Date: September 5, 2023
To: Mr. Rappleyea, Multnomah County Hearings Officer
From: Shawn Nerison, Surface Nursery, in cooperation with colleagues mentioned in Exhibit I.80
RE: Case File #T3-2022-16220 PWB Land Use Application for Filtration Plant & Pipelines

Subject: Bull Run Filtration Facility and Pipelines Project — Rebuttals to Comments selected from selected exhibits
Criteria referenced: Farm Use Impacts in Multnomah County as they apply to approval criteria MCC 39.7515 A and C.

Exhibits referenced:
I.80, "Response to Public Comments Related to Farm Use Impacts in Multnomah County
I.84, "Response to Select Testimony from Land Use Review Process for the Filtration Facility and Pipelines"
H.3, "Pre-Hearing Statement by the Applicant"
I.81, "Response to Testimony of Agricultural Soils Impact"
I.86, "Carpenter Lane One-Lane Access Analysis"

Please accept this document as our collective, cooperative response to consultant rebuttals of comments from Surface Nursery and general farm concerns expressed by multiple area farmers. The consultant's language is italicized, followed by responses in regular font. Those responses include collaboration with colleagues also mentioned in the Exhibit I.80.

The first portion of this document will address the consultants rebuttal to concerns of significant changes in and costs to our accepted farming practices, as expressed by numerous farmers on record.

Consultant: Several farmers expressed the same or similar concerns regarding dust, noise, and traffic. Response to those topics is collectively addressed first in this memorandum. Where more unique or specific concerns are raised, further responses are given below with the other comments by each farmer. For each farm, I have evaluated the individual and cumulative impacts presented by their testimony and analyzed in the Operations Report, Farm Traffic Report, and prior specific responses included in Exhibit H.3. Taking all of this information into consideration, and looking at it cumulatively, I conclude that neither the filtration facility nor the pipelines will force a significant change in accepted farm practices or a significant increase in the cost of those practices on Surrounding Lands devoted to farm use. This memorandum includes additional details of this farm- by-farm analysis."

RESPONSE: The fact that several farmers have expressed the same and similar concerns regarding dust, noise, and traffic, among other things, should be an indication that these concerns are not unfounded, as Mr. Prenguber states in many of his retorts. The farmers who have expressed these concerns have been successfully farming this area for their entire lives. They weren't just raised on a farm and have a degree, they have decades of experience – collectively hundreds of years' worth – of running successful, professional, respected and well-known commercial nursery operations. *They* are the experts in the field of nursery stock, literally. Each farmer who was interviewed and has subsequently commented has added the fact that despite Mr. Prenguber claiming to have interviewed them and analyzed their farming operations, they do not feel their concerns were heard or taken seriously. How can something be analyzed properly if known concerns are not included in the analysis, and instead dismissed in an arbitrary and biased blanket judgement? It cannot. Mr. Prenguber fails to acknowledge the farmers as the actual experts, although he has no substantive experience in the farming of commercial nursery stock. In fact, many farmers admit that Mr. Prenguber had to ask them what they do as nursery stock farmers. These so-called analyses performed by Mr. Prenguber and published in his various reports are not only contrary to what farmers said in many cases, but they are plagued with inaccuracies, mistaken assumptions and erroneous conclusions.

Consultant: Dust from the filtration facility site is not even a remote threat to neighboring farms for much of the year because of the high rainfall pattern and surface soil moisture. Dust generation therefore will not occur for about two-thirds of the year.

RESPONSE: It doesn't rain for 8 months of the year in Multnomah County, nor are damp conditions so prevalent that they would preclude the generation of dust from a massive construction project such as the facility and pipelines being built and constructed entirely within dirt fields.

Consultant: In those times when dust could be generated, the Water Bureau construction contractors have the needed expertise and measures planned to eliminate or contain dust throughout the filtration facility site. The Applicant's Pre-Hearing Statement (Exhibit H.3), Attachment 8 (the "Dust Control Plans") explains the dust control plans for operation and construction of the filtration facility. The following dust control measures are planned for mitigation of dust generation and dispersal during the dry season: Construction vehicle speeds limited to 10 mph within the filtration facility will reduce dust on temporary paved or gravel road surfaces at the site.

Response: concern extends beyond primary site construction and includes Carpenter Lane and fields where pipelines will be constructed.

Consultant: Water trucks will operate continuously through the dry season wetting all on-site gravel roads.

Response: Dust will primarily come from excavation activities, trucks travelling within the sites on dirt surfaces in proximity to trees and employees in the fields, and the hundreds of vehicles that will be travelling on Carpenter Lane every hour past employees and trees.

Consultant: Water truck passes will be conducted in a manner that applies enough water to control dust but not to an excess that will cause runoff or erosion.

RESPONSE: How will this be monitored? How will this prevent mud that will only make dusty conditions worse once dried?

Consultant: Two on-site filling stations will be used for water trucks. Both filling locations will be temporarily paved or stabilized to provide adequate erosion prevention.

RESPONSE: This creates more impervious surface which affects runoff flow and velocity.

Consultant: Wheel wash facilities will be installed and utilized as necessary to control track- out which could otherwise contribute to dust in the surrounding area.
Use of cover or other acceptable means (e.g., watering as needed) to retain soils on stockpiles and prevent fugitive dust releases.

