



**EXTENSION OF PERMIT EXPIRATION DECISION
AR 21-0006 PRAXAIR SITE IMPROVEMENTS**

August 11, 2023

Case #:	AR 21-0006
Project:	Praxair Site Improvements
Location:	10450 SW Tualatin Sherwood Road; Tax ID: 2S123CC 1500
Applicant:	Trent Suko, Linde Gas & Equipment Inc.
Owner:	Praxair Distribution, Inc.

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Arrangements can be made to provide these materials in alternative formats such as large type or audio recording. Please contact the Planning Division at 503.691.3026 and allow as much lead time as possible.

I. INTRODUCTION

A. Applicable Criteria

The following Chapters of the Tualatin Development Code (TDC) are applicable to the subject proposal:

- TDC 32: Procedures
- TDC 33.020: Architectural Review

B. Site Description

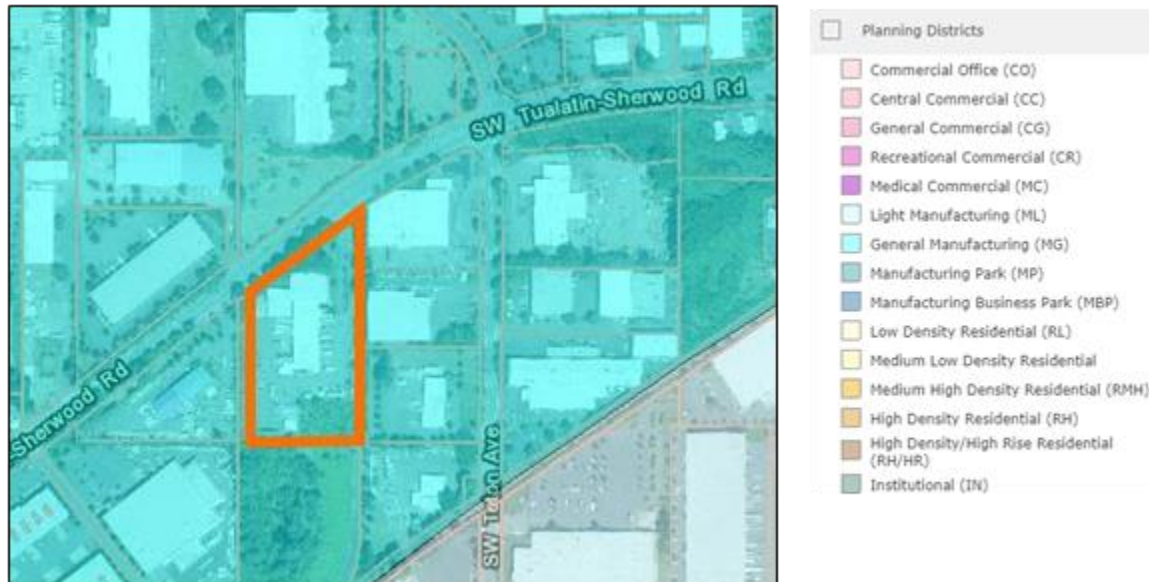


Figure 1 Aerial view of site with zoning (TualGIS)

The 4.43 acre site is comprised of one tax lot zoned General Manufacturing (MG). This property is located south of SW Tualatin-Sherwood Road and west of SW Teton Road. Public access is taken from SW Tualatin Sherwood Road along the eastern site frontage, as well as through a shared access easement west of the site.

Existing site improvements include a warehousing and office building in the north, employee and visitor parking in the northeast, and vehicular circulation and storage areas in the south. The Praxair site is used for filling and chemical storage of gases.

C. Project Approved Under AR 21-0006

The decision granted approval to expand an outdoor equipment yard and vehicular circulation area for the chemical warehouse and distribution facility. The improvements are located in the southeast corner of the site and will not be visible from the public entrance to the existing warehouse building or the right-of-way or. An existing shed, portions of a chain link fence, and four trees will be removed to allow the site expansion.

