MEMORANDUM

To: Liz Fancher, Hearings Officer – T3-2022-16220

Date: *5/5/2025*

From: Ian Courter, Lauren Courter

RE: Response to N.57: *Bull Run Filtration Project – Wetland Evaluation*, prepared by Anita Cate Smyth, SPWS, Winterbrook, April 15, 2025

SUMMARY OF WINTERBROOK FINDINGS

In Exhibit N.57, Winterbrook provided a description of work completed to evaluate effects of the filtration and pipeline projects on wetland habitat. Winterbrook describes their wetland evaluation as "extensive" and describes that the projects will avoid all permanent impacts to wetlands and waters of the state. A single temporary impact to wetlands within an SEC area is an 83-square-foot area described as being dominated by invasive plants. Winterbrook states that the Portland Water Bureau (PWB) will restore this area with native species after construction. After consulting with state agencies, Winterbrook states that no compensatory mitigation is required, and standard practices will be used to prevent construction-related effects like dewatering. Winterbrook concludes that the project is expected to result in no adverse impacts to wetlands.

RESPONSE TO FINDINGS

Wetland Delineation and Reporting

The location and extent of all wetlands are allegedly identified in a delineation evaluation report is referenced as "WD2023-0085". However, this report does not exist in the record and the details of those findings are not available for review and response. Without these details, the extent and rigor of the evaluation is uncertain. Furthermore, baseline conditions have not been presented in detail.

LUBA has asked for substantial evidence to support PWB's findings of no impact to natural resources[1], including wetlands. Although WD2023-0085 does not, on its own, satisfy the conditional use criterion, if PWB is going to rely on it as providing some assurance of pre-construction conditions or mitigation, it must be provided. As it stands, any analysis of impacts to wetland natural resources that existed prior to construction remains to be provided.

Agency Coordination

[1] Within the context of the Comprehensive Plan, "Natural Resources" is defined as: "Generally, a functioning natural system, such as a wetland or a stream, wildlife habitat or material in the environment used or capable of being used for some purpose, also including minerals and fuels, agricultural resources and forests"

The Winterbrook report emphasizes concurrances on the wetland approach by USACE and DSL. PWB "received concurrence" from DSL on the wetland delineation report in July 2023. In Exhibit N.57, PWB details a USACE general permit (NWP-2024-102), a ODEQ 401 Water Quality Certification, and a DSL General Authorization 64845-GA.

Because WD2023-0085 does not exist in the record, it is unclear what DSL concurred on. In Exhibit N.57, this concurrence statement is followed up by a description of the alternatives analysis process where *the Water Bureau succeeded in avoiding wetlands by employing measures such as locating pipes in roadways and using trenchless construction techniques.* While it is true that most of the pipelines avoid wetlands, some wetlands will still be impacted by pipeline site preparation and installation, as acknowledged by PWB in the Winterbrook report. Winterbrook identifies the impacted wetland a between the toe of the SE Dodge Park Blvd roadway embankment and an area of agricultural use (83 square feet). However, there are seasonal wetlands and a pond adjacent to the raw water pipeline portal (Figure 1), which have already been impacted (Figure 2). The area is currently graveled over and a temporary bridge installed.

Long-Term Impacts and Mitigation

While the Portland Water Bureau (PWB) characterizes the wetland impacts as temporary, this assertion overlooks two critical concerns:

> **First**, mitigation plantings proposed to offset construction impacts will not instantaneously restore functional wetland conditions. The establishment of wetland vegetation, soil structure, and hydrological function is a long-term process. Even under optimal conditions, it can take years or decades for planted vegetation to develop the structural complexity, soil microbial communities, and hydrological regimes that support wetland ecosystem services such as water filtration, flood attenuation, and wildlife habitat. As a result, there will be a substantial temporal gap between impact and ecological recovery, during which wetland function and biodiversity will remain impaired.
>
> **Second**, the installation of raw water pipelines—from SE Lusted Road beneath SE Dodge Park Boulevard—introduces a significant risk of long-term or permanent hydrological disruption. The tunneling process, which involves blasting and drilling at depths of 200 to 250 feet over roughly 1,200 feet, may alter subsurface geology and fracture aquifer structures. This is particularly concerning given the presence of domestic wells in the vicinity that draw from both shallow (Walter residence) and deeper (~300 feet, Courter residence) aquifers. Disturbance to these aquifers has the potential to disrupt groundwater flow paths, reduce groundwater discharge to surface wetlands, and alter the seasonal hydrology critical to wetland maintenance. Reduced groundwater input can lead to desiccation, changes in plant community composition, and loss of wetland function over time.

