



LUP Hearings <lup-hearings@multco.us>

T2-2025-0067

Cottrell CPO <cottrellcpo@gmail.com>

Mon, Jul 6, 2026 at 3:20 PM

To: LUP Hearings <LUP-hearings@multco.us>, LUP Comments <lup-comments@multco.us>

This Message Is From an External Sender

External Sender - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information.

BEFORE THE MULTNOMAH COUNTY LAND USE HEARINGS OFFICER**Case No. T2-2025-0067****Re: Cottrell Pond Site Restoration, 8344 SE Cottrell Road****Submitted by: Cottrell Community Planning Organization**

The proposed restoration project is located within a Significant Environmental Concern – Water Resources (SEC-WR) overlay that provides functioning riparian and aquatic habitat occupied by species of concern, including Northern Red-legged Frogs and Coastal Cutthroat Trout. Although neither species is currently listed under the federal Endangered Species Act, both receive state and federal conservation recognition because of habitat loss and declining populations. Their acknowledged presence demonstrates that the project area supports functioning aquatic and riparian habitat that the SEC-WR overlay is intended to protect.

The issue presented by this application is not whether ecological restoration is beneficial or whether dam removal may ultimately improve stream function. Rather, the issue before the County is whether the record contains substantial evidence demonstrating that this particular proposal - including excavation, grading, vegetation disturbance, dam removal, and associated construction activities - meets the approval criteria applicable to development within an SEC-WR resource under MCC 39.5590(B) (application submittal requirements) and (C)(3) and (C)(4) (the alternatives analysis and development standards that flow from it).

Based on the materials submitted, several important aspects of the existing environmental conditions and potential project impacts do not appear to have been fully evaluated. Without this information, it is difficult to conclude that the required findings can be supported by substantial evidence.

Existing Environmental Conditions Have Not Been Fully Characterized

The application appears to evaluate the project primarily using current site conditions while giving little consideration to reasonably foreseeable changes occurring immediately upstream.

The project is located downstream of the Bull Run Filtration Facility, a major infrastructure project expected to continue through several additional years of construction before entering long-term operation. Construction activities and permanent site improvements have the potential to influence hydrology, groundwater interactions, sediment transport, riparian vegetation, channel stability, stream temperature, and other watershed processes that may directly affect conditions within the proposed restoration reach. This bears directly on the County's obligation under MCC 39.5590(D)(2)(b)(iv) to consider the cumulative adverse effects of past and ongoing activities on the Riparian Area, and on the baseline site analysis required under (B)(2) through (B)(4).

The applicant may argue that (D)(2)(b)(iv) is a discretionary factor that only applies if the applicant is seeking an exception to the mitigation sequence under (D)(2)(a), and that no exception is needed here because the project is “self-mitigating.” That argument assumes the very conclusion at issue. Whether the project is genuinely self-mitigating — whether it produces a net improvement rather than a net loss — depends on the same existing-conditions baseline this section identifies as missing from the record. The County cannot rely on a “no net loss” characterization to avoid considering cumulative effects when that characterization is itself unsupported by the substantial evidence (D)(2)(b)(iv) and (B)(2) through (B)(4) require. At minimum, the record should show the County considered whether ongoing upstream construction affects the baseline against which “self-mitigating” is being measured.

Because these upstream activities may influence future environmental conditions, the County should consider whether the record adequately evaluates reasonably foreseeable changes in stream flow, sediment transport, riparian processes, and channel conditions. Reliance solely upon present-day conditions may not fully characterize either the existing ecological functions or the

conditions under which the proposed restoration will ultimately function, and undermines the applicant's showing under (C)(3)(d) that the Riparian Area “can be restored to an equal or better condition.”

Without evaluating these reasonably foreseeable upstream influences, it is difficult to determine whether the proposed restoration measures will achieve their intended ecological objectives throughout the life of the project.

Existing Biological Information Does Not Constitute a Project-Specific Habitat Assessment

The application references biological information collected by the Johnson Creek Watershed Council (JCWC) over approximately the past decade. The JCWC's community science program provides valuable information regarding watershed health and amphibian occurrence and represents an important regional conservation effort. However, these data do not appear to constitute the project-specific biological assessment contemplated by MCC 39.5590(B)(4), which requires wetland and related surveys prepared by qualified professionals sufficient to support the findings required for this application.

The community science surveys were not conducted specifically to evaluate the proposed restoration footprint or to support the findings required for this land use application. Available information indicates that the program was designed to document amphibian occurrence throughout the watershed rather than to systematically evaluate Northern Red-legged Frogs, salamanders, or other amphibians within the specific area proposed for excavation, grading, dam removal, and riparian disturbance.

Accordingly, the referenced information does not appear to establish:

- whether amphibians currently utilize the project footprint for breeding, egg deposition, larval development, overwintering, or seasonal refuge;
- the location and extent of sensitive aquatic or riparian habitat within the disturbance area;
- whether habitat use has changed since the referenced surveys were conducted;
- how construction activities may affect species that are acknowledged to be likely present.

At the same time, the application recognizes that Northern Red-legged Frogs and Coastal Cutthroat Trout are expected to occur within or adjacent to the project area. If existing biological information is sufficient to conclude that these species are likely present, then that same information should also inform an evaluation of how excavation, grading, vegetation removal, construction timing, sediment disturbance, and other project activities may affect the habitats they occupy — information the County needs to support its (D)(1) “Good Corridor” determination.

The question is therefore not whether additional species surveys are categorically required. Rather, the issue is whether the record contains sufficient project-specific information for the County to evaluate the effects of the proposed activities on the ecological functions protected by the SEC-WR overlay.