RESPONSE: Will every truck be covered during transit?

Consultant: While loading trucks from stockpile or excavation areas, when practical, conduct loading and unloading activities on the downwind side of the pile. Addition of moisture as needed during the loading operation to minimize the release of dust during loading and or hauling.

RESPONSE: This adds weight to the load, who will be weighing these trucks to prevent further damage to our roads?

Consultant: While loading trucks from stockpile or excavation areas, minimize drop heights and transfer points whenever practical.

RESPONSE: More vague, unenforceable language designed to mitigate the non-enforcing of the proposed mitigations.

Consultant: Regarding dust generation within pipeline construction zones, the contractors will also follow similar best-practices dust management procedures, which include:

1) *The contractor will use on-site water trucks to provide dust control. The on-site water trucks will keep the work area wetted down as necessary to prevent dust from leaving the work area.*
2) *Temporary aggregate access roads will be used to reduce operation of equipment on bare ground.*
3) *Paved roads at or near the construction zones will be regularly swept.*

4) *While loading trucks from stockpile areas, where practical, conduct loading and unloading activities on the downwind side.*
5) *While loading trucks from stockpile and excavation areas, minimize drop heights and transfer points.*
6) *Wheel wash facilities will be installed and used as necessary to control track-out on roadways*

Response: The same points from above are valid to these proposed mitigations as well. Creating more impervious surface should not be the answer, and was this amount of impervious surface included in the application and permit? This only creates more dust by displacing it from the road onto the trees and employees alongside the road. Mitigations are needed only because the condition which necessitates mitigation exists. For reasons presented here as well as documented by other local farming experts throughout the record, these conditions will exist despite mitigation attempts and will cause significant changes to our accepted farming practices.

Consultant: Compliance with Multnomah County erosion and sediment control permits and compliance with DEQ 1200-CA permit requirements will address the issue some farmers raised of mud, created by dust control practices, leaving the filtration site and pipeline work sites. As part of the 1200-CA permit, for example, DEQ requires that the contractors implement "track-out controls as necessary to ensure that sediment removal occurs prior to vehicle exit (e.g., wheel and tire washing, rumble strips, and rattle plates)." When applying water to reduce dirt generation, the construction contractors will only apply the amount needed for dust mitigation, in order to avoid erosion or mud problems. The proper allocation of water will not create "massive amounts of mud" as alleged in one comment, but there will be sufficient application of water to control dust. The contractors have experience with striking this balance successfully.

RESPONSE: I don't think the consultant understands the magnitude and scale of the proposed construction projects. There is no scenario in which construction dust generated at these sites can be effectively controlled with a proper amount of water that leaves the area dry enough for construction activities. Again, this site is entirely dirt with a loamy clay soil that turns to mud easily and is prone to rutting. It's great soil for farming, but a terrible choice for building a massive plant of this scale and magnitude that requires this amount of excavation, digging, grading, concrete work, landscaping, etc.

Consultant: The greatly reduced seasonal time periods when dust could be an issue has to be considered for why there is minimal concern for dust generation causing a significant change in accepted farm practices or increased costs of those practices during construction. Farmers have commented that dust is a "serious and significant impacts", and "the massive amount of dirt and topsoil to be excavated and hauled off will generate quantities of dust and diesel particulate in the air that far exceed what is expected in accepted farm practices."

RESPONSE: There is not a greatly reduced seasonal time period when dust could be an issue. The only season when dust is NOT a major issue is during the wetter months when either construction activities will not be taking place, or, if they are, they will be creating massive amounts of mud that will eventually dry and only add the dust problem when moved and dealt with. Construction activities rely on the dry months to perform the majority of construction activities, especially for a project like this involving dirt fields rather than existing concrete conditions. Therefore, Mr. Prenguber's conclusion that the project won't generate significant dust impacts to farmers is simply incorrect because the construction will be happening during the dry months, when dust will absolutely be a problem despite the mitigation strategies proposed.

Consultant: Furthermore, farms themselves can create excessive dust, and for this reason farms are generally not sensitive to dust from off-site sources. Farm vehicles frequently travel and perform work on dirt roads and through dirt fields. Farms often have dirt roads that run through the middle of fields and are traversed many times per day. Trees and their leaves next to these roads receive large quantities of dust kicked up from these activities. A video provided into the record concurrently with this memorandum illustrates the quantity of dust from a single truck going slowly (10 MPH) on a farm road.

RESPONSE: Farmers do not, as a practice, drive farm trucks 10 mph down rows of trees. Significantly less dust is created from a farm truck on a regularly used compacted dirt farm road than from fresh excavation in a dirt field construction site. Row work is conducted with small tractors travelling much slower than 10 mph, and disc or harrow work does not involve employees on foot. Construction activities are incomparable

to farm activities. Construction plans in and near our fields require digging trenches at least 4' deep to lay utilities and then construct a new all-weather surface road, excavation, grading, concrete, and paving projects throughout the approximate 70-acre main site, and millions of cubic yards of dirt will be disturbed with heavy construction equipment. This is a much different picture than a single farm truck or tractor driving slowly in a field. Farmers and their employees understand that it is best practice to not create significant dust when driving or operating in fields, as plants and trees are highly sensitive. I do not imagine construction crews will take the same care.

