

8/7/2023

To: Alan Rappleyea

From: Ian Courter, Senior Fisheries Scientist; Lauren Courter, Ph.D Toxicologist

Subject: Filtration Plant proposal does not meet MCC 39.7515(B): “Will not adversely affect natural resources” because of its impacts on fisheries and water resources

Mr. Rappleyea,

We are writing to provide additional perspective about MCC 39.7515(B): *Will not adversely affect natural resources*. This criterion is intended to restrict conditional uses that may impact natural resources in the West of Sandy River Planning Area within MUA-20 zoning. The West of Sandy River Area was set aside within Multnomah County to serve two purposes—agriculture and natural resource protections. Indeed, the first nine policies in the West of Sandy River Plan address protections for natural resources. It would be absurd to allow conditional uses that impact the primary uses and values in the area, which is why we believe Criterion B is unequivocal. Note that there is no qualifier. It does not say “minimize effects” nor “mitigate” or “reduce effects.” It simply says, “will not adversely affect...” There is no provision for mitigation actions. Applying its plain meaning suggests that any effect, big or small, on natural resources from industry other than agriculture is not allowed within MUA-20. This was intentional on the part of the County when implementing the criteria. If you read the community vision statement at the beginning of the West of Sandy River Plan it becomes apparent why Criterion B is so inflexible:

As residents and landowners in the area between the cities of Gresham and Troutdale and the Sandy River, our vision is that we will continue to enjoy our rural lifestyle. We value all of the features that make this a rural place including the quiet open spaces, vistas of productive farm and forest lands and of Mt. Hood, country roads, healthy air, soils and streams, and a night sky where we can clearly see the stars.

We envision that the Orient and Pleasant Home rural centers will continue to prosper within defined areas in order to provide for the needs of residents and visitors. We want our roads to continue to serve as the transportation network for the area, while remaining usable for people enjoying the country and accessing the Sandy River, with opportunities for exercise by walking, running, bicycling and horseback riding.

In order to maintain this vision, we recognize that the planned density of residential development must not increase, that the agricultural economy of the area must remain strong, and that development of new non-agricultural businesses should serve the needs of the local area. This plan is intended to help us in our stewardship of the environment, our lifestyle, and our community over the next 20 years. (Emphasis added.)

You stated at the beginning of the Conditional Use Application hearing on June 30 that “the burden of proof lies with the applicant.” The Portland Water Bureau (PWB) has not provided

proof that they will not adversely affect natural resources with the construction and operation of their proposed filtration plant at Carpenter Lane. PWB's Conditional Use application materials submitted between October 2022 and June 2023, included an incomplete demonstration that the project area does not overlap with the Significant Environmental Concern (SEC) overlays. However, this does not satisfy Conditional Use Criterion B, nor does it acknowledge the purpose of Multnomah County's designation of SECs, for two primary reasons. First, the SEC overlay database is intended to highlight areas of environmental concern. In Chapter 5 of the Multnomah County Comprehensive Plan, the County states the goals of the SEC overlay inventories and protection programs are to limit "...the impacts of land use and development in these areas.." because they are "critical for sustaining wildlife populations." Considering only development within the SEC boundaries as the limit of "natural resources," makes Criterion B superfluous. If the County intended to limit Criterion B only to SEC designated areas, the language of the Criterion itself would say so. Rather, the term is "natural resources" which would include those that may extend beyond the mapped SEC boundaries. Second, assessment of Criterion B should not be limited to the footprint of the proposed development project or the boundaries of what the applicant's own. Nothing in the language of the Criterion B suggests that the evaluation is limited as PWB claims. This includes impacts that will occur on neighboring properties and elsewhere in the West of Sandy River Planning Area, including but not limited to areas impacted by the raw and finished pipelines. None of these impacts have been addressed within PWB's application materials.

