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MEMORANDUM

TO: Clackamas County Board of County Commissioners (BCC)

FROM: Dan Johnson, DTD Director

RE: ZDO-288, *Utility Facilities*

DATE: July 30, 2024

REQUEST: Staff would like to share updated information related to utility facilities. This information may influence how the Board decides to proceed with written adoption of the zoning code amendments that were orally approved on June 12, 2024.

BACKGROUND: On June 12, 2024, the Board held a land use hearing on proposed amendments to the Comprehensive Plan and Zoning and Development Ordinance that would change how the county regulates utility facilities. The key issue that emerged was which utility lines, if any, should require a conditional or nonconforming use permit.

The Planning Commission recommended conditional or nonconforming use permits for natural gas and electric distribution and transmission lines, but only on property not owned or controlled by the utility provider. Typically this would be property that the utility must condemn because it is outside the road right-of-way or existing utility easement and the property owner does not agree to a new easement. The Board voted 4-1 to approve the Planning Commission's recommendation with two relatively minor edits and directed staff to prepare an ordinance for adoption. Adoption date is tentatively scheduled on the August 1, 2024 business meeting.

This recommendation hinged on the thought that any utility requesting authority to condemn would be required to get land use authorization before doing so. Since the hearing staff is receiving conflicting information from Public Utility Commission (PUC) staff suggesting that the PUC *may* approve a Certificate of Public Convenience and Necessity (CPCN), which is their condemnation authorization, *prior to local land use approval*. Staff has reviewed a PUC order that did exactly that in a different jurisdiction. With a CPCN in hand, the utility provider can proceed to court to finalize the condemnation without land use approval. To ensure that a utility line requires a land use application, tying the requirement to the need for condemnation, as recommended by the Planning Commission, is not sufficient.

If the Board chooses to reconsider its June 12 decision and approve a revised version of the code amendments, it could do so at a Business Meeting without another public hearing because testimony was already taken. Options include, but are not limited to, the following.

- Direct staff to revise the draft amendments to require a conditional or nonconforming use permit only for **aboveground electric transmission lines** regardless of whether they are in a road right-of-way, utility easement or on private property
- Direct staff to revise the draft amendments to require a conditional or nonconforming use permit only for **gas and electric transmission lines** regardless of whether they are in a road right-of-way, utility easement or on private property

None of the options change the rules on state-regulated farm and forest land or where federal preemption applies. No conditional or nonconforming use permit would be required for service lines or lines approved as part of new developments such as subdivisions.