Temporary Construction Effects Should Be Evaluated Independently From Long-Term Restoration Benefits

Although the project is characterized as ecological restoration, restoration activities themselves may temporarily impair the very ecological functions the SEC-WR overlay is intended to protect. This distinction matters under MCC 39.5590(D)(2), which governs the sequence of avoiding, minimizing, and compensating for adverse impacts, and under the erosion and protection standard at (C)(4)(i).

The record should distinguish between temporary construction impacts and anticipated long-term ecological improvements rather than assuming that future restoration benefits fully offset short-term habitat degradation.

The County should have sufficient information to evaluate temporary impacts associated with:

- excavation and grading;
- heavy equipment access within the riparian corridor;
- vegetation removal;
- temporary channel disturbance;
- sediment generation and turbidity;
- bank destabilization;
- temporary changes to groundwater and surface water connectivity;

- temporary habitat fragmentation;
- noise and vibration affecting wildlife.

Understanding these temporary impacts is particularly important where the project area provides functioning habitat for sensitive amphibians and native salmonids, and where the compensatory mitigation general requirements at (D)(3) presume a defined, monitorable mitigation plan.

Downstream Effects of Dam Removal Require Evaluation

Dam removal frequently results in temporary channel adjustment, mobilization of accumulated sediments, and changes to downstream aquatic habitat. These effects bear on the development standards at MCC 39.5590(C)(4), generally, and on whether the “equal or better condition” finding required by (C)(3)(d) can be supported for reaches beyond the immediate project footprint.

The record should evaluate whether removal of the structure may result in:

- downstream transport of fine sediment;
- burial of spawning gravels;
- increased turbidity;
- alteration of streambed substrate composition;
- impacts to juvenile fish rearing habitat;
- changes to channel morphology;
- impacts to amphibian breeding habitat downstream;
- long-term channel adjustment following removal.

The application should also describe the measures that will be implemented to minimize these effects, including sequencing of work, erosion and sediment control measures, monitoring, and adaptive management should sediment releases exceed expectations, consistent with the erosion-protection standard at (C)(4)(i).

Without this information, it is difficult to conclude that downstream effects on protected water resource functions have been fully evaluated.

Existing Sediment Conditions Should Be Characterized Prior to Excavation

The proposed project includes excavation within an impounded area where fine sediments have accumulated over many years. The record does not appear to include an evaluation of the physical or chemical characteristics of these sediments before they are disturbed, notwithstanding the soils and grading information required under MCC 39.5590(B)(3).

Previous proceedings associated with the Bull Run Filtration Facility documented residual agricultural contaminants, including DDT, DDE, and dieldrin, within portions of the upstream project area. Those proceedings also evaluated the potential for contaminated soils to migrate to nearby natural resources, including Johnson Creek. Although the Bull Run analysis ultimately concluded that completed site improvements would reduce future contaminant mobilization, those proceedings demonstrate that contaminant transport within this watershed has previously been recognized as an issue requiring evaluation.

Given the project's downstream location and the excavation of accumulated pond sediments, the record does not appear to address whether sediments proposed for disturbance have been characterized to determine whether contaminants are present that could be mobilized during construction — information relevant to the erosion and sediment protection standard at (C)(4)(i).

The purpose of such an evaluation would not be to presume contamination exists, but rather to determine whether sediment quality has been adequately characterized before excavation and whether appropriate management measures would be implemented should contaminants be identified.

If sediment characterization has not been performed, the record should explain why existing information is sufficient to conclude that excavation, sediment disturbance, and downstream transport will not adversely affect the water resource functions protected by the SEC-WR overlay.

Seasonal Biological Resources Require Evaluation

Northern Red-legged Frogs utilize shallow aquatic habitats for breeding and egg deposition during late winter and early spring, while Coastal Cutthroat Trout utilize stream habitats for spawning, incubation, and juvenile rearing during seasonally sensitive

periods. MCC 39.5590(C)(4)(i) specifically requires that work in fish-bearing streams be done in accordance with the ODFW in-stream timing schedule.

The record should identify:

- anticipated construction timing;
- proposed in-water work windows;
- seasonal timing restrictions intended to avoid breeding, spawning, incubation, larval development, and juvenile rearing where practicable;
- any pre-construction biological assessments proposed to identify sensitive life stages within the work area;
- contingency measures should sensitive species or life stages be encountered during construction.

Without identifying when construction activities will occur and how biologically sensitive periods will be addressed, it is difficult for the County to determine whether temporary impacts to aquatic resources have been minimized as required by (C)(4)(i).

Conclusion

The comments above do not suggest that ecological restoration should not proceed or that dam removal cannot provide long-term environmental benefits. Rather, they identify areas where the record appears incomplete for purposes of supporting the findings required for development within an SEC-WR resource under MCC 39.5590(B), (C)(3), (C)(4), and (D).

Collectively, these issues raise a broader question of whether the existing environmental baseline has been sufficiently characterized before concluding that the proposal will protect or improve the ecological functions of the resource. The record should contain substantial evidence demonstrating:

- that reasonably foreseeable upstream changes have been evaluated (D(2)(b)(iv));
- that existing habitat conditions have been adequately characterized within the project footprint (B(4));
- that temporary construction impacts have been evaluated independently from long-term restoration benefits (D(2), D(3));
- that downstream effects of dam removal have been assessed (C(3)(d), C(4));
- that accumulated sediments have been sufficiently characterized prior to excavation (B(3), C(4)(i));
- that construction timing considers sensitive biological periods (C(4)(i)); and
- that proposed mitigation measures are sufficient to protect the ecological functions that the SEC-WR overlay is intended to conserve (D(1), D(3)).

Absent this information, it is difficult to conclude that the County has substantial evidence to support the findings necessary for approval under the applicable SEC-WR standards.