PWB offers a list of general permits that have been obtained to verify compliance with federal and state regulation. These are permits that approve work with the understanding that the applicant must employ specific Best Management Practices (BMP) to avoid impact to the waters

of Oregon and the United States in the post-construction phase. Whether BMPs are sufficient to satisfy state and federal standards, they cannot substitute or otherwise satisfy a county conditional use criterion that requires finding "no adverse impact." Indeed, meeting federal and state requirements are necessary for the construction of projects such as this; however, PWB continually fails to acknowledge that the county conditions for projects outside the vision of the community are more restrictive in order to protect the area's natural resources.

BMPs are insufficient to protect the areas natural resources because BMPs:

Focus on Minimization, Not Elimination: BMPs reduce but do not prevent all disturbances; systems and habitats still experience degradation.

Are Not Site-Specific to Unique Ecological Conditions: The county's conditional use criterion requires *"no adverse impact,"* a higher and more protective standard than general compliance measures. BMPs are broad, standardized approaches and do not constitute targeted mitigation for site-specific ecological vulnerabilities—such as the groundwater-dependent wetlands and domestic wells at risk in this case.

Do Not Address Cumulative or Subsurface Impacts: BMPs mainly target surface-level issues like runoff and erosion. They do not sufficiently mitigate complex, long-term disruptions from activities like blasting and drilling, which can alter aquifer structures and permanently change groundwater flow that sustains wetlands and private wells.

Do not apply to the protective County Standards: The county standard to protect natural resources is vital to this community's identity and ecology. The county's requirement for *"no adverse impact"* reflects this higher level of protection than what BMPs can assure.

CONCLUSION

PWB failed to provide substantial evidence to meet the county's conditional use criterion requiring demonstration of *no adverse impact* to natural resources. The absence of the WD2023-0085 delineation report, lack of baseline data, and incomplete accounting of hydrological risks leave critical gaps in the record. Federal and state permits alone do not satisfy the county's more stringent standard. Broad BMPs that are neither site-specific nor designed to address the unique vulnerabilities of groundwater-dependent wetlands and domestic wells of the area. BMPs minimize but do not eliminate impacts. BMPs do not mitigate the cumulative or subsurface disruptions caused by blasting and drilling. PWB's current evidence falls short and cannot support a finding of "no adverse impact."