D. Exhibit List

- A: Application Materials
- B: Noticing Materials
- C: AR21-0006 Decision
- D: CWS Comments

II. CONDITIONS OF APPROVAL

Based on the Findings and Conclusions presented herein, the extension of AR 21-0006 expiration is **approved** subject to the following conditions:

GENERAL:

- A1. This Architectural Review extension expires on June 29, 2024 unless a building, or grading permit submitted in conjunction with a building permit application, has been issued and substantial construction pursuant thereto has taken place and an inspection performed by a member of the Building Division, pursuant to TDC, pursuant to TDC 33.020(10)(f).
- A2. The applicant must construct all site improvements as conditioned under AR 21-0006 prior to the issuance of a certificate of completeness.
- A3. The extension must adhere to the conditions of the original decision of AR 21-0006.
- A4. The extension must comply with all applicable standards and objectives in Tualatin Development Code Chapters 32 and 33.
- A5. The site must continue to not be neglected so as to allow the site to become blighted in accordance with TDC 33.020(10)(iv).

III. FINDINGS

Findings reference the Tualatin Development Code, unless otherwise noted.

Chapter 32: Procedures

[...]

Section 32.030 – Time to Process Applications.

(1) Time Limit - 120-day Rule. The City must take final action on all Type II, Type III, and Type IV-A land use applications, as provided by ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete under TDC 32.160, unless the applicant provides written request or consent to an extension in compliance with ORS 227.178. (Note: The 120-day rule does not apply to Type IV-B (Legislative Land Use) decisions.)

[...]

Finding:

The application was deemed complete on July 24, 2023. The 120th day will be November 21, 2023. The final action on this application must take place within the 120 days unless the applicant requests an extension in compliance with ORS 227.178. This standard is met.

Section 32.130 – Initiation of Applications.

(1) Type I, Type II, Type III, and Type IV-A Applications. Type I, Type II, Type III, and Type IV-A applications may be submitted by one or more of the following persons:

- (a) The owner of the subject property;
- (b) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;
- (c) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or
- (d) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by paragraphs (a), (b) or (c) of this subsection, and accompanied by proof of the agent's authority.

[...]

Finding:

The applicant has provided a title report within Exhibit A showing Praxair Distribution Inc. to be the current owner of the subject site. The application has been signed by an agent of Praxair Distribution Inc. subsidiary. This standard is met.

Section 32.140 – Application Submittal.

(1) Submittal Requirements. Land use applications must be submitted on forms provided by the City. A land use application may not be accepted in partial submittals. All information supplied on the application form and accompanying the application must be complete and correct as to the applicable facts. Unless otherwise specified, all of the following must be submitted to initiate completeness review under TDC 32.160:

- (a) A completed application form. The application form must contain, at a minimum, the following information:
 - (i) The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;
 - (ii) The address or location of the subject property and its assessor's map and tax lot number;
 - (iii) The size of the subject property;
 - (iv) The comprehensive plan designation and zoning of the subject property;
 - (v) The type of application(s);

- (vi) A brief description of the proposal; and
 - (vii) Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).
 - (b) A written statement addressing each applicable approval criterion and standard;
 - (c) Any additional information required under the TDC for the specific land use action sought;
 - (d) Payment of the applicable application fee(s) pursuant to the most recently adopted fee schedule;
 - (e) Recorded deed/land sales contract with legal description.
 - (f) A preliminary title report or other proof of ownership.
 - (g) For those applications requiring a neighborhood/developer meeting:
 - (i) The mailing list for the notice;
 - (ii) A copy of the notice;
 - (iii) An affidavit of the mailing and posting;
 - (iv) The original sign-in sheet of participants; and
 - (v) The meeting notes described in TDC 32.120(7).
 - (h) A statement as to whether any City-recognized Citizen Involvement Organizations (CIOs) whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary must include the date when contact was made, the form of the contact and who it was with (e.g. phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;
 - (i) Any additional information, as determined by the City Manager, that may be required by another provision, or for any other permit elsewhere, in the TDC, and any other information that may be required to adequately review and analyze the proposed development plan as to its conformance to the applicable criteria;
- (2) Application Intake. Each application, when received, must be date-stamped with the date the application was received by the City, and designated with a receipt number and a notation of the staff person who received the application.
- (3) Administrative Standards for Applications. The City Manager is authorized to establish administrative standards for application forms and submittals, including but not limited to plan details, information detail and specificity, number of copies, scale, and the form of submittal.