We contend that PWB has made minimal effort to meet Criterion B, and they appear to be concealing potential impacts through omission of key facts about their project. PWB should comprehensively evaluate the project's effects objectively and transparently. Instead, their strategy is to convince decision-makers that their project is essential and they should not be required to meet conditional use Criterion B. For example, Page 10 of Exhibit H.3 submitted by PWB just prior to the June 30 hearing states the following:

"Given the essential nature of this project for protecting the safety of our water supply and our regional economy, the Water Bureau asks that you take the feedback from the community and convert it to appropriate conditions of approval to the extent you believe necessary to meet approval criteria"

In short, they are asking for approval because Portland water is important, and they believe you should adapt the conditional use criteria because the provision of safe water is so critical. We agree that Portland's water supply is important, but it is not more important than the fish, wildlife, forest, and water resources in the West of Sandy River Area, and it most certainly does not demand waiving or taking a less strict approach to applying the criteria in this case. It is not appropriate for PWB to ask for additional elasticity in your interpretation or application of the criteria. PWB chose the site at Carpenter Lane with knowledge of what the Conditional Use criteria would be. We've been telling PWB for six years that Criterion B must be met, and it is impossible for a \$2 billion industrial plant with a nearly 50-acre footprint to meet the standard of no adverse impacts on natural resources. The authors of the West of the Sandy River Transportation and Land Use Plan (2002) acknowledge that an industrial project, similar to the one proposed is "generally the most intrusive on the landscape due to large areas of impervious surfaces and clearing, large parking and loading areas, and sources of toxic run-off, effluent, and

other factors that are generally detrimental to significant natural resource sites.” The proposed site at Carpenter Lane is surrounded by significant resources including water resources and fish and wildlife habitat.

There are many ways that the proposed filtration plant at Carpenter Lane will adversely affect natural resources. For example, water and fisheries resources in Johnson Creek, a tributary to the Willamette River, will be adversely affected by the project. PWB proposes to build their filtration plant at the headwaters of Johnson Creek (Figure 1). The subject property is located so close to the creek that it includes a portion of the riparian area (Figure 2). This is not in agreement with Strategy 5.2-2 of the Multnomah County Comprehensive Plan to protect headwaters due to their critical ecosystem role, nor the policies of the West of the Sandy River Transportation and Land Use Plan. Though much of Johnson Creek transits through urban areas, the creek continues to support natural populations of migratory and resident salmonids including Chinook Salmon, Coho Salmon, Steelhead Trout, and Cutthroat Trout. All of these species are game fish (ORS 496.009) to be protected and preserved (ORS 506.036). Oregon law prohibits activities that harm these fish, other than specific activities sanctioned by the Oregon Fish and Wildlife Commission, such as angling within specified seasons. The anadromous fish species in Johnson Creek also receive federal protections under the U.S. Endangered Species Act (ESA). Chinook Salmon, Coho Salmon, and Steelhead Trout in Johnson Creek exist within the Lower Columbia River Evolutionary Significant Unit, listed as “threatened,” necessitating assessment of biological effects of the proposed filtration plant before the plant can be built. Habitat restoration work in Johnson Creek is ongoing with a goal of increasing fish returns, highlighting the importance of fisheries resources in the creek.

PWB has not provided any assessment of their effects on water quality nor the fish populations downstream of their proposed development site (Figure 1; Figure 2). This is similar to the approach they took when they applied for federal funding from the Water Infrastructure Finance and Innovation Act (WIFIA) program. PWB’s WIFIA loan application included a simple questionnaire, and no in-depth environmental assessment was provided. Furthermore, answers to the questionnaire were inaccurate and incomplete, specifically with respect to impacts on fisheries resources in Johnson Creek. This was significant because it led the Environmental Protection Agency (EPA), who administers the WIFIA loan program, to conclude PWB’s proposed project would have “no significant environmental impact,” permitting loan approval without development of an Environmental Impact Statement. Taken together, PWB’s WIFIA loan application materials and their Conditional Use application materials do not provide proof that they will not adversely affect natural resources.