Consultant: Yet, farmers do not manually wash the leaves next to these roads. Instead, the accepted farm practices are that rain and irrigation sprinklers wash the dust off the plants, which is aided by wind moving the dust off of the plants. Irrigation applies water for plant growth in dry weather, which is also when dust blows. Farms would already supply protective equipment for their employees if it is needed. There is no reason to expect that construction activity operating with the dust control plans will result in the problems described by farmers.

RESPONSE: Again, the normal amount of dust generated by normal farming activities is manageable. Farmers' concerns are regarding dust generated from construction of the plant and pipelines that far exceed acceptable dust conditions in normal farming.

Consultant: Controlling for dust — both through dust reduction as well as mitigation — is an accepted farm practice. Farmers in the Surrounding Lands control dust in numerous ways. Exposure of bare soil in fields is avoided and this can be accomplished by planting vegetation between rows of trees or other harvested crops, use of minimum tillage practices, and adding mulch to soil surfaces. As mentioned above, sprinkler irrigation has the secondary purpose of removing dust from plants and is used to purposely "irrigate" dirt or gravel roads in the same way the Water Bureau will use water truck passes to control dust on the filtration facility site. Slower vehicle speed in fields, and performing field work at optimum soil moisture levels (not too dry) is another practice, as is spraying for dust mites. Wind may also be monitored to determine if it is providing adequate dust control on plants. The minimal additional dust added by the project will not force farmers to do anything more than they normally would do for dust mitigation.

RESPONSE: It is illogical to state that the construction activities at an approximately 70-acre bare dirt field construction site, and construction in dirt fields for pipelines will only generate minimal additional dust, and erroneous to conclude that accepted farming practices won't be impacted by dust from construction-related activities.

Consultant: Farming operation, which themselves can generate substantial noise, typically are not sensitive to noise from off-site sources. Additionally, noise will be mitigated by site conditions and noise mitigating measures.

RESPONSE: The noise generated by construction activities at the main site, along the rural roads where fields are located, and in the fields themselves is far beyond what is expected in normal farming conditions. To think that a typical farm environment has the same decibel volume as multiple dump trucks inline and being loaded and then operated on local roads, excavation equipment being operated, trucks delivering materials, concrete trucks pouring, and other typical construction activities is further proof that *the consultant* has not spent time *as a professional* at a working farm or nursery operation. Not only are construction noises completely out of character for this area, but they are far, far different than farming-related noises.

Consultant: Second, the construction of the main water treatment facilities involves excavation that descends into the ground. As excavation progresses, sound will be directed upward, not outward from the area of construction. This will limit the noise from excavation that could potentially reach neighboring sites.

RESPONSE: The consultant admits noise 'could' reach neighboring sites, but suggests that the construction equipment will be operated below the surface? Even if the elevation change were enough to serve as mitigation for noise disturbance, it does not negate the fact that all other activities still take place at the surface such as loading, hauling, jackhammers and other hydraulics, equipment maneuvering and backing up, etc. Additionally, construction activities taking place in 'pits' throughout the site require haul trucks to run up and down grades to be loaded, causing operation noise to actually increase due to back up alarms, exhaust brakes, and more maneuvering by 30-40 trucks to get loaded. The need for a mitigation

strategy only reinforces the presence of the adverse condition requiring mitigation. Any mitigation is subject to hundreds of contracted employees from various workgroups and companies actually following, 100 percent of the time, the mitigation directive, which in the applicant's case do not appear to have enforcement measures in place. With no enforcement plan, evaluation of their success is reactive at best with no consequence to the applicant for failure. Mitigation strategies imposed by construction activities lasting years are a significant change to accepted farming practices.

Consultant: Third, the contractors have developed and will implement a Noise Pollution Control Plan (NPCP) during construction. The contractors will use a sound level meter to check for sound level verification. Among other noise control best practices, that plan requires that: no equipment will be used that has unmuffled exhausts and all equipment will comply with pertinent standards of the U.S. Environmental Protection Agency (EPA); stationary equipment will be located as far from nearby private properties as possible; practices pertaining to dump trucks will limit avoidable practices that generate excess noise such as compression brakes; and the contractor will construct temporary or portable acoustic barriers around stationary construction noise sources if required (for example, such barriers are planned near the raw water tunnel portal in the raw water pipelines easement and could be used around generators or other stationary equipment when located close to the property boundary).

RESPONSE: None of these things are logical for a project of this magnitude. They will need a minimum of 30-40 dump trucks at a time making continuous rounds and waiting to be loaded for 10 hours a day, for 413 days. That's just the initial grading project to move the 1.25 million cubic yards of dirt. The assurance offered to mitigate the presence of nuisance and invasive construction noises are far from a guarantee, and farmers nor their employees have any recourse if the mitigations fail or are not followed by the hundreds of contractors and crew on site during the 7 years of this construction.

Consultant: The noise created by tractors and other farm equipment may already require that farmers provide protection for their employees from noise generated in their fields as an accepted farm practice.

RESPONSE: Not at this magnitude.

