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Date: May 5, 2025

To: Ms. Liz Fancher, Multnomah County Hearings Officer

From: Bruce Prenguber, M.S., Agricultural Economist

Subject: Response to Public Comments on Agriculture and Agricultural Lands

This memorandum responds to Multnomah County land use review public comments received at or before the public Remand Hearing on April 16, 2025, that address whether farmland and farmed soil are agricultural natural resources and, if so, whether there will be any adverse effects on natural resources from the operating Project. In this document, Project refers to the operation of the Portland Water Bureau (PWB) Filtration Facility and the operation of the proposed raw and finished water pipelines.

The responses below are intended to broadly address the themes and concepts in this selection of public comments. For that reason, these responses are likely to also be applicable to other public comments now in the record or that are placed in the record after the date of this response.

Farm Testimony Responses by Topics

Agricultural Land Is Not a Functioning Natural System

Multnomah County Staff Report on Remand page 8 states the term “natural resources” should be construed as “functioning natural systems such as wetlands or streams, wildlife habitat, ”

Agricultural land, considered as either farmland or farmed soil, is not a functioning natural system. This is true whether the land is used for high-value agriculture crops such as ornamental nursery plants, blueberries, other food and crop production, or less intensive agricultural uses, such as pasture or hay for livestock. Farmland, particularly ornamental nurseries, dominate the lands surrounding the proposed filtration facility site. I studied

these nurseries from 2020 to 2023 and prepared detailed evaluations of their accepted farm practices for the PWB land use applications. These farms do not follow organic or typical sustainable cultural practices. Significant human intervention with large amounts of inputs are employed. The inputs include soil that is modified with many additives to produce the robust plants that quickly reach salable size and then are extracted from the soil. The added materials to the soil are fertilizers, pesticides, herbicides, rodenticides, soil amendments, and seeds/seedlings in order to be utilized for crop or livestock production. Plants are harvested by both the bareroot method, and by ball and burlap (b&b). Both harvest methods remove soil with the plants; the b&b method removes more soil with the root ball. Agricultural land is managed for crop production, not for natural conditions such as wildlife habitat, wetland functions, or stream management.

The soil itself is often modified with subsurface tile to allow drainage. The soil is also modified by regular compaction by heavy farm equipment during field operations that include plowing, disking, mowing, pruning, harvesting, and more. Irrigation water is applied which must supplement natural rainfall for optimum plant growth. Fences are sometimes used to thwart or harm wildlife, such as elk and deer which can easily damage or destroy the crops. Some farmers hunt themselves or allow others to enter their fields to hunt. Fences and hunting, along with the other agricultural practices described, alter the natural movement and viability of wildlife that would occur in a functioning natural system.

The Natural State of the Land & Many Uses of Soils

Farming is not the “natural” state of the land. Instead, farming is a use of land and soils, not something inherent to the natural resource. In east Multnomah County, as elsewhere, human intervention has caused conversion of the land from its “natural” state to farm use. Instead of farm use, the natural landscape of the land in east Multnomah County featured: “Expanses of flat and gently rolling forest and meadow land were punctuated by occasional hills and volcanic buttes, which often served as timber resources after the surrounding flats were converted to farming and stock-raising.” (*East Portland Historical Overview & Historical Preservation Study*, March 2009, City of Portland Bureau of Planning and Sustainability, page 10, <https://digitalcollections.library.oregon.gov/nodes/view/250952>.)

Whether originally forest, meadow, or any other “natural condition,” it has changed to farm use, an “unnatural” state. Even if land has been in farm use for a long time, the natural condition of forest or meadow land in east Multnomah County is what it would be (and would revert to) without human activity (farm use) which has harnessed and dramatically modified it for crop production. The land cover would return to principally consist of native trees and grasses.

This is why, in my prior analysis in Exhibit N.63, I analyzed the potential impacts of the project on soils – which can provide crop producing capacity (but also can be left in a natural resource state or put to other uses). Agriculture does not have an exclusive right to use those soils, particularly in areas like those of the project that are not located in Exclusive Farm Use zoning.