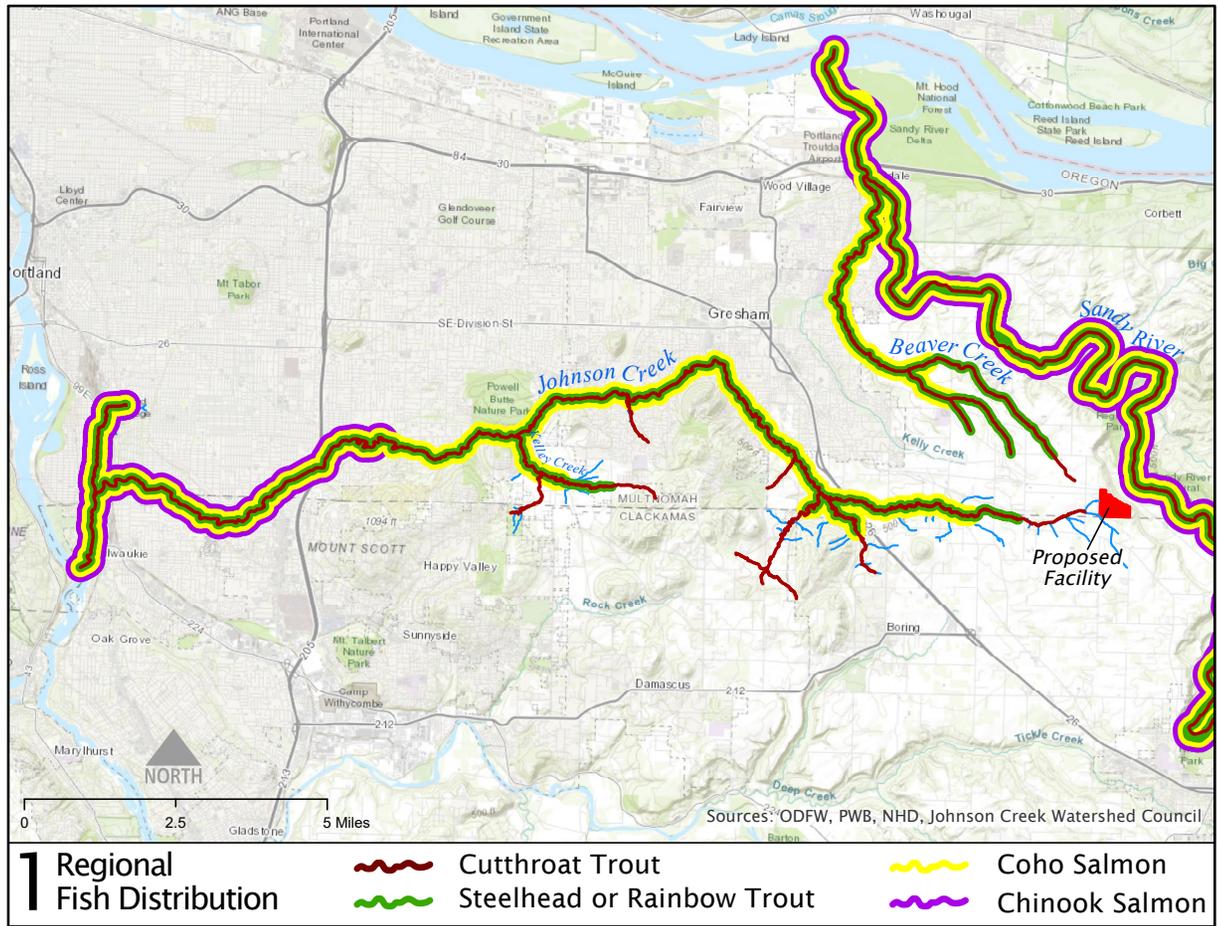


Figure 1. Regional salmonid distribution within Johnson Creek, Beaver Creek, and the Sandy River adjacent to the proposed filtration facility and associated pipelines.