Consultant: Traffic Impacts for Farm Travel
Several nurseries express concern that the volume of Water Bureau construction traffic and road closures will force unacceptable delays for them and cause significant financial hardship. As explained in the Farm Traffic Report, careful consideration has been given to reduce or eliminate farm travel delays and detours due to the project. The routes of travel for farms that regularly use public roads in the Surrounding Lands have been mapped and studied by Globalwise for several years.

RESPONSE: Prior submissions detail inaccuracies in Mr. Prenguber's 'study' of farm traffic routes and general accepted farm practices. Several farmers have stated they were misquoted or their practices misunderstood or misreported by Mr. Prenguber.

Consultant: This information was utilized by the pipeline design team to schedule when main roads are either closed or have flagger-controlled one-way lane passage. Also, scheduled pipeline construction at critical intersections is timed to occur at seasonal low periods for farm traffic. As detailed in the Farm Traffic Report, 11 constraints have been placed on pipeline construction to reduce farm travel delays and detours. The Water Bureau is also ensuring farmers can maintain local access to fields, including by passage through otherwise closed work zones as needed.

RESPONSE: How can any traffic, farm or otherwise, be routed through 'closed work zones' – aren't they closed for a reason, either safety or for construction activities? What is considered farm traffic? Does it include our commuting employees? Crew buses? Foremen? Deliveries? How will a tractor or crew bus logically pass a line of cars waiting for the flagger? We believe Mr. Prenguber fails to comprehend the level of daily activity involving local roads, especially segments identified in his report, that is generated by accepted farming practices. We seriously doubt that road flagger crews will stop construction every time a tractor or crew bus approaches and needs to be flagged through to avoid the significant delay being caused by the lane closure.

Consultant: Opponents state that construction will continue for 4 years or more with a high level of impact during that entire period. The often-quoted number of 300 trucks traveling to the filtration facility site per day is a peak number and

is not maintained at this maximum level for 4 years.

RESPONSE: How does the applicant or consultant define peak? How many days/weeks/months can we expect that peak number of 300 truck trips per day? Since the consultant does not take the opportunity to dispute the number, what are the chances it could be more than this? What types of trucks fall into that estimated number, and how many other construction vehicles are not counted in that but will also add to the number of trips per day? Additionally, since the original comments were made, it has been discovered that the construction period will likely last 7 years, with an option to extend permits for additional years as needed.

Consultant: The longest time pipeline construction is planned in a single segment of road is 14 months and this is in only two road segments, with one of these in Dodge Park Boulevard where there will be one lane of passage.

RESPONSE: Farmers cannot be expected to rearrange their accepted farming practices and use alternate routes for 14 months, just for one of many road segments impacted. That is literally a 'change' to accepted, established farm practices. This is significantly longer and much more disruptive than any regular road closure due to construction, weather, or an accident. This is another example of how the applicant's project forces significant changes to accepted farming practices and violates approval criteria MCC 39.7515C.

Consultant: Overall, the Construction TIA Update Memo does not change Globalwise's prior analysis and conclusions in the Farm Traffic Report, particularly Section 6.0, related to the addition of vehicle trips to the surrounding road network during construction.

RESPONSE: Many farmers have confirmed that Mr. Prenguber's "Farm Traffic Report" he references above does not accurately represent or report their farm activities, including farm traffic use of surrounding roads. Most importantly, Mr. Prenguber conducted his 'interviews' with these farmers long before these most recent documents and plans were made public. Farmers discussed their operations based on potential impacts before construction was considered, before Site Access B was denied by Clackamas County, and in some cases before they were told where the construction would be, including prior to the condition that local roads would first have to be improved before construction could commence. That condition, which involves massive and lengthy road construction on numerous roads utilized year-round by farm traffic, is not taken into consideration in the construction TIA or the Farm Traffic Report, nor were farmers aware of the condition during their interviews with Mr. Prenguber. His report is subjective and selective in an effort to conclude that he thinks there are no impacts, significant changes or costs to accepted farming practices. In reality, every farmer on record – collectively with 100's of years of successful commercial farming experience – disputes his biased findings and they have pointed out numerous errors, omissions and inaccurate conclusions in his report, such as incorrect "low traffic volume months" and suggesting farm roads as alternate routes of travel. Every farmer on record is reinforcing the same concerns and showing how traffic and construction-related interference will cause significant changes and costs to their farming operation. Only one person, who doesn't work in the nursery stock industry, the *local* ag industry, or farm commercially, is saying otherwise, and he has been hired and paid to come to a specific conclusion. The conclusion that Mr. Prenguber has been hired to report can only be supported by dismissing farmers' concerns, omitting and misreporting facts, and ignoring the real experts – the farmers – who are simply trying to show how, based on their lifetimes of farming experience, their operations will be disrupted and delayed for months if not years, which absolutely meets the threshold of significant changes and costs. Any other conclusion is drawn from either bias or a misunderstanding of the real-life, real-time accepted farming practices and operational needs of local farmers.