As noted in Exhibit N.63, water is covered by BioHabitat's reports in the record, and there is no possibility that the Project will impact the availability of other inputs to farming (sunlight, labor, seeds, tissue culture, fertilizers, pesticides, feed, machinery, etc.) even if they were considered natural resources. Accordingly, soil is the only input to farming that will be addressed in my analysis. Topsoil is the media in which crops grow. However, topsoil is the covering of land and therefore also has many other uses, such as the foundation for constructing buildings and roads. Soil also has many uses, even within farms. Farmers, on their own farmland, erect buildings, build private roads, bury irrigation pipes and electrical lines, place underground storage tanks, and much more. Topsoil in use by farms must be viewed with all these purposes in mind, in addition to being an input in the process of producing crops.

Typically, farmers and others use the USDA soil classification system to define soil quality for crop production. USDA uses soil capability classes ranging from Class 1 to Class 8, with Class I and II having slight or moderate limitations that restrict their use. See Title 430, National Soil Survey Handbook, Part 622, Subpart A, amended January 2021, page 3.

Even the United States Department of Agriculture recognizes that farming is not the only use of land. The USDA's WebSoilSurvey (<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>) provides a whole range of "Suitabilities and Limitations for Use" in its "Soil Data Explorer", including information on building site development, corrosion of steel, dwellings with and without basements, lawns, landscaping, and golf fairways, roads and streets, shallow excavations, small commercial buildings, and solar arrays.

Soil type, the degree of slope, susceptibility to seasonal flooding, and topsoil depth are principal considerations for high quality farmland. Microclimate is another key factor in evaluating if land is farmed. Microclimate includes the seasonality of rainfall and snow, the length of the growing season, and the amount of heat available for crop growing. Microclimate is influenced by geographic factors such as elevation and prevailing wind direction and speed. Generally, as elevation increases, the amount of heat available for crop production decreases. Aspect is also a factor, meaning exposure to sunlight. Land that slopes to the south receives more sunlight and therefore is better suited to crops that thrive with a larger amount of sun and heat exposure.

Farm Field Size Is Not Unique

A large number of comments claim that the acreage at the Filtration Facility site is uniquely large. Comments also refer to the smaller fragmented farm fields found elsewhere in the area. I extensively studied the farms around the Filtration Facility site for my past analysis, travelled the area, and talked to farmers about where their fields are located. Certainly, there are smaller nursery fields. However, the comments about field size overlook the significant consolidation of farm fields in continuous blocks that have evolved over time through a combination of ownership and leasing. A quick look at Google Earth shows these large field blocks north and south of Oxbow Drive. A second large block is just south of the Bluff Road in Clackamas County between SE 327th Avenue and west to Revenue Road. These fields are much larger than the 90 acres of farmed land at the Filtration site. Other blocks in the area are close to the size of the Filtration Facility site.

The size of an area for farming is not determined by tax lots and parcelization into smaller lots, but instead in the ability of nursery operators and other farmers to aggregate multiple lots. Farmers use a combination of land ownership and leases to consolidate fields into large blocks. In fact, the Filtration Facility site itself was leased to two different nurseries – R&H Nursery, which has fields to the West of the Filtration Facility site, and Surface Nursery, which has fields to the South of the Filtration Facility site.

Responses to Written and Oral Testimony Entered at or Before the Public Hearing

Exhibit N.9 Oregon Association of Nurseries comments - April 4, 2025

Comment page 2: “Converting [agricultural] land for an urban community services use consumes and thereby adversely effects the soils and related agricultural natural resources.”

Response – First, see The Natural State of the Land & Many Uses of Soils above. Soil, and more broadly, land, are not only for agriculture use, but rather agriculture is a use (farming the land).

Furthermore, the project will not “consume[]” soils that could be used for agriculture. Instead, as described in the memorandum *Water Bureau Filtration Facility Project - Response to Public Comments Related to Contaminated Soils*, the Water Bureau worked with the Department of Environmental Quality to find a “beneficial reuse” of the topsoil from the filtration facility site – namely allowing a farmer in the region to take the soil and place it on his land to be used for agriculture. Therefore, the agricultural use of the topsoil will continue and it has not been “consume[d]”.

Comment page 2: “It should go without saying that Portland’s water treatment facility does not serve the needs of the rural area where it is sited and where OAN’s members grow their crops.”

