

To: Hearing Officer
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Subject: Testimony Related to LUBA Remand; Case File T3-2022-16220
PWB

Thank you for the opportunity to submit testimony regarding LUBA's remand of the County's approval of the Portland Water Bureau's proposed industrial-scale water filtration plant and associated pipelines in rural east Multnomah County.

LUBA's decision included the following directives to the hearings officer:

"On remand, the hearings officer should determine whether any natural resources will be affected by the community service use and must find that the proposed use will not adversely affect those natural resources." (LUBA decision, pg123.)

"Under a proper construction of MCC 39.7515(B) on remand, the hearings officer should determine whether any of the identified natural resources will be affected by the community service use and must find that the proposed use will not adversely affect those natural resources or explain why the identified natural resources are not subject to the criterion." (LUBA decision, pg127)

"The hearings officer misconstrued the community use natural resources criterion and, based on that misconception, failed to adopt adequate findings supported by substantial evidence." (LUBA decision pg 130)

This testimony is divided into 2 sections. Section 1 will summarize my previous testimonies (Ex E.9 and Ex J.7) and provide documentation of natural resource destruction that has occurred to date.

Section 2 will reiterate adverse impacts to natural resources that were raised in my previous testimonies (Ex E.9 and Ex J.7) but never received consideration or response.

Section 1

Ex. E.9 raised numerous issues related to adverse impacts to natural resources related to PWB's proposed project. Included in this testimony was the elimination of a natural "hedgerow" located in the ROW of Dodge Park Blvd. for a distance of approximately .9 miles beginning east of Cottrell Rd. and extending west to the point where the finished water pipeline turned north and entered privately owned EFU land.

Ex. E.9 (pgs 8-10) stated:

"Proposed Conditions" are shown on LU-201 and LU-202. These drawings show all the trees noted above eliminated and replaced with "roadside seeding" **That's 324 trees eliminated as well as an undetermined number of shrubs.** (only trees in excess of 6 in diameter were included)."

An inventory of trees and shrubs (Ex. E.9, pg8) present in the hedgerow documented wide diversity of tree and shrub species all known to provide quality habitat for a variety birds and small mammals for nesting, foraging, cover and travel corridor purposes. The importance of the hedgerow for a variety of pollinators was also stressed.

The Multnomah County Comprehensive Plan (Chapter 12; Policy 16, Strategy C) recognizes the importance of "hedgerows" by stating: 9 "c) **"Review internal protocols related to road and right-of-way maintenance, including roadside hedgerow trimming and weed eradication.** Work with the Soil & Water Conservation Districts, ODFW and wildlife conservation organizations to protect wildlife and manage invasive plant species to ensure that habitat and water resource restoration projects are coordinated with County road maintenance and drainage control programs."

In addition to their significant value to wildlife, hedgerows sequester CO2, provide shade that helps attenuate excessive heat episodes, and absorbs, filters and slows storm runoff. Hedgerows are an important natural resource that Applicant has failed to even mention and undeniably fails to protect.

The photographs below show the "hedgerow" prior to its destruction by the PWB. (from 5/5/2023)







The pictures below show the same hedgerow in it's current condition.







Unfortunately, the hedgerow along Dodge Park Blvd was not the only hedgerow area destroyed by the PWB. The picture below (2/28/24) shows some of the mature Giant Sequoias cut along SE Carpenter Ln. to accommodate road widening. Many other trees and shrubs were cut here as well.



The photograph below shows the same area after tree cutting by PWB.



Prior testimony raised serious concerns about the impacts to natural resources at the proposed site of the raw water tunnels. Ex. E.9 documented the removal

of 24 trees in excess of 6" diameter and unspecified number and species of shrubs all of which provided habitat value for a variety of avian, mammals and amphibians and explained the value of "edge" habitat.

The pictures below show the site just after tree cutting commenced.





The following pictures show the same site in its current condition.







As noted with the hedgerows along Dodge Park Blvd. and SE Carpenter Lane, PWB failed to conduct any inventory of avian, mammal, or amphibian species utilizing the site prior to its destruction.