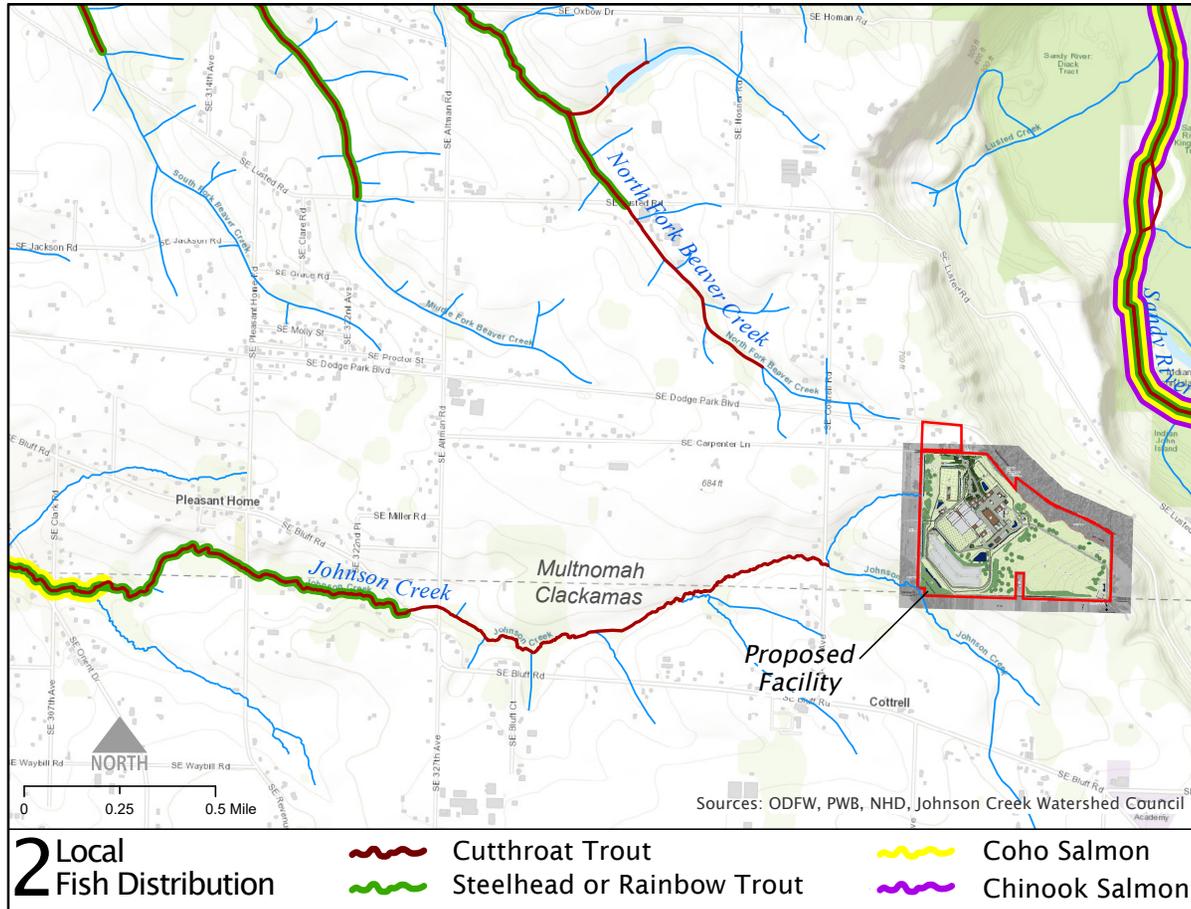


Figure 2. Footprint of proposed filtration facility relative to the headwaters of Johnson Creek and Beaver Creek.



Comments for T3-2022-16220

1 message

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Mon, Aug 7, 2023 at 11:47 AM



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Please see attached written comments for T3-2022-16220 with regards to MCC 39.7515(B)

Regards,
Ian Courter
Lauren Courter

 **MCC 39.7515(B)_Aug7.pdf**
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