Response – The first sentence of this comment is false: Portland’s water treatment facility will certainly serve a portion of the area, including over 4,600 customers of the Pleasant Home Water District, Lusted Water District, and the City of Sandy (from FY 23/24 City of Portland Wholesale Customer Statistics and personal communication with Michelle Cheek, PWB). A depiction of the Water Bureau’s service area (including immediately surrounding the filtration facility site) is included as an attachment to this memorandum.

Comment page 3: “In discussing emergency vehicle access, the application stated: ‘the Water Bureau prioritized placement of the pipelines within the right-of-way where possible to preserve surrounding farmland and natural resources where feasible.’ Rec 346. In other words, where the applicant deemed that preservation of farmland and agricultural natural resources was not feasible, such as on the treatment facility site, those resources were not preserved. The applicant therefore admits that adverse impacts to natural resources are occurring.” (Emphasis added.)

Response – The commenter attempts to slip in a word (“agricultural”) to conclude that the Water Bureau “admits that adverse impacts to natural resources are occurring” – see the difference between the two emphasized sections of the comment above. Inserting words to suggest something that was never said undermines both integrity and honest discourse.

Instead, the “natural resources” that the Water Bureau was listing inherently did not include farmland, or else the sentence would have read “where possible to preserve surrounding natural resources” only. If farmland were a natural resource, there would be no reason to list it separately in this sentence. Additionally, the quoted page is in the Applicant’s Final Written Argument, which made exceedingly clear that the applicant was following the County’s longstanding interpretation of “natural resources” to mean Goal 5 mapped resources. There was no admission of adverse impacts to natural resources.

Exhibit N.16 1000 Friends of Oregon comments - April 14, 2025

Comment page 1: “1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to support livable urban and rural communities, protect family farms, forests and natural areas, and provide transportation and housing choices.”

Response – In this sentence Mr. Johnson states the organization works to “protect family farms, forest, and natural resources,” and distinguishes between farms and natural areas. This statement by the 1000 Friends of Oregon supports my conclusion that farmed soils, and more broadly farmland, are not an agricultural natural resource exclusive to farming, but instead farming is a use of those soils and lands.

Oral Testimony of Jim Johnson

Comment at times stamp 3:09:32 – 3:10:25 (page 137-138 of transcript): “So this is this is -- this is important to understand that also the subject parcel is a larger tract, 95 acres. A tract of this size with the capabilities that it has in terms of soils and the past history of agricultural use is very rare in this area. Agricultural operations tend to operate in this area with multiple constituent parcels, most of the time smaller than this. And so they have to consolidate and move their machinery around in effect. So to lose a track this size where you could conduct this large of an operation at one site is very relevant to the -- to the importance of the site. The integrity of this area, the integrity of the site, the ability to operate unimpeded has

-- will be certainly affected here. And thus adversely affect natural resources in terms of the surrounding agricultural operations.

Response – See Farm Field Size Is Not Unique above.

Oral Testimony of Kelly Beamer

Comment at times stamp 3:52:28 – 3:52:44 (pages 171 of transcript): “To your introductory comments, Hearing Officer Fancher, about natural resources, we do see soils as functional natural systems. As they work to sequester carbon, support complex biological functions, and help clean and cool water as it feeds into our watersheds.”

Response – See Agricultural Land Is Not a Functioning Natural System above.

In her comment, Ms. Beamer uses the word “functional” instead of “functioning” to describe the natural systems (see Staff Report on Remand, Exhibit N.7 page 8). Regarding soils, and more specifically soils used for farming, “functioning” describes a current state of function, as compared to any level of functional support and including a lower standard. This is an important distinction, because farmland and soils used for farming, especially the intensive types of nursery farming surrounding the filtration facility site and the pipelines, have significantly diminished ability to perform carbon sequestration, support complex biological functions, or clean or cool water as stated by Ms. Beamer.

N.33 Suzanne Courter Comments - April 15, 2025

Comment on unnumbered page 2: “Agriculture seems like a man made functioning system but the soils that support the growth of plants is a phenomenon of itself.”

Response – Agriculture more than “seems like a man-made function system,” it clearly is *only* functioning because it is man-made and requires continuous human input to continue functioning, as explained in Agricultural Land Is Not a Functioning Natural System above.

Exhibit N.34 Jesse Nelson comments - April 14, 2025

Comment (unpaginated; first page of comments): “Sacrificing 92 acres of high-value soil in a region that is rapidly urbanizing erodes the foundation of one of Oregon’s most vital and irreplaceable natural resources.”