Finding:

The applicant submitted an extension of AR 21-0006 expiration request on June 28, 2023, prior to the pending expiration date of June 29 as required under TDC 33.020(10). The application was deemed complete on July 24, 2023. The general land use submittal requirements were included with this application included as Exhibit A. These standards are met.

Section 32.150 - Sign Posting.

- (1) When Signs Posted. Signs in conformance with these standards must be posted as follows:
- (a) Signs providing notice of an upcoming neighborhood/developer meeting must be posted prior to a required neighborhood/developer meeting in accordance with Section 32.120(6); and
 - (b) Signs providing notice of a pending land use application must be posted after land use application has been submitted for Type II, III and IV-A applications.
- (2) Sign Design Requirements. The applicant must provide and post a sign(s) that conforms to the following standards:
- (a) Waterproof sign materials;
 - (b) Sign face must be no less than eighteen (18) inches by twenty-four (24) inches (18" x 24"); and
 - (c) Sign text must be at least two (2) inch font.
- (3) On-site Placement. The applicant must place one sign on their property along each public street frontage of the subject property. (Example: If a property adjoins four public streets, the applicant

must place a sign at each of those public street frontages for a total of four signs). The applicant cannot place the sign within public right of way.

(4) Removal. If a sign providing notice of a pending land use application disappears prior to the final decision date of the subject land use application, the applicant must replace the sign within forty-eight (48) hours of discovery of the disappearance or of receipt of notice from the City of its disappearance, whichever occurs first. The applicant must remove the sign no later than fourteen (14) days after:

- (a) The meeting date, in the case of signs providing notice of an upcoming neighborhood/developer meeting; or
- (b) The City makes a final decision on the subject land use application, in the case of signs providing notice of a pending land use application.

Finding:

The applicant provided certification within Exhibit B that signs in conformance with this section were placed on site in accordance with this section. These standards are met.

Section 32.160 – Completeness Review.

(1) Duration. Except as otherwise provided under ORS 227.178, the City Manager must review an application for completeness within 30 days of its receipt.

(2) Considerations. Determination of completeness will be based upon receipt of the information required under TDC 32.140 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.

(3) Complete Applications. If an application is determined to be complete, review of the application will commence.

(4) Incomplete Applications. If an application is determined to be incomplete, the City Manager must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:

- (a) All of the missing information;
- (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
- (c) Written notice from the applicant that none of the missing information will be provided.

(5) Vesting. If an application was complete at the time it was first submitted, or if the applicant submits additional required information within 180 days of the date the application was first submitted, approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted.

(6) Void Applications. An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.

[...]

Finding:

The applicant submitted an extension of AR 21-0006 expiration request on June 28, 2023. The application was then deemed complete on July 24, 2023. These standards are met.

Section 32.220 – Type II Procedure (Administrative Review with Notice).

Type II decisions are made by the City Manager with public notice and an opportunity for review and comment. The local appeal body for each application type is specified in Table 32-1. Type II decisions include limited land use decisions under ORS 197.195.

(1) **Submittal Requirements.** Type II applications must include the submittal information required by TDC 32.140(1).

(2) **Determination of Completeness.** After receiving an application for filing, the City Manager will review the application for completeness in accordance with TDC 32.160.

(3) **Written Notice of Application and Opportunity to Comment.** Once the application has been deemed complete, the City must mail notice of a pending Type II decision to the following individuals and agencies no fewer than 14 days before making the Type II decision to allow interested people and agencies the opportunity to submit written comments on the application before the City issues the decision.

