

LUBA REMAND TESTIMONY FOR APRIL 16, 2025 HEARING

CASE FILE T3-2022-16

LUBA REMAND ORDER 2023-086

TESTIMONY OF HOLLY H. MARTIN CONCERNING AFFECT OF PROPOSED WATER TREATMENT PLANT ON NATURAL RESOURCES, submitted April 15, 2025

My testimony concerns the natural resources in the area that PWB has failed to even acknowledge, let alone demonstrate how adverse impacts can be avoided, with reference to MCCP policy 2.45 and the MCCP glossary cited in LUBA's remand order at pages 117 and 121-2

WILDLIFE AND HABITAT

Our property is located 3.4 miles from the PWB construction site for the proposed water treatment plant ("PWB Plant"), following the shortest paved route from the construction site gate of Cottrell Road, Dodge Park, and Lusted Road. As the crow flies (or the earthbound wildlife travels) it's approximately 1.8 miles.

My testimony given in the initial proceedings in this case details the area wildlife present over the 32 years we have lived here, including deer, elk, amphibians, predator birds, and mamalian predators and the habitat our particular property provides, including open pasture, forest, and a seasonal wetland. *See, Exhibit H.34 written testimony from Holly Martin, received 6/30/23, paragraphs 1,5 6, and Exhibits 1-5.*

We also host a small number of water fowl in the spring and have had Great Blue Heron hunting in our fields during especially wet winters.

I previously mentioned the healthy amphibian population we host in our seasonal wetland, including the suspected presence of the Northern Red Legged Frog (*Rana Aurora*), which is Federally listed as a Species of Concern and listed by Oregon as a Sensitive Species, and included a stock photo of the frog along with a photo of a dead frog found on our driveway. Attached as Exhibit 1 to this testimony is a different stock photo which illustrates the range of colors this frog can exhibit, as well as a complete set of my frog photos.

This area is rife with small wooded streams and wetlands, perfect habitat for amphibians. Rather than acknowledge the presence of Northern Red Legged Frog on our property, PWB chose to ignore the issue, illustrated by my email exchange with PWB on the subject, Exhibit 2 to this testimony. Its expert environmental consultants went even further, noting that their scope of work DID NOT INCLUDE WETLANDS, and this included everything they touched, not just our property. *See, Exhibit H.34, para. 6 and fnt 1.*

The area wildlife wanders. Human boundaries such as roads and county lines do not concern them. While I am not a wildlife expert, travel between our property and the PWB site is confirmed by sightings of a very unique coyote "Stumpy" who is recognizable by his short tail and stocky build. Jennifer Hart, who lives within 1/2 mile of the PWB site (*Exhibit H.24.1, written from Jennifer Hart, rec. 6/30/23*), confirmed to me that she has seen 'Stumpy' on her acreage. From our property to the Sandy River is only an additional .4 mile, so it is fair to assume that wildlife ranges from the river to at least the PWB treatment plant.

Our deer population illustrates the impact the PWB treatment plant is having on the local wildlife. Our resident deer population is 2-3 animals, consistent over the 32 years we have lived here, except for the last year. Once construction started, we had as many as 7 deer, including 2 mature bucks for a period of time, then ALL deer disappeared. I predicted this eastern flight of wildlife in my previous testimony, *Exhibit I.8, rec. 8/1/23, last paragraph*. I spotted a couple of deer again, after construction halted post LUBA remand. This cannot be dismissed as "temporary" affects of the 5 year construction process, as the 90 acre site is permanently out of the eco-system, plus the noisy, heavy hauler trucks will continue to roll in order to supply the chemicals needed for the type of plant PWB has elected to build, which is not required by any EPA or OHA mandate. Furthermore, the landscape has been permanently altered by the loss of mature trees and roadside habitat that has been paved over to service PWB's needs.

### ROADSIDE HABITAT

I have attached a series of photographs which illustrate the loss of trees and the paving over of county road right of ways that have already occurred during the LUBA appeal period. These can be considered permanent losses, as they will not be recovered in our life times. My photos and testimony cover Dodge Park Boulevard, Lusted Road, and Altman Road, 3 of the nearby roads used by PWB for this project. Cottrell road which contains the building site's immediate entrance is not included, as I don't regularly drive it and observe conditions there.

Exhibit 3 Dodge Park: Photos of the logging and habitat destruction on the south side of Dodge Park Boulevard. The area of the photos starts .7 miles southwest of mile post 4 through Cottrell Road intersection, for a total of 1.4 miles. Much of this area backs up to active farm land. Of note are the temporary little black plastic erosion control barriers that can be seen all along this section, although some are not visible in the photos due to angle or terrain. For a habitat description and pictures of how this area originally looked, see *Cindy Bennington Testimony Exhibit I.24 rec. 8/6/23, Exhibit J. 92 rec. 9/7/23, Exhibit J.93 video*.