Well known conservationist, Aldo Leopold, stated: "The first intelligent rule of tinkering is to save all the pieces." In this case, PWB didn't even identify the "pieces" much less make any effort to save them!

The applicants "Wildlife Conservation Plan" lacked:

- any semblance of an inventory to document which wildlife species (e.g. mammals, birds, amphibians etc.) likely utilize the habitat either year round or seasonally....
- any discussion of the value of the the "cleared areas" (i.e. "edge habitat") described in "the plan" as "...degraded and consist of disturbed vegetation (e.g. pasture grasses) with no trees."**
- *** significant research documents impacts to avian species from exposure to construction noise. Impacts include but are not necessarily limited to: ".... changes in foraging location and behavior; interference with acoustic communicate between conspecifics; failure to recognize other important biological signals, such as sounds of predators and/or prey; decreasing hearing sensitivity temporarily or permanently; and/or increasing stress and altering steroid hormone levels. Any of these effects could have long-term consequences and enduring impacts that include interference with breeding by individuals and populations, thereby threatening the survival of individuals or species." (Caltrans, 2016)*****the value of edge habitat in proximity to forested areas is well established and generally contributes to diversity of both mammal and avian species."

Ex. I.96 from applicant attempted to downgrade the number of trees that would be cut, then diminish the value of the natural resources they intended to destroy and then proposed "mitigation" plantings on the filtration plant site. For example, a "hedgerow" was proposed to offset the elimination of the Dodge Park Blvd. hedgerow.

However, this “mitigation” lacks credibility because:

- Installing a row of trees on the filtration plant site next to an existing forested area could not provide the same functional value as what has now been destroyed.
- The criterion in MCC 39.7515(B) requires a finding of “no adverse impact to natural resources”. The criterion does not stipulate “no adverse impact to natural resources *unless mitigated.*”
- Even if the proposed mitigation was permissible and found to replace the lost functions of the destroyed hedgerow, its replacement value would take decades to be realized.

To Summarize:

- PWB initiated work that caused irreparable harm to natural resources even though a Notice of Appeal had been filed on December 19, 2023.
- PWB failed to inventory vegetation to be removed and the mammal, avian and amphibian species utilizing the habitat areas that have now been destroyed.
- PWB concealed the massive loss of trees in their initial land use application. Subsequently, PWB unsuccessfully attempted to downgrade the number of trees to be cut; attempted to diminish their value; then propose “mitigation” that is not a component of MCC 39.751(B).
- Even if it were an approved strategy, the proposed mitigation falls far short of replacing what has been lost.

NOTE: This testimony only addresses loss of trees 6 inches diameter or greater in the hedgerow and raw water pipeline area. Additional large trees were removed along SE Carpenter Lane (east of Cottrell Rd.) and vast numbers of ecologically important shrubs were also destroyed in these areas.

Section 2

Prior testimony raised issues related to natural resources that were either ignored completely or glossed over in PWB's response submittals and the hearing officer's decision. This section seeks to raise these issues once again in this remand process with the expectation that they will receive the thorough consideration that was omitted previously.

Ex.E.9 pgs. 5-7 detailed specific concerns related to adverse impacts of project construction and **ongoing operations on air quality from heavy haul trucks**, large construction equipment and subsequently **regular use of large diesel generators (50,000 gal. of diesel will be stored on site and used regularly)**, **numerous chemical deliveries and off-hauling of plant by-products**.

In response, PWB stated: Ex I.75, pg. 2: "The city of Portland participates in the Clean Air Construction (CAC) Program" and "Contractors working on the Bull Run Filtration Project will need to certify that all applicable diesel equipment or vehicles are registered and in compliance with the CAC Program or have a valid exemption."

PWB never provided any explanation of what the impact of the CAC Program meant in terms of reducing massive amounts of diesel emissions or explained what a valid exemption meant or how many pieces of diesel equipment pieces would be permitted to have a "valid exemption". I challenge the PWB to provide that information during this remand process so that the impact of their project on this community's air quality and climate change can be assessed.

