

# PBOT

PORTLAND BUREAU OF TRANSPORTATION

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**Chloe Eudaly** Commissioner **Chris Warner** Interim Director

May 28, 2019

## SUMMARY OF REMONSTRANCES AND FINDINGS TO COUNCIL

\*Amend the scope of the N Suttle Road Local Improvement District to extend sanitary sewer to serve developed property owned by Supreme Perlite Company, and extend the planned street, sidewalk and stormwater improvements to the west right-of-way line of N Suttle Rd. to provide maintenance and emergency access to undeveloped property owned by the Port of Portland (Hearing; Ordinance C-10058)

### I. SUMMARY

Two (2) written remonstrances representing two (2) of the owners of the nonexempt properties in the North Suttle Road Local Improvement District were received by the filing deadline registering objections to amendment to the scope and project limits of the local improvement district. A third document was received regarding stormwater charges and fees. Total remonstrances represent 12.4% of the total area of properties included in the local improvement district, 10.0% of the assessable area of properties included in the local improvement district and 8.0% of the estimated assessment within the local improvement district.

It is the recommendation of the Local Improvement District Administrator that the City Council overrule any and all remonstrances and amend the North Suttle Road Local Improvement District.

### II. SPECIFIC RESPONSES TO THE REMONSTRANCE FILED BY PMP PROPERTIES, LLC

An objection was submitted by Fletcher L. Conn, owner of the property at 3610 N. Suttle Rd.; State ID #2N1E32DA 1600; tax account #R951320520; property ID #R323418; legal description SECTION 32 2N 1E, TL 1600 3.89 ACRES SEE R323419 (R951320521); pending lien record #160836; see Attachment 1; and owner of the property at 3730 N. Suttle Rd.; State ID #2N1E32DA 1700; tax account #R951320500; property ID #R323416; legal description SECTION 32 2N 1E, TL 1700 1.97 ACRES; pending lien record #160835; see Attachment 1.



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## ISSUES RAISED BY THE OBJECTION

**Issue No. 1:** We request that our property be assessed on basis of current vehicular access and therefore exempted by 2.378 acres (or 103,586 square feet).

### Findings:

- a. The proposed assessment reduction absent changes to other properties' assessable square footage would reduce the combined assessments for both properties by 39% from 265,270 assessable square feet to 161,684 square feet.
- b. Special benefit for LIDs may include but is not limited to current vehicular access, such as stormwater improvements and fulfillment of required frontage improvements irrespective of access to a corner lot. A property which does not access a property prior to final assessment of an LID may access the newly-improved street in the future after final assessment is imposed. Prospectively exempting a property with potential access could therefore be unfair to owners of property included in the LID which currently already have vehicular access to the street.
- c. Aside from Finding 'b' above, such an exemption could not be applied solely to the properties covered by this remonstrance. Such an exemption would be applicable to all properties on the north side of N. Suttle Rd. which also have current or potential access to N. Marine Dr. Applying the same 39% reduction to properties abutting the south side of N. Marine Dr. as the properties covered by this remonstrance would result in the assessable rate for core project costs increasing from \$2.18 per square foot to \$2.63 per square foot. This would reduce the combined savings to these properties while resulting in unplanned increases in estimated assessments to properties whose owners did not remonstrate against the proposed scope and project limit change to the LID.
- d. Mr. Conn did not raise this suggestion for a change in the assessment methodology in a prior remonstrance previously submitted by Mr. Conn (see record of Ordinance No. 188576). Therefore, it is recommended that Council decline to change the assessment methodology after LID formation.
- e. Five (5) owners of properties in combined ownership chose not to remonstrate against the scope and project limit change and have significantly higher proportions of the LID cost. The combined assessment for PMP properties will be 64.5% lower than the largest combined assessment in the LID if Council approves this Ordinance.

### III. SPECIFIC RESPONSES TO THE REMONSTRANCE FILED BY OIL REREFINING COMPANY AND MERIT USA INC.

An objection was submitted by Chelsea J. Glynn, of counsel to the owner of the properties at 4150 N. Suttle Rd.; State ID #2N1E32D 1400; tax account #R951320570; property ID #R323424; legal description SECTION 32 2N 1E, TL 1400 2.81 ACRES; pending lien record #160838; see Attachments 2 and 3; and owner of the property at 4150 N. Suttle Rd.; State ID #2N1E32D 1700; tax account #R951320470; property ID #R323413; legal description SECTION 32 2N 1E, TL 1700 1.58 ACRES; pending lien record #160833; see Attachments 2 and 3.

#### ISSUES RAISED BY THE OBJECTION

**Issue No. 1:** The proposed LID improvements do not reasonably enhance the value of Taxlots 1400 and 1700, and these properties are undevelopable.