Consultant: Traffic Impacts for Product Shipments
Farmer comments are that they believe they will face major disruptions in shipping because the semi-trucks will be disrupted by the amount of pipeline construction in the roads and the large number of construction vehicles that will be added to the local road system in the Surrounding Lands.
Globalwise studied routes that the semi-trucks will take to headquarters where the loading docks are located. In most cases, there are alternative routes that will have minimal pipeline construction activity. Either by taking the first preferred route, or if the driver chooses to take a detour route, only a minimal delay is expected which would not force a significant change in, or increase in cost of, accepted farm practices.

Farmers in the Surrounding Lands also have various other accepted farm practices to allow them to adjust to changing conditions on the public road system or other changing conditions such as weather. If for some reason they had to delay planting or harvest because of weather or road conditions, for example, the accepted farm practice includes adding employee hours on other days.
Combined with the temporary nature of construction and the many constraints placed on pipeline construction discussed in the Farm Traffic Report, construction traffic and pipeline construction will not force a significant change in, nor significantly increase the cost of, product shipment accepted farm practices in the Surrounding Lands.

RESPONSE: In response to Mr. Prenguber's statement that farmers won't experience significant delays to their operations, including to shipping, it is important to note that the expected delays generated by this project are not limited to pipeline construction. Road construction to numerous road segments as a condition of project approval have not been included in the analysis of farm traffic impacts. This will further constrain alternate routes and add delay time to all travel on affected roads. It is NOT an accepted farm practice to check road conditions on TripCheck or other GPS app before sending equipment or crews to or from fields. Expecting farmers and employees to do so adds more time to job duties and requires that every driver have a smart phone, which is not a requirement of employment at a farm. Also, the construction causes congestion for all vehicles on the road. Delays often come from the amount of vehicles being offloaded to other roads because of delays and detours. It is reasonable to predict that as farm traffic is forced to seek alternate routes of travel, so too will regular traffic. Forcing the normal traffic load of one segment to combine with the normal traffic load of another increases the total traffic on that segment, and with that, increases the delays that farm traffic will experience as tractors in many situations must move over and accommodate cars to pass or wait for vehicles to back up and allow room for the tractor to continue. This is demonstrated in submitted exhibit titled "V4.0_Large_Trucks_And_Farm_Traffic_On_Cottrell_Rd_SB_at_Bluff--Case_T3-2022-16220" where a tractor using Cottrell Rd (coming from Bluff Rd), which is the new route they will have to take as PWB is closing off the current easement they use to reach their Bluff Rd fields, encounters a dump truck hauling gravel. The dump truck pauses, likely waiting to see if the tractor will pull off the road which it cannot because of the very wide implement it is pulling. The tractor can't move over because it would wipe out the mailbox on the side of the road, and also the tractor driver can't look behind him to watch where the implements tires are and at the same time look forward while driving. The dump truck attempts to pass the tractor on the shoulder, driving over a grass strip that borders a pasture (hopefully where no water lines are running, as the dump truck weighs appx 75,000 pounds). When the dump truck driver realizes there still isn't enough room, he backs up and causes the traffic behind him to also back up about 100 feet and pull off into a gravel driveway. The tractor and the traffic behind it pass, slowly, and then the southbound traffic is able to pull back onto the road. This video is also referenced in Surface Nursery's responses to the suggested alternate route of Cottrell Rd to Bluff instead of Carpenter for their farm traffic. In this instance, the tractor encountered one dump truck and caused about a 5-minute delay. When site construction begins, this road is shown to be a primary haul route to avoid construction traffic leaving the main site causing congestion on Carpenter Lane (Exhibit I.86). The amount of dump truck trips per day on this or any road connecting to and including Carpenter Lane, estimated at 180 trips per day just for the first grading project, is not compatible with farm traffic use and will absolutely cause massive congestion and delays to the farm traffic and regular traffic, as well as the construction traffic. It is also reasonable to conclude that this was a very stressful encounter for the farm worker driving the tractor and the dump truck driver, as well as frustrating for the other drivers on the road. The sheer amount of road construction to the actual roads necessary to accommodate this project, in addition to pipeline-related construction and lane closures lasting in at least one case for 14 months, will no doubt cause significant interference with commercial farming traffic including shipping operations and crew an equipment mobility. Our shipping manager had a conversation with one of the main brokers for our local area. She quotes his concerns for our operation in a separate submission, but it is important to note that he also expressed concern for R & H Nursery's ability to even get trucks to come to their location once construction to the intersections at Dodge & Cottrell and Cottrell & Carpenter begin, as well as the widening of Carpenter Lane itself which involves moving a power line and extending the road to the edges of the right of way. And all this must take place before construction at the main site can begin, which will likely paralyze R & H's trucks, farm equipment and employees from being able to get in or out of the loading area or farm driveway. Carpenter Lane will see massive amount of backup as 30-40 dump trucks make an estimated 180 continuous trips to and from the

site every day. With that amount of slow, heavy truck traffic, in addition to the 575 daily facility commuter roundtrips, the shipping broker estimates there is very little chance a commercial truck driver will want to accept a load from R & H. The level of construction traffic trips on our roads also leaves absolutely no room in the road capacity to expand our businesses, hire more employees, or ship more loads because the capacity of 4,000 average daily trips that our local roads are built to handle will be completely taken up by the applicant's construction-related traffic. I see this as most impactful on Carpenter Lane for nurseries like R & H, Marjama's and Sunshine who won't have any opportunity for growth or expansion due to the constrained capacity the applicant's proposal is forcing on that road. The conclusion that construction-related activities and traffic will not force significant changes in and costs to our local accepted farming practices is purely wishful thinking on the consultant's part. This project should be denied not only because it fails to meet the approval criteria off numerous MCC's, but it also takes up the entire capacity of our local rural road network based on a single-day traffic study that attempts to make it look better on paper than it will in reality for those who make their living in this community.