Although the PWB may argue that air pollution is primarily "construction related" and therefore does not count, the simple fact is that emissions will continue as a result of operations and public health and climate impacts will last long after construction ends.

Ex. E.9, pgs. 19-20 states:

"A. See Exhibit A 214, Appendix A.2; A. Site Plans (pipelines). Sheet LU100 (existing conditions raw water pipelines) shows the location of 2 ponds. The CU narrative fails to provide any evaluation of their ecological value or condition. The Applicant has apparently failed to

conduct a wetland delineation to determine the location or extent of jurisdictional wetlands within this area or other proposed project areas. Instead, the Applicant's CU narrative assumes that auger boring the 2 large pipelines under one of the ponds is sufficient evidence that adverse impacts to natural resources are avoided. Lacking a wetland delineation and a full inventory of mammals, avian and amphibian species, it is impossible for the Applicant to make any such conclusion."

It is now clear that a wetland delineation was never completed. Without baseline information PWB cannot provide evidence to support a finding that wetlands were not adversely impacted by the site alterations or the ongoing operation of the raw water pipelines.

Ex.E.9 pg.22 states:

"C. Applicant materials specify "pipeline drains" in both raw and finished water pipelines.

It is assumed that these drains are utilized when pipelines must be emptied for the purpose of repair or maintenance activities. Applicant provides no information about either the quantity or chemical content of water that will be discharged or how the discharged water will be managed. In the case of the the raw water pipelines, 2 @72" pipes will extend 1200 feet and then rise approximately 230 ft to the surface at the proposed filtration plant site. Assuming only the water from the tunneled pipes is drained, 604,908 gallons of water will be discharged under pressure of 230 ft. of head. This volume has the capacity to cause localized ponding, erosion or run-off into local drainage swales and protected watercourses.

Applicant's failure to identify or assess issues related to pipeline drains creates the likelihood of impacts to natural resources and potential damage to adjacent private property."

Ex.E.9 pg.23 states:

"D. Two tunnels for the proposed raw water pipelines will have diameters of 9'. Raw water pipes will be 6' in diameter. The shaft that will bring the 2 raw water pipelines to the surface will be 30-35' in diameter. According to PWB staff (10/5/2022), the significant voids around the pipes "will be filled with either lightweight cellular concrete or grout".

Applicant materials fail to evaluate the potential for the concrete or grout to contaminate or otherwise interfere with ground water that supplies nearby residential/agricultural wells or natural seeps/springs that may be important for the many forms of wildlife known to utilize the area. Applicant has provided no evidence to document groundwater resources within the area or geologic formations that may permit migration of the concrete or grout causing adverse impacts to groundwater resources." Interference with groundwater resources would continue after project construction.

Summary/Conclusion

Despite the knowledge that a Notice of Appeal had been filed on December 19, 2023 with LUBA, PWB initiated construction on their Filtration/Pipelines project in February, 2024 that included tree cutting at the both the hedgerow, the raw water pipeline sites and along SE Carpenter Ln..

PWB concealed their plans to cut at least 348 trees in the hedgerow and raw water pipeline area in their land use application.

Subsequently, PWB unsuccessfully claimed that the number of trees to be removed was substantially less than 348, then attempted to diminish their habitat value and finally proposed "mitigation" that is not permitted in MCC 39.751(B).

.9 mile of hedgerow has been destroyed and the entire raw water project area has undergone massive alterations and is currently a massive construction site. The finished pipelines have the capacity to impact surface waters and wetlands long after construction is complete.

PWB failed to inventory vegetation, wetlands, mammals, avian species and amphibians prior to destroying natural resources.

PWB made no attempt to assess the impacts of their project on natural resources other than to claim the project avoided designated areas of Significant Environmental Concern.

Four issues were raised regarding adverse impacts to natural resources that the hearing officer and PWB never acknowledged or provided response.

Barring substantial new evidence that supports a finding of “no adverse impacts” or an explanation of why the identified natural resources are not subject to MCC 39.751(B), this project cannot be approved.