Response – The Project will not “sacrifice[] soil” that could be used for agriculture. Instead, as described in the memorandum *Water Bureau Filtration Facility Project - Response to Public Comments Related to Contaminated Soils* submitted concurrently into the record with this memorandum during the first open record period, the Water Bureau worked with the Department of Environmental Quality to find a “beneficial reuse” of the topsoil from the filtration facility site – namely allowing a farmer in the region to take the soil and place it on his land to be used for agriculture. Therefore, the agricultural use of the topsoil will continue and it has not been “sacrifice[d].”

Comment (unpaginated; first page of comments): “This land isn’t just dirt. It is living soil, part of a unique ecological and agricultural system that cannot be replicated. It supports crops, wildlife, pollinators, and rural heritage. Once converted to industrial use, it will be stripped of its function and value for generations, all to serve a project that could be located elsewhere.”

Response – This comment supports my analysis in The Natural State of the Land & Many Uses of Soils above. Soils are not exclusively a resource to be used for agriculture – instead they “support crops, wildlife, pollinators, and rural heritage” in a variety of ways. Instead of being “stripped of its function and value”, the topsoil will be reused on agricultural land in the area and the land will provide other functions, including providing extensive habitat for the wildlife and pollinators mentioned by this commentor.

N.43 Cottrell CPO & PHCA Adverse Effects Report - April 15, 2025

This is a report titled “Adverse Effects of Portland Water Bureau’s Proposed Water Treatment Plant on Natural Resources.”

Comment page 35: “Oxbow Property: Unpermitted Clearing and Environmental Damage”

“An agreement was established between the property owner and the City of Portland to use the Oxbow property as a fill site for spoils from the future water filtration project...”

Response: *This response was provided by David Peters, Engineering Manager for the Portland Water Bureau.*

The statement that there is an agreement to take soils to a site referred to as the “Oxbow Property” is false. The PWB nor any of its contractors have agreements with the owner of the Oxbow Property to dispose of fill there.

No fill from the project has been taken to the Oxbow Property. Current construction contracts are based on fill being taken to locations outside of Multnomah County.

PWB would welcome a condition of approval to provide notice to Multnomah County if project conditions change and it becomes desirable place fill anywhere in Multnomah County.

The Water Bureau has discussed the possibility of providing clean fill from the Filtration Facility Site to be used as fill on portions of the Oxbow Property with the property owner. However, the Water Bureau has not committed or established an agreement to take fill to the Oxbow site. The discussions with the property owner include an understanding that the owner would need to meet all local, state, and federal laws, including obtaining all necessary permits from Multnomah County, the state of Oregon, and/or the federal government for the activity. That understanding would be part of any agreement.

As noted above, no fill from the project has been taken to the Oxbow Property and there is no agreement between the property owner and PWB or its contractors to bring fill there in the future. Therefore, past DEQ notice and actions and litigation with the County is unrelated to the Filtration Facility project. Moreover, DEQ's asserted "fail[ure] to enforce corrective measures]" is a matter that should be raised with DEQ, rather than in this forum.

Comment page 63: Under the diagram heading Irreparable Effects to Agricultural Resources at the Filtration Site and Along Finished Water Pipeline Route

"Impaired Functioning Natural System:

- Renewable, high-value Agricultural soils
- Farmland and Surrounding ecosystem, generally

Site Preparation and Construction Effects:

- >> More than 90 acres of renewable Class II soils converted to nonrenewable; permanent loss
- >> Modification of natural water drainage, permanently affecting surrounding agricultural resources
- >> Ecosystem disruption

Ultimate Use – Facility and Underground Pipeline Effects:

>> More than 40 acres of high-value farmland out of production; permanent soil loss

>> Modification of natural water drainage, permanently affecting surrounding agricultural resources

>> Ecosystem disruption and decreased biodiversity”

Response: First, see Agricultural Land Is Not a Functioning Natural System above. The conclusions in that section above are reinforced by the commenter here stating that this is “a renewable resource, but only if it is cared for in a sustainable way” by being “shaped and managed by humans.” Page 63. That is, agricultural land is not a functioning natural system, it requires human shaping and management in order for it to be harnessed for the agricultural use. Other uses of the land, as described in The Natural State of the Land & Many Uses of Soils above, could be considered functioning natural systems, because they do not require this constant human manipulation in order to function.