Another concern for loss of these road side treed areas, is of permanent erosion control and mitigation of the migration of agricultural pesticides, herbicides and other chemicals into the watershed. These treed areas not only supplied habitat and a safety barrier from the road traffic for wildlife, but they also served to buffer the farm lands. PWB should have to address this aspect. It is antedcdotal, but I had a friend recently retired from EPA NE watershed

management visit last month and took her for a tour of the area, mentioning the concerns we had with ag lands and old chemicals in the context of the waiver DEQ granted PWB to move contaminated ag soils off the site without treatment. Without prompting from me she noticed the Dodge Park destruction of Exhibit 3 and said "there's a problem, as road-side trees and vegetation are first line of defense in trying to keep chemicals from ag lands from moving off farm property and into the watershed via the surrounding ditches and paved roadways." PWB should have to address this issue where it has disturbed/destroyed these buffers around farm lands as on Dodge Park. That is certainly a potentially adverse affect to our natural resources.

Exhibit 4 Lusted Road: Photos of paving over county right of way, both sides of the road, approximately 400' in length near the Multnomah-Clackamas county line, including a PWB facility located at 36910 SE Lusted Road used to support work at the PWB site during the time before remand. Note the security exclusion of all wildlife with the chain link fencing and gulag style 3 strand barb wire on top. This results in no cover, no fencing, and no safe place to get off the road.

Exhibit 5 Altman Road: Photos of paving over of county right of way on the west side, for a distance of .4 miles from the intersection of Lusted and Altman. Most of this is in front of peoples' homes, up to the edge of their lawns. There is a series of at least 5-6 homes, but I did not want to be too invasive of people's privacy so I just gave examples. Again, no grace room for wildlife or people seeking a safe place away from vehicles. This pavement is permanent damage.



Exhibit 1A Northern Red Legged Frog

Stock photo of Northern Red Legged Frog, as it appeared in 10,000 Things of the Pacific Northwest, Adventures of a Recreational Naturalist a blog by Dan Nelson on October 27, 2020.

*Rana aurora* (Northern Red-legged Frog)





Exhibit 2: Email exchanges with PWB concerning wetlands and amphibians-- highlights added.

From: Ackerman, Ken <Kenneth.Ackerman@portlandoregon.gov>  
To: Holly Martin (martinlegal@cs.com) <martinlegal@cs.com>  
Cc: Oswald, Bonita <Bonita.Oswald@portlandoregon.gov>  
Sent: Thu, Apr 9, 2020 1:02 pm  
Subject: Access Agreement - Martins

Holly,

Thank you for meeting with me on Tuesday. I wanted to follow up on a couple issues with you. After talking to our wetlands consultant, they would like to see the photo of the frog from your driveway if you would be will to share. In the future if we would like to visit what would be the best way to provide the 3 day notice?

And last I want to see how your neighbors horse is doing?

Ken Ackerman, PE  
Sr. Engineer  
Portland Water Bureau  
1120 SW 5<sup>th</sup> Ave.  
Portland, OR 97204-1926  
P: 503-823-7613  
C: 503-784-9047  
[Kenneth.ackerman@portlandoregon.gov](mailto:Kenneth.ackerman@portlandoregon.gov)

From: Holly Martin <martinlegal@cs.com>  
To: Kenneth.Ackerman@portlandoregon.gov <Kenneth.Ackerman@portlandoregon.gov>  
Cc: Bonita.Oswald@portlandoregon.gov <Bonita.Oswald@portlandoregon.gov>; PDXDirect@cs.com <PDXDirect@cs.com>  
Sent: Fri, Apr 10, 2020 3:31 pm  
Subject: Re: Access Agreement - Martins

Hi Ken-- Alas, Comet (the horse) is no more. He was put down the day after you were here-- twisted intestine--he was in an insane amount of pain. So both Dwayne and his other horse Dusty are sad and lonely.

As for notice, email sent to both Mike and I will suffice. If there is a reason for less than the 3 day notice, just give us a call. If you reach us and we will be on the property, we can probably accommodate you. I will look, for the frog picture and forward it to you. Are the environmental/cultural consultants done? Bonita's letter said they would be working April 7-8, but we are only aware of your presence with some additional personnel for a short time on the 7th. I know your access hours are regular business hours, but if the environmental consultants are really interested in the frogs, they need to be here dusk to dark--that is when they are active. In fact, they are quite noisy now. If they wish to be on the property when the amphibians are active, please let us know and it can happen.

Holly Martin

From: Holly Martin <martinlegal@cs.com>  
To: Kenneth.Ackerman@portlandoregon.gov <Kenneth.Ackerman@portlandoregon.gov>  
Sent: Fri, Apr 10, 2020 4:40 pm  
Subject: Frrog pix Martin 39100 SE Lusted Road, Boring, OR 97009

Hi Ken- here are the frog pix from last year's traffic accident on our driveway. They were taken April 3, 2019. Generally we do not see the amphibians, other than salamanders, but the chorus we hear at night indicates several frog species.