It is beyond reasonable to conclude that operational disruption from a construction plan of this magnitude will absolutely force a significant change to and increase cost of accepted farming practices in the surrounding lands.

Consultant: Regarding dust, that has been addressed in the Response to Dust Impacts. Regarding diesel fumes, all vehicles working on the project will meet applicable standards for vehicle emissions. The filtration facility will follow air pollution control measures to meet air quality standards, including the City of Portland Clean Air Construction (CAC) requirements, as described in the Construction Supplemental Information memorandum submitted concurrently into the land use record with this memorandum. When diesel trucks are not in operation, the engines will be shut off. In the few cases where diesel generators will be used on the site, they will be turned off when not in use. No other specific airborne particulate was identified by farm commenters. However, site activity is monitored so that miscellaneous materials that could blow off site are monitored by construction personnel with instructions to properly dispose of it. Combined with the temporary nature of construction, airborne particulate will not force a significant change in, nor significantly increase the cost of, accepted farm practices in the Surrounding Lands.

RESPONSE: It is a reasonable concern for the health and safety of employees and live, perishable products such as young plants and trees that airborne particulate and diesel fumes from construction activities taking place within feet of farm activities and crops will be a significant impact. Mr. Prenguber does not take into consideration the hundreds of trips per day by construction traffic such as diesel dump trucks driving on Carpenters Lane and interior farm roads where pipeline construction is taking place, and employees and crops will be in the impact zone. The level of fumes and airborne particulate from concrete work and other construction activities for a project of this magnitude far exceeds what can be associated with normal farming operations, and far exceeds what farm employees and crops would normally be exposed to. For all of these reasons, the only logical conclusion is that the proximity of construction activities to farm employees and crops will force a significant change to accepted farming practices and is a valid concern to farm operators.

Consultant: The filtration facility site is owned by the City of Portland and was purchased in 1975 for the specific reason to provide for the future needs to upgrade treatment and supply water from the Bull Run for the residents of Portland and nearby areas. The zoning is MUA-20 and community use is allowed as a conditional use. No re-zoning is required to change the use from farming to a water filtration facility that will serve approximately one million people in the greater Portland region. Customers include the Pleasant Home Water District in the Surrounding Lands.

RESPONSE: The land owned by the City of Portland was not purchased exactly, it was taken from the original owner (who was actively farming it) through condemnation. The project for which it was acquired was ultimately decided against, and the farmer was allowed to continue farming it so that City of Portland could maintain the farm deferral and avoid significantly higher property taxes. The City never offered the property for sale to original farmer nor anyone else after the project did not go through. These circumstances, however, do not change the fact that 90+ acres has been farmed for generations, and does contain soil that is exceptional for farming, according to every farmer in the area as well the USDA as cited in earlier testimony on the record. The number of customers in the Pleasant Home Water District is 1437,

as of PWB's June 2022 report. This is the total number of customers in the surrounding area that this community service use will benefit as other providers, including City of Gresham and Lusted Water District are not renewing contracts with PWB and instead drilling their own wells to avoid the rate increase due to the applicant's proposed - and unnecessary - filtration plant.

Consultant: See Exhibit A.35, Agricultural Soils Restoration Plan. These soil restoration practices are similar to accepted farm practices for soil reconstruction of disturbed soil during and after installing subsurface farm infrastructure such as drain tile or pipelines.

RESPONSE: Farmers carefully install field tile with minimal soil disturbance, and typically do not farm on top of the area. It's standard practice to install field tile and water lines where trees are not planted, such as along farm roads or perimeters. Farmers know that once soil is disturbed (especially to the degree that deep pipelines will disturb it), it is no longer the same quality as it was prior to the disturbance. There are peer-reviewed, published scientific journal articles on the record as supporting evidence of this, in addition to the local farmers' hundreds of years' worth of experience farming this exact soil in these exact locations. The farmers know what happens when a road is made, used for a season or two, then that land is attempted to be returned to farming, especially if it was graveled. The applicant's soil restoration plan is a mitigation forced upon the affected farmers who know with their own expert authority and experience that there is no guarantee that the soil can or will be restored, and in fact there is abundant evidence that it will not. Best practices as well as accepted farming practices simply do not include attempts at soil restoration.
Please also refer to the following excerpt from a submission by Cottrell CPO:

> In the Executive Summary, the report states "This Agricultural Soils Restoration Plan describes the methods that will be used to reduce, minimize, or mitigate for impacts on agricultural resources associated with construction of the Facility…." The report further states "The Water Bureau is committed to using stare-of-art practices to return the land to pre-construction productivity... "Below you will see scientific evidence that what the PWB says they can and will do is impossible. [Please see additional scientific evidence to substantiate this impossibility in Exhibit I.11, Ekstrom Rebuttal; Exhibit I.11.a, Pipeline Installation Effects; Exhibit I.11.c, Pipeline Study; and Exhibit I.11.d, Pipelines keep robbing the land.] You will see that a "condition for approval" cannot mitigate the impact on disturbed productive soil that cannot be restored to pre-construction condition, and the resulting loss of land production and loss of income to the farmers effected. The soil restoration process proposed has been around for a long time and is often referred to as the 2-Lift system. Interestingly enough this process has been used to restore or improve contaminated soils. Of course, these types of contaminated soils are going to benefit somewhat with the newer soil mixture. But we are not talking about contaminated soils here. We are talking about prime farmland. Steve Culman* was personally contacted and explained in a phone call that the protocols stated by Jacobs and used in the 2-Lift process are usually not followed, in his experience, because the process is labor intensive, and the road crews would hurry through the process and make many errors. They were "careless" and even "reckless," he said. So, the process was not thoroughly or strictly followed. Culman continued that many times the road crews would continue with the soil replacement procedures even when the soils were wet which completely undermined the process. These errors were routinely made, Culman stated. Culman pointed out that in an Ohio Study, http://go.osu.edu/pipeline-study, the restoration process did not return the farmland to normal productivity, i.e., the soils stayed degraded after 5 years.** Culman summarizes it best ….. "Current best management practices of pipeline installation and remediation employed by three companies were insufficient to combat widespread soil degradation and crop yield loss."
>
> The loss to farmers cannot be mitigated and cannot be mitigated through "conditions for approval".
>
> Respectfully, Cottrell Community Planning Organization [Cottrell CPO]
>
> Referenced: Steve Culman. Associate Professor, Washington State University; Ph.D.,

Agronomy, Cornell University; M.S. Soil Science, Cornell University; B.A. Biology, Thomas More College; Endowed Chair of Soil Health, Washington State University. **ORIGINAL ARTICLE: Published online: 9 February 2023. Soil Science Society of American Journal Soil & Water Management & Conservation: Soil degradation and crop yield declines persist 5 years after pipeline installations. (Theresa Brehm, Steve Culman)
Abstract: Degradation of natural resources, including increased soil compaction, soil horizon mixing, and decreased crop yields have been common outcomes of underground pipeline installation. We observed significant degradation in soil physical properties, such as surface penetration resistance (15.3% increase) and mean weight diameter of soil aggregates (13.6% decrease) in right-of-way (ROW) areas compared with adjacent (ADJ) areas, respectively. Soils in ROW showed evidence of soil horizon mixing, with 25.0 g kg−1 higher clay compared with ADJ areas. Soil degradation resulted in decreases of 23.8% and 19.5% in corn yields and 7.4% and 12.5% in soybean yields during 2020 and 2021, respectively. Widespread disturbance persisted 5 years following pipeline installation in soil physical, chemical, and biological properties. Current best management practices of pipeline installation and remediation employed by three companies were insufficient to combat widespread soil degradation and crop yield loss.

Consultant: The main reason for the past loss of farmland in the Surrounding Lands, and the impetus for future loss of farmland, is that land use planning has allowed residential development to expand in so many places within the Surrounding Lands.

RESPONSE: All residential development that has been 'allowed' by land use planning is contained within the urban growth boundary. The impact area and the surrounding lands of this project are outside of the urban growth boundary and have not been impacted by residential development which is not an allowed land use in EFU or MUA 20 land, and therefore this statement is inaccurate.

BEGIN SURFACE NURSERY – specific

Excerpts of consultant's comments from I.80, rebuttal of E.36 Surface Nursery:

Consultant: It is important to note that the pipeline construction zone in Lusted Road will never pass by the entrances to Surface Nursery's headquarters.
It also does not mean that farm vehicles cannot route to locations in front of a pipeline construction zone or behind it while the pipeline construction zone moves approximately 30 to 50 feet per day. The pipeline construction contractors will not leave Surface Nursery headquarters "completely inaccessible" due to the construction planned for Lusted Road. In fact, the numerous entrances to Surface Nursery on Lusted Road will not be closed.

RESPONSE: Our testimony did not state we are concerned they will block our driveway. Rather, our testimony explained our concerns about the interference ongoing and extensive road construction and pipeline construction activities will cause to our operation, including inbound and outbound, employees, service providers, vendors, local deliveries, crew and equipment mobility, and prospective customers visiting the farm. Our nursery is located on Lusted Road between Altman Road and Hosner. The only accesses to our farm are in this stretch of road. Commercial shipping trucks, employees, service vendors, crew transport and farm equipment all have to pass through either the intersection at Lusted & Hosner, Lusted & Cottrell, or Lusted & Altman. These are all locations identified as impacted by construction for either pipeline construction or road 'improvements' to facilitate pipeline construction. If any one of those intersection is closed or has a delay, traffic will stack up quickly because there are no alternate routes without significant re-routing prior to arriving at the impacted intersection. Mr. Prenguber argues the point that our entrances will not be closed, but he misses the point that the roads to get there will be.

Consultant: Full road closure does not mean local traffic cannot pass through a construction zone. Where no detour is available, farm traffic will be treated similarly to emergency vehicles and will be flagged through otherwise closed work zones.