Comment page 63-64: “Soil is considered a renewable natural resource for agriculture. Current farming practices involve sustainable soil management to conserve the resource for long-term crop production, such as crop rotation, reduced tillage, and erosion control. These conservation practices were employed by the previous farming operators (Surface Nursery, Ekstrom Nursery)-at the filtration construction site and along the finished pipeline route-for several decades ...”

Response – See Agricultural Land Is Not a Functioning Natural System above. Current farming practices include the need to “adulterate” (to use the commentator’s word) soil to achieve maximum productivity and crop output, especially for intensive farming such as the ornamental nurseries near the Project area. Bareroot Nurseries maximize crop production, an example being bareroot tree nurseries which produce trees in close spacing on a 3-year rotation, with no soil rest or one year of soil rest before replanting. These types of farm practices do not have “zero,” or “natural” effect on soil.

Exhibit N.50 Larry Bailey comments - April 14, 2025

Comment page 2: “In the Staff Report on Remand, Portland Water Bureau admits that a “natural resource” encompasses “agricultural resources and forests” (N.7, page 8, from the 2025 Remand). However, it then attempts to twist that plain language in order to serve the City’s purposes.”

Response – Mr. Bailey seems to misunderstand the author of the “Staff Report” in Exhibit N.7. The Multnomah County Land Use Planning Department, not the PWB, is

the author of Exhibit N.7 (the Staff Report on Remand). Therefore, there is no "admission" by PWB in Exhibit N.7. that a "natural resource" encompasses "agricultural resources and forests." The PWB has never, in any testimony, named any agricultural inputs as natural resources.

Oral Testimony of Larry Bailey

Comment at times stamp 3:01:44 – 3:01:55 (page 130 of transcript): "And I'll also point out that I was called out by the city in terms of prior submissions and we did discuss natural resources. We discussed the loss of -- loss of farmland, so would appreciate a more genuine discussion in this context."

Response – In my review of Mr. Bailey's testimony in the 2023 proceedings, I am not aware of any statement that agricultural land was a "natural resource" subject to MCC 39.7515(B) or even any reference to MCC 39.7515(B). Instead, Mr. Bailey (appropriately) addressed the separate farm impacts criterion at MCC 39.7515(C). Multnomah County Farm Bureau (which Mr. Bailey represents) was one of the petitioners at LUBA who decided not to appeal LUBA's decision upholding the County's determination that the farm impacts criterion at MCC 39.7515(C) is met in this case.




