new improvements located at the wastewater treatment facility, the applicant proposes this "privately funded public improvements" approach in order to address a zoning regulation (discussed in detail below) that lists "public utilities" as a permitted use in the zone where the wastewater treatment plant is located.

The first question necessary to be addressed in determining the proposal's compatibility with local land use regulations is if it is consistent with zoning regulations. As noted above, the pipeline will almost exclusively be developed inside public right of ways, with the exception of the private easement that connects the wastewater treatment plan to the nearest street, and the point where the new pipeline attaches to the existing wastewater treatment facility. The zones the pipeline will traverse include: 8PF (Public Facilities and Park Zone), 1R (Residential Zone), 2R, (Residential Zone) and 4C (Commercial Zone). The approximate routing of the proposed pipeline is shown on the attached zoning map, Figure 1.3. The relevant provisions from each zone are discussed below:

Zone 8-PF (Public Facilities and Park Zone):

Chapter 17.12.070 of Port Orford's Municipal Code contains the regulations governing the 8-PF zone.

Among the uses listed as permitted outright in this zone are "Public utilities and services." Because the applicant proposes paying for the construction of the entire system, and granting ownership to the city of the portions of the new pipeline located in the 8-PF zone, those publicly-owned portions of the pipeline will constitute "public utilities." If the city approves the application (subsequent to DEQ's issuance of the WPCF permit), the city will be given the opportunity to accept ownership of these "privately funded public improvements." At that point, the city will also have the opportunity to set a rate schedule for any users of the recycled water pumped through these city-owned facilities, in order to ensure the ultimate users of this recycled water is responsible for the costs of operating and maintaining the new facilities. Any user will be required to have both a WPCF, and a RWUP approved by the DEQ. Initially, the applicant is likely to be the primary user of this recycled wastewater, as it will be suitable only for agricultural and fire-fighting purposes. Because this type of facility is allowed in the 8-PF zone, the proposal is consistent with local land use regulations in this area.

Zone 1-R (Residential zone):

Chapter 17.12.010 of Port Orford's Municipal Code contains the regulations governing the 1-R zone. Section C.6 lists "Utility facility, including substation or pumping station or private generator" as uses that are conditionally permitted in this zone. Subsequent to DEQ issuance of the WPCF permit, the applicant will be required to obtain conditional use permit approval from the city before it can locate the proposed force main pipeline in this zone. Conditional use permit approval is governed by Chapter 17.32 of Port Orford's Municipal Code. The applicable provisions in that Chapter include siting standards for utilities in Section 17.32.050.D. In particular, following DEQ issuance of the WPCF permit, the applicant will be required to demonstrate that the proposed pipeline and ancillary equipment will be "located, designed and installed as to minimize their conflict with scenic values." Because this type of facility can be permitted in the 1-R zone, the proposal is consistent with local land use regulations in this area.

Zone 2-R (Residential zone):

Chapter 17.12.020 of Port Orford's Municipal Code contains the regulations governing the 2-R zone. Section C.6 lists "Utility facility, including substation or pumping station or private generator" as uses that are conditionally permitted in this zone. Because this standard is identical to the approval standard discussed above, in regard to the 1-R zone, those findings are incorporated herein.

Zone 4-C (Commercial zone): Chapter 17.12.030 of Port Orford’s Municipal Code contains the regulations governing the 4-C zone. Section C.3 lists “Utility facility, including substation or pumping station or private generator” as uses that are conditionally permitted in this zone. Because this standard is identical to the approval standard discussed above, in regard to the 1-R zone, those findings are incorporated herein.

Conclusion:

DEQ’s administrative rules provide review criteria for the type of LUCS the applicant is currently seeking. OAR 660-031-0020(2)(c) provides:

“Where the affected local government has an Acknowledged Comprehensive Plan, the state agency or local government review shall address compatibility with the Acknowledged Comprehensive Plan when the activity or use is:

[...]

“(c) Allowed by the plan but subject to standards regarding siting, design, construction and/or operation;”

As discussed above, the proposal falls into this category. The proposed pipeline is allowed outright in one of the zones where it has been proposed, and can be conditionally approved in the other three zones where it has been proposed. Accordingly, there is nothing in the proposal that is inconsistent with Port Orford’s local regulations. Because the City of Port Orford City Council voted on July 16, 2015 to authorize the modification of its NPDES permit to allow a second sewage outfall, the applicant has preliminary approval to begin the permitting process at DEQ. Subsequent to DEQ issuing the WPCF permit, the applicant will be required to present a detailed development proposal to obtain site-specific city approval, which will entail addressing the approval standards discussed above.