#### Findings:

- a. To the extent that the property owner's counsel is making the same objection that was raised regarding the amount of the estimated assessment at LID formation (see record of Ordinance No. 188576), Council overruled that objection. If the property owner's counsel is continuing to object to the reduced estimated assessment by arguing that it is still too high after the reduction proposed by this Ordinance, the LID Administrator does not feel it would be appropriate to shift more of the LID cost to the other property owners, and recommends that Council overrule the objection.
- b. The wetland exemption proposed for these properties is intended to reflect the barrier to development cited in the remonstrance. However, the taxlot boundary lines do not precisely follow the boundaries of the wetland area. It would be unfair to exempt non-wetland areas for this property and not do so for other property owners participating in the LID. There are other "landlocked" parcels which will be subject to future assessment by this LID reflecting a square footage rather than abutting linear footage assessment methodology. The square footage methodology much more appropriately reflects special benefit to properties and avoids internal inequity and skewed LID assessments.
- c. Eleven (11) owners of properties in combined ownership chose not to remonstrate against the scope and project limit change and have significantly higher proportions of the LID cost. The combined assessment for Merit USA properties will be 76.9% lower than the largest combined assessment in the LID if Council approves this Ordinance and will have been reduced 4.7% since LID formation. The single assessment for the Oil Refining Co. property will be 97.7% lower than the largest combined assessment in the LID if Council approves this Ordinance and will have been reduced 86.4% since LID formation.

**Issue No. 2:** Oil Rerefining Company and Merit USA are unaware of any City improvements related to stormwater management facilities on North Suttle Rd.

Findings:

- a. The Bureau of Environmental Services (BES) is currently subject to a combined estimated assessment amount of \$750,718.34. This funding is from fees paid by Oil Rerefining, Merit USA, and all other ratepayers across the City.
- b. Not all City ratepayers who pay stormwater management fees will see stormwater management facilities in the immediate vicinity of their properties. Many factors are considered when locating such facilities, which are constructed where they are most needed within the entire system. In addition, budgetary priorities often dictate when facilities are built. Nevertheless, the City's facilities ensure that all residents receive the benefits of effective stormwater management throughout Portland, in the form of passable streets and healthy watersheds. Oil Rerefining Co. and Merit USA will see stormwater management facilities built on North Suttle Road with a significant financial contribution from the City of Portland as the second-largest contributing property owner in the LID. Additional BES ratepayer dollars will be used to maintain those facilities on an ongoing basis after construction is complete and after final assessment has been imposed by a separate and subsequent Ordinance.
- c. N. Suttle Rd. is among 306.2 centerline miles of streets in the City lacking curbs and stormwater management as of June 30, 2018, or 15.4% of the City's total of 1,991 centerline miles of streets. Similarly, 55.7 centerline miles or 2.8% of the City's streets were unpaved as of 6/30/18. N. Suttle Rd. is among 14 currently-formed LIDs to build needed infrastructure. The City is already providing significant funding for this LID but relies on financial partnerships to make projects such as N. Suttle Rd. financially feasible without unduly burdening taxpayers and ratepayers across the entire City.
- d. Funding the entire cost of the N. Suttle Rd. improvements by BES would not be an appropriate use of ratepayer dollars, as the majority of the costs of the improvements are for the street portion of the improvements.

**Issue No. 3:** The environmental conservation ("c") zone overlay renders the property undevelopable.

Findings:

- a. The environmental conservation ("c") zone overlay is less restrictive than the environmental protection ("p") zone overlay. No part of properties owned by Merit USA or by Oil Rerefining Co. are in the more restrictive "p" zone overlay.
- b. Areas of properties in the "p" zone overlay are exempt from LID assessment in all LIDs, and areas of properties in the "c" zone overlay are subject to LID assessment in all LIDs.

- c. It is inaccurate to say that a “c” zone overlay renders a property “undevelopable.” Code Chapter 33.430.017 states, “The Environmental Conservation zone conserves important resources and functional values in areas where the resources and functional values can be protected *while allowing environmentally sensitive urban development.*” (emphasis added).
- d. Only the portions of the Oil Rerefining and Merit USA properties not exempted from National Wetland Inventory assessment will be assessed by this LID through a separate and subsequent assessment. The LID will fulfill a future financial obligation to improve N. Suttle Rd. upon future development of this property irrespective of whether there is current access. The current “landlocked” nature of this property could change in the future, and this property even in its current “landlocked” state will benefit from management of public stormwater runoff where public and private stormwater are separated. Even absent future access to the newly improved street, this “landlocked” parcel will no longer have to manage any public stormwater overflowing from the non-adjacent public right-of-way.

**Issue No. 4:** The Oil Refining Co. parcel has an Oregon Department of Environmental Quality asphalt remediation cap.

Findings:

- a. In *Oil Rerefining Co. v. Environmental Quality Commission*, Oil Rerefining Co. (2017), Oil Rerefining Co. did not contest that it had accepted hazardous waste at this site without proper manifest form, nor that it operated a hazardous waste site without a proper permit. It is recommended that Council not establish a moral hazard by which properties in a future LID not in compliance with Oregon DEQ standards could then receive an LID exemption. The effect of this would be to shift the burden of LID assessments from properties in noncompliance with environmental standards to properties in compliance with environmental standards.
- b. An asphalt remediation cap does not mean that a property has no economic value nor will fail to benefit from a local improvement. For example, a parking lot in this industrially-zoned area could provide a parking use while benefiting from the improved access afforded by the LID. The newly-constructed parking lot would still function as an asphalt remediation cap to prevent migration of contaminants to the soil surface.

#### **IV. RECOMMENDATION**

It is the recommendation of the Local Improvement District Administrator that the City Council overrule any and all remonstrances and amend the North Suttle Road Local Improvement District.

Respectfully submitted,

A handwritten signature in black ink that reads "Andrew H. Aebi". The script is cursive and fluid.

Andrew H. Aebi  
Local Improvement District Administrator