

March 15, 2019

Via E-Mail

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**RE: Santiam Water Control District Comments on Proposed Land Use Action
(Land Use File 4-03/19)**

Santiam Water Control District (“SWCD”) submits the following public comment on Stayton Area Rotary’s application for Site Plan Review for a pedestrian trail along a portion of the Salem Ditch between N. Evergreen Avenue and N. Larch Avenue (“Application”).

1. Existing SWCD Easement along Salem Ditch.

SWCD owns Salem Ditch and operates the facility for the primary purpose of agricultural irrigation water delivery to SWCD patrons. SWCD performs maintenance activities within Salem Ditch and along the banks of the facility to improve water flow, to maintain water quality, to improve public safety, and to diminish flood risk (“SWCD Maintenance Activities”).

NORPAC owns the property adjacent to the Salem Ditch and subject to the Application. NORPAC is a member of SWCD. As the owner of Salem Ditch, SWCD holds an easement from NORPAC’s predecessor-in-interest (“SWCD Easement”). Among other use rights, the SWCD Easement grants SWCD an unobstructed right-of-way. Therefore, any use that obstructs, conflicts, or interferes with SWCD’s rights under the SWCD Easement, including performance of the SWCD Maintenance Activities, is prohibited. The prohibited uses include those uses that impose an increased financial burden on SWCD for responsible performance of the SWCD Maintenance Activities. SWCD is not responsible for any damages suffered by third parties resulting from SWCD’s responsible performance of the SWCD Maintenance Activities within the easement area.

The Application proposes that NORPAC grant the City of Stayton a 25-foot wide easement along primarily the south side of Salem Ditch, and a short section on the north side (“Trail Easement”). Under the pre-existing SWCD Easement, SWCD has a right to access and maintain Salem Ditch on both the north and south sides, including the segment adjacent to the Trail Easement. Therefore, the Trail Easement and approval of this land use action should contain language restricting the City of Stayton, as the holder of the Trail Easement, from interfering with SWCD Maintenance Activities in and along Salem Ditch. Explicit recognition of the existing use rights in the Trail Easement will help to prevent future conflict between the City of Stayton’s maintenance of the pedestrian trail and SWCD’s operation and maintenance of Salem Ditch.

2. Water Quality in Salem Ditch.

The Application area falls within the City of Stayton’s Natural Resource District overlay, which requires the proposed development have as few significant detrimental environmental impacts on water as possible. SMC 17.17.090(3)(a). SWCD is committed to maintaining water quality in its facilities and has institutional knowledge of the stormwater and erosion issues associated with Salem Ditch. The Applicant should consult with SWCD on the site plan to prevent unintended water quality degradation associated with construction of the project and use of the SWCD Easement area for SWCD Maintenance Activities.

3. Proposed Bridge Crossing Salem Ditch.

The Application as submitted relies upon a bridge crossing Salem Ditch. Construction of a bridge over Salem Ditch requires permission from the SWCD Board of Directors. At this time, Applicant has not brought this request before the SWCD Board of Directors. A new bridge over Salem Ditch may interfere with SWCD’s ability to perform the SWCD Maintenance Activities. Specifically, a bridge may inhibit SWCD’s ability to remove silt from under the crossing and to rework the ditch. The Stayton Planning Commission should condition Application approval on the Applicant obtaining SWCD permission for the bridge crossing. The Stayton Planning Commission should clarify the impact upon the Application if the bridge crossing is not approved.

4. Incomplete Application Site Plan.

The Application site plan is incomplete. The property owner has indicated that it may need to change the location of fencing on the property to accommodate the proposed bridge. This proposed change is not shown on the Application site plan. The change may interfere with SWCD access and Maintenance Activities. This change, in addition to the construction of a new bridge over Salem Ditch, may interfere with SWCD’s use rights. The Application site plan does not include all easements granting SWCD use rights on the property.

SWCD is willing to coordinate with the property owner and Applicant to design the trail in a manner that does not interfere with its use rights. The Stayton Planning Commission should condition Application approval on SWCD approval of the site plan.

Thank you for your time and consideration.

Sincerely,

Brent Stevenson
Manager, Santiam Water Control District