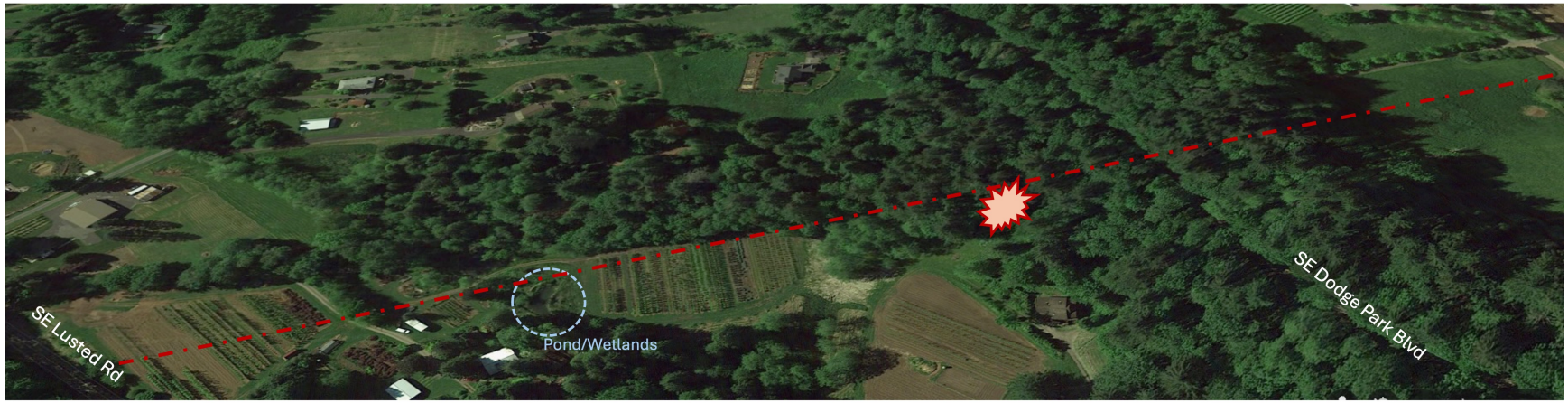

Figure 1. Estimated raw water pipeline (red hashed line) from Lusted Road conduit, facing southeast. Pipeline will extend through wetland habitat (blue circle) and toward portal within SEC-h (red blast icon) and continuing under the SE Dodge Park Blvd. Pipeline continues underground toward filtration site to the west

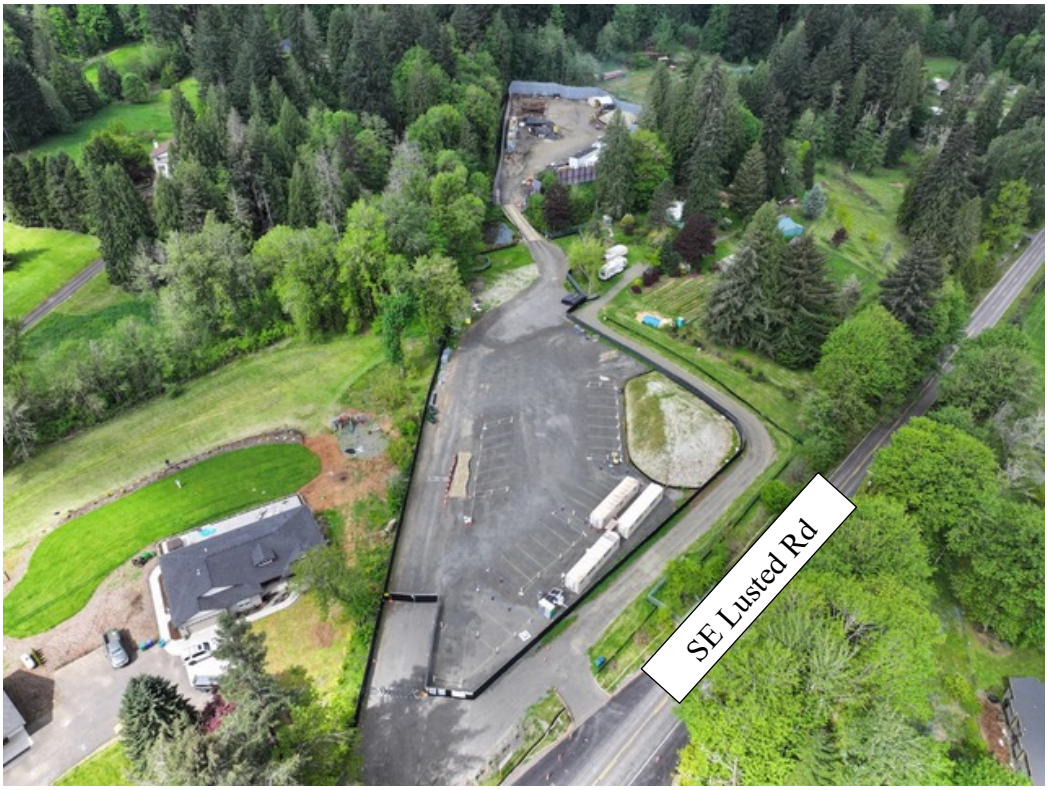

Figure 2. Raw water portal site looking west from SE Lusted Rd, May 2025.

Multnomah County

LUP Hearings <lup-hearings@multco.us>

#T3-2022-16220: Response to N.57

Cottrell CPO <cottrellcpo@gmail.com> Mon, May 5, 2025 at 10:47 AM
To: LUP Hearings <LUP-hearings@multco.us>

LUP,

With regards to the remand of T3-2022-16220, attached is our response to N.57 - Wetland Evaluation.

Please acknowledge receipt of this email.

Thank you,
Cottrell CPO

Courter Response to N.57 - Wetland Evaluation.pdf
1341K