Holly Martin

From: Ackerman, Ken <Kenneth.Ackerman@portlandoregon.gov>  
To: Holly Martin <martinlegal@cs.com>  
Cc: Oswald, Bonita <Bonita.Oswald@portlandoregon.gov>; PDXDirect@cs.com <PDXDirect@cs.com>; Gossett, Ben <Ben.Gossett@portlandoregon.gov>  
Sent: Thu, Apr 30, 2020 1:45 pm  
Subject: RE: Access Agreement - Martins

Holly,

Sorry for not getting back to you sooner & sorry to hear the Comet is no more. We are all done for this spring and summer for work on your property, but Ben is still working to get your agreement modified and back to you. I did send your photos to the environmental consultants and they were helpful. They don't need to be on site when they are active, we are likely going to bore under the stream area to avoid any impact. Let me know if you have any question and Ben will be in touch soon on the agreement.

Ken Ackerman, PE  
P: 503-823-7613  
C: 503-784-9047

**Exhibit 1B**

**My photos of suspected Northern Red Legged Frog from our seasonal wetland, taken on my driveway at 39100 SE Lusted Road, Boring, OR April 3, 2019**











**EXHIBIT 3: Dodge Park roadside logging and habitat destruction**











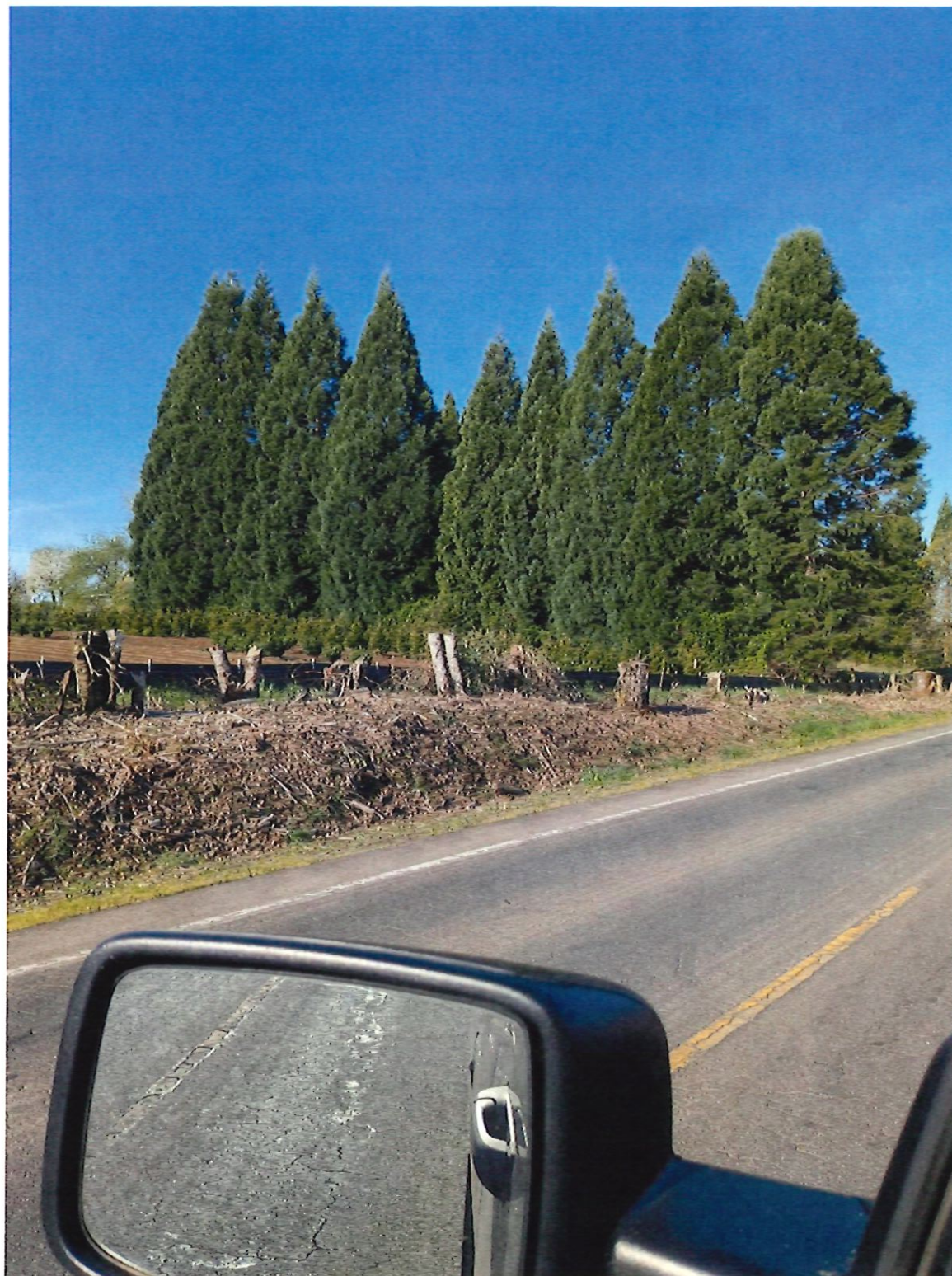












Exhibit 4 Lusted Road: Paving over of county right of ways, boh sides Lusted Road.









Exhibit 5 Altman, pavement of the county right of way.