(a) Recipients:

- (i) The applicant and the owners of the subject property;
- (ii) All property owners within 1,000 feet measured from the boundaries of the subject property;
- (iii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases;
- (iv) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9;
- (v) Any person who submits a written request to receive a notice;
- (vi) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; where the project either adjoins or directly affects a state highway, the Oregon Department of Transportation; where the project site would access a County road or otherwise be subject to review by the County, then the County; Clean Water Services; Tri Met; and, ODOT Rail Division and the railroad company if a railroad-highway grade crossing provides or will provide the only access to the subject property. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code; and
- (vii) Utility companies (as applicable).

(b) The mailed notice of pending Type II Decision, at a minimum, must contain all of the following information:

- (i) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;
- (ii) The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID;
- (iii) The proposed site plan;
- (iv) Statement noting if a railroad-highway grade crossing provides or will provide the only access to the subject property;
- (v) The type of application and a concise description of the nature of the land use action;
- (vi) A list of the approval criteria by TDC section for the decision and other ordinances or regulations that apply to the application at issue;
- (vii) Brief summary of the local decision making process for the land use decision being made;
- (viii) The date, place and time where comments are due and that comments are due no later than 5:00 p.m. on the 14th calendar day after the notice was mailed;

- (ix) A statement indicating that issues which may provide the basis for an appeal to the Oregon Land Use Board of Appeals must be raised in writing prior to the expiration of the comment period and with sufficient specificity to enable the applicant and local appeal body to respond to the issue;
 - (x) Statement that after the comment period closes, the City will issue its decision and the decision will be mailed to the applicant, property owner, anyone who submitted written comments on the application, and to anyone else is otherwise legally entitled to notice;
 - (xi) A statement that comments received after the close of the public comment period will not be considered;
 - (xii) The name of a City representative to contact and the telephone number where additional information may be obtained; and
 - (xiii) Statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at a reasonable cost from the City.
- (c) Failure of a person or agency identified in TDC 32.220(3)(a) to receive the notice required in TDC 32.220(3)(b) does not invalidate any proceeding in connection with the application provided the City can demonstrate by affidavit that notice was given in accordance with this section.
- (d) Written comments must be received by the City no later than 5:00 p.m. on the 14th calendar day after the notice was mailed in order for comments to be considered.
- (4) Decision. At the conclusion of the comment period, the City Manager must review the comments received and approve, approve with conditions, or deny the application. The decision must be in writing and include a statement that:
- (a) Explains the criteria and standards considered relevant to the decision;
 - (b) States the facts relied upon in issuing the decision; and
 - (c) Explains the justification for the decision based on the criteria, standards and facts set forth.

Finding:

After submittal and completeness review as required by this section, notice for the Type II application for extension of AR 21-0006 expiration was mailed by city staff on July 25, 2023, and contained the information required by this section, as attached in Exhibit B. A comment was received from CWS that their requirements for a Storm Water Connection Permit have been satisfied, as included in Exhibit D. These standards are met.

- (5) Notice of Type II Decision. Notice of the decision must be provided to the property owner, applicant, and any person who submitted written comments in accordance with TDC 32.220(3)(d). If approval is granted to remove a Heritage Tree, a copy of the decision must be sent to the chairman of the Tualatin Park Advisory Committee. The Type II Notice of Decision must contain all of the following information:
- (a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
 - (b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;
 - (c) A statement a statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;
 - (d) The date the decision becomes final, unless an appeal is submitted; and
 - (e) A statement that all person entitled to notice of the decision may appeal the decision in accordance with TDC 32.310.
- (6) Appeal of a Type II Decision. Appeals may be made in accordance with TDC 32.310.

(7) Effective Date of Type II Decision. A Type II Decision becomes effective 14 days after the City mails the Notice of Decision, unless an Appeal is submitted pursuant to TDC 32.310 or unless the conditions of approval specify otherwise.

Finding:

A final decision and any appeal will follow the requirements of this section. These standards will be met.

Chapter 33: Applications and Approval Criteria

[...]

Section 33.020 Architectural Review

[...]