Oral Testimony of Les Pool

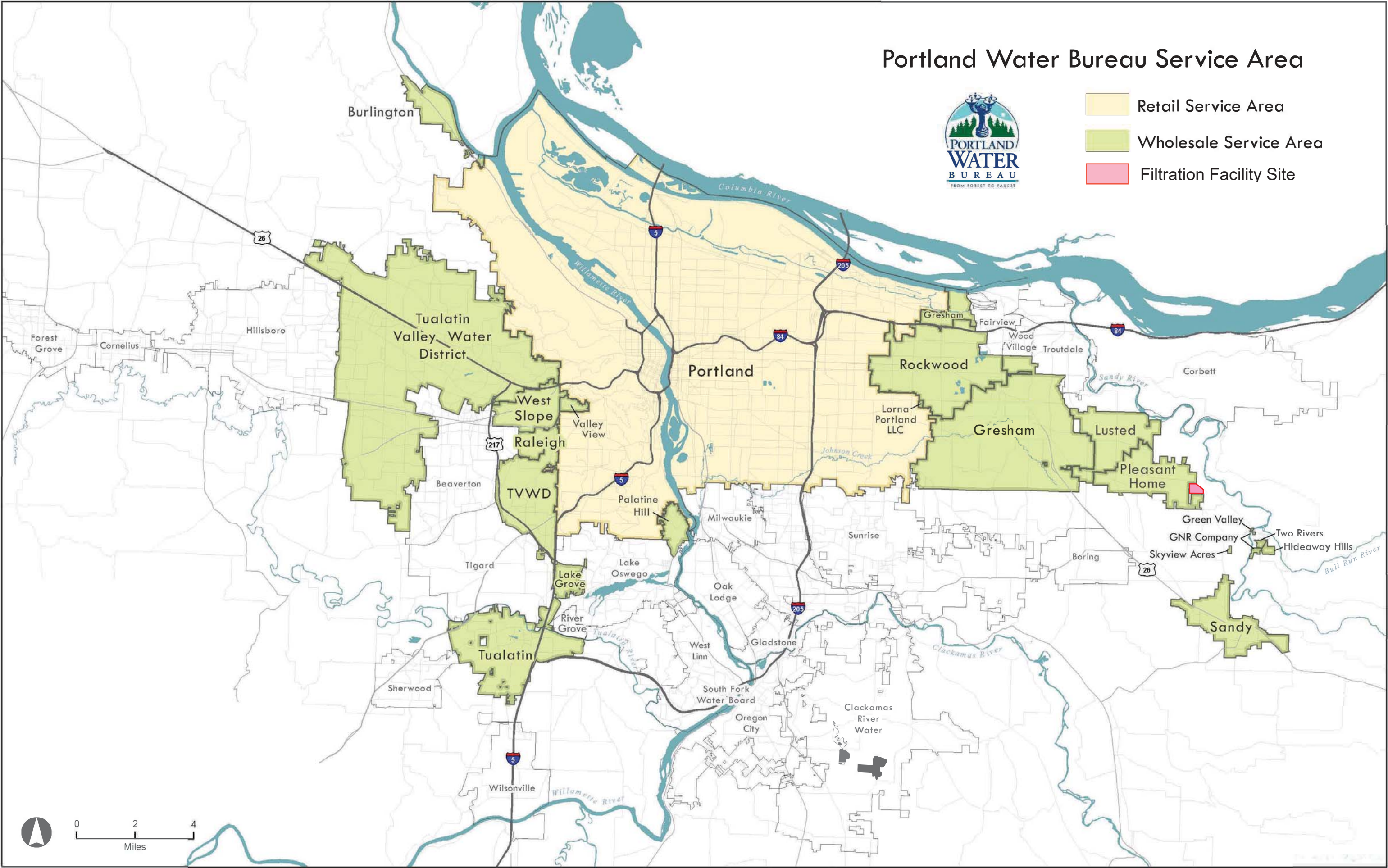
Comment at times stamp 3:50:16 – 3:50:49 (page 169 of transcript): "We have a 90-acre site. When you look at the treatment plant and the footprint of it and its needs, I see no justification for condemning about 30 or 35 acres of that private property. And as a gentleman mentioned earlier, taking it out of -- out of production. It seems that the reason that that is included in the project is it's a place to store and process all of the contaminated waste that's been -- that was announced that would be dealt with --."

Response – This is not a condemnation since the entire acreage in the project facility site has been in the City of Portland's ownership since the 1970's. The PWB has always had the long-term goal of using it for the Portland water supply.

Portland Water Bureau Service Area



-  Retail Service Area
-  Wholesale Service Area
-  Filtration Facility Site





LUP Hearings <lup-hearings@multco.us>

Applicant's First Open Record Period Submission -- T3-2022-16220

Zoe Powers <zpowers@radlerwhite.com>

Mon, May 5, 2025 at 11:47 AM

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

Cc: "Peters, David" <David.Peters@portlandoregon.gov>, Renee France <rfrance@radlerwhite.com>, Zoe Powers <zpowers@radlerwhite.com>

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

Multnomah County Staff,

At this link, please find the applicant's submissions into the record for the First Open Record Period of T3-2022-16220 on remand:

<https://radlerwhite.sharefile.com/d-sc32887acc9964f03b16e192384a89def>

I have personally endeavored to make sure these are all searchable, unlocked/editable, and of a proper size. I understand that in our last submission we missed recognizing that one of the documents was locked by an engineer's stamping procedure and it caused additional work for staff. Please let me know if you have that issue again and I will have the document corrected.

Thank you,

Zoe Lynn Powers

Partner



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Pronouns: She/her

Work Hours: I work normal business hours all days except for Tuesdays. **On Tuesdays, I work until 2:30 PM and then return around 7 PM.** If you have an urgent matter on a Tuesday afternoon between 2:30 PM and 7 PM, please call my legal assistant, Brittany, at 971.634.0216. Brittany will be able to contact me.

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