(10) Extension of Permit Expiration.

(a) An Architectural Review approval may be extended if the applicant, or successor interest, submits a written request for an extension of time within two (2) years of the effective date.

Finding:

AR21-0006 was approved on June 29, 2021. The applicant submitted an extension of AR 21-0006 expiration request on June 28, 2023, prior to the pending expiration date of June 29, 2023. These standards are met.

(b) A Minor Architectural Review approval may not be extended. A new application is required if the permit expires.

Finding:

The extension request is not for a Minor Architectural Review. These standard does not apply.

(c) Upon receipt of a request for an extension of time, the City will process the extension request as follows:

(i) If the City Manager approved the Architectural Review, then the City Manager will decide the extension request under the Type II procedures in TDC 32.220.

(ii) If the Architectural Review Board (ARB) approved the Architectural Review, then the ARB will decide the extension request under the Type III quasi-judicial procedures in TDC 32.230.

Finding:

AR21-0006 was approved by the City Manager authority. The extension request has been processed under the Type II procedures previous discussed. These standards are met.

(d) The City must provide notice of the extension request to past recipients of the Architectural Review notice of decision and the applicant must post a sign pursuant to TDC 32.150.

Finding:

City staff mailed notice for the Type II application for extension of AR 21-0006 expiration on July 25, 2023 and the applicant provided evidence that a sign was posted, as attached in Exhibit B. These standards are met.

(e) The City Manager or Architectural Review Board, as applicable, may grant the extension of time upon finding the following:

(i) The applicant submitted a written extension request prior to the expiration date;

(ii) There have been no significant changes in any conditions, ordinances, regulations or standards of the City or applicable agencies that affect the previously approved project so as to warrant its resubmittal for Architectural Review;

- (iii) If the previously approved application included a special study, the applicant provided a status report includes a letter from a recognized professional that states that conditions have not changed after the original approval and that no new study is warranted; and**
- (iv) If the site has been neglected so as to allow the site to become blighted, the deciding party must factor this into its decision.**

Finding:

The applicant submitted an extension of AR 21-0006 expiration request on June 28, 2023, prior to the pending expiration date of June 29, 2023. There have been no significant changes to conditions of approval, regulations, or standards since the application was approved in 2021. Ordinances that have been approved since that time, relate to middle housing and comprehensive plan updates in support of the Water Master Plan update and do not affect this decision. Additionally the applicant has submitted a stormwater memo conducted by a registered civil engineer as required under (iii) which confirms there are no changing conditions that would affect the Stormwater design. Clean Water Services (CWS) have also confirmed that a Storm Water Connection Permit Authorization Letter was issued on March 23, 2023 under Exhibit D. Lastly staff has not received complaints from the community that the site is neglected or blighted. These standards are met.

- (f) The City Manager or Architectural Review Board, as applicable, may grant or deny the extension request. The decision must be in writing and must be made within sixty (60) days of receipt of the request for extension. If the decision is to grant the extension, the extension can be no more than a single one-year extension.**

Finding:

The proposed application is granted an extension by writing. The decision will be issued within 60 days of received a complete request. As conditioned under Condition of Approval A1, this extension is for a single one-year extension and will expire on June 29, 2024. This standard is met.

- (g) Upon making the decision, the City must provide notice of the extension decision as provided in TDC 32.220 for Type II decisions made by the City Manager and TDC 32.230 for Type III decisions made by the Architectural Review Board.**

Finding:

The city will provide notice of decision as required under the Type II process. This standard is met.

IV. APPEAL

This decision will be final after 14 calendar days unless a written appeal is received by the **Community Development Department – Planning Division at 10699 SW Herman Road, Tualatin, Oregon 97062 / planning@tualatin.gov** before 5:00 p.m., August 25, 2023. The appeal must be submitted on the City appeal form with all the information requested provided thereon and signed by the appellant.

The plans and appeal forms are available at the Tualatin City Services – Planning Division office.

Submitted by:



Erin Engman
Senior Planner, AICP