RESPONSE: Here Mr. Prenguber acknowledges that there will be construction periods when no detour is available, and attempts to pacify our very real concerns by stating that farm traffic will be treated similar to emergency vehicles and flagged through otherwise closed work zones. Are employees considered farm traffic? I have employees that report to work anywhere from 6am to 9am, depending on their job. Will local deliveries for my supplies be considered farm traffic? They bring necessary supplies so that I can continue my accepted farming practices without a significant interruption. Will our portable restroom service be flagged through? Will all inbound and outbound commercial semi-trucks be considered farm traffic and be flagged through "otherwise closed work zones?" When there is a line of traffic stacked up waiting for a flagger, how will my 'farm traffic' be identified and flagged through from the back of the line? Is someone going to be checking ID's against a master list of who is allowed to be flagged through and who is non-farm traffic? If the farm traffic is limited to tractors only, or equipment that can not otherwise travel at posted speeds, then this plan does not understand and account for what is involved in a farm operation. Vehicles that can travel at posted speeds and seek alternate routes are no less important to our operation. Alternate routes in this area are not abundant, and they are not short or quick little detours. Out here in the country, it can be a mile long or more workaround, and alternative routes are often not safe or appropriate for a number of reasons, including weather and school traffic. The applicant's proposal will force closures and delays that prevent unfettered access to my farm for operational needs. This absolutely forces a significant change to our normal operations and accepted farming practices that is beyond logical and acceptable mitigation.

Consultant: As stated previously in Globalwise's response to Surface Nursery's comments dated April 4, 2023 (included in the land use record as Attachment 6 to the Applicant's Pre- Hearing Statement, at staff's Exhibit H.3), Globalwise has carefully studied Surface Nursery and the potential impact of the Water Bureau Project on Surface Nursery. This has included several in-person meetings with Mr. Nerison. I have also reviewed the location of fields farmed by Surface Nursery based on information supplied to me by Mr. Nerison. My analysis of farm fields agrees with the field locations of Surface Nursery and the routes taken by Surface Nursery as listed by Surface Nursery in the attachment to their public comments dated June 29, 2023. Surface Nursery is Farm Operator "F" in Exhibit H.3.

RESPONSE: There are numerous errors and omissions identified in the referenced analysis of our farm traffic routes and overall operations, including crew and farm traffic mobility. Mr. Prenguber extrapolated incorrect conclusions from various conversations that took place well before any of the construction traffic impacts had been disclosed by the applicant. All farmers that were interviewed by Mr. Prenguber who have since rebutted his Farm Traffic Study in H.3 agree that the questions we were asked were not framed to cooperatively identify solutions to our concerns. Ultimately, many of us feel that Mr. Prenguber simply does not understand the nature of the nursery stock business, as evidenced by the numerous incorrect conclusions he draws from misapplied information. For example, he states that our low volume farm traffic months are August through October (reiterated in I.80, p 16). This is an incorrect assumption that, because those months can be slower for outbound shipments and they are prior to our busier 'digging season,' we don't have much traffic on the roads. In fact, had Mr. Prenguber simply asked a more thorough question such as, "are there any months when you don't use surrounding roads for your operation," he would have learned that every month is busy in farming, and there is no length of time when farms aren't moving crews and equipment among fields for one reason or another, or shipping, or prepping orders, or taking deliveries. Nursery stock farming is a year-round operation with some seasonal *activities*; the operation itself is *not* seasonal.

Consultant: Mr. Nerison stated in our face-to-face meetings that Surface Nursery emphasizes mobility for traveling between headquarters and fields as well as from farm field to farm field. Mr. Nerison includes this same statement in his June 29 comments that "I have multiple, open route options to ensure the safety of my employees and efficient mobility of my equipment." This same point was also expressed by other nurseries in the Surrounding Lands and shows that Surface Nursery follows the accepted farm practice of using alternative routes as needed to reach their farm fields.

RESPONSE: Mr. Prenguber has mis-quoted me here. The statement I made in my letter, dated June 29th, actually reads, "For all these reasons, it's imperative I have multiple, open route options to ensure the safety of my employees and efficient mobility of my equipment." It continues with, "The attached maps demonstrate the most common routes to our off-site field locations that are part of our normal farming operations, but again, these routes may change as needed due to many factors, and unrestricted mobility is an important key characteristic of well-established farm practices." My statement emphasizes the operational necessity of having unfettered access on surrounding roads, so that if there is a reason we

need to change our usual route, for instance an accident, weather issue, or county road work, we can do so without delay. Mr. Prenguber is trying to show that using multiple routes is an accepted farm practice, but quite the opposite is true. We have particular, trusted and efficient routes we follow that we know exactly how long they take and what obstacles or hazards our employees may encounter, such as bus stops, difficult turns, or conflicts with businesses or other nurseries. Using this knowledge of the area, best practices for farming is to utilize the safest most direct route with the fewest obstacles. The part that Mr. Prenguber got right is that we *do* need, and it is an accepted practice to have, multiple safe and efficient options available *should we need them*. The applicant's construction plans that involve massive road construction to prepare the surrounding roads for their pipeline and facility construction activities will constrain our local rural road network so much that farmers will no longer have other available options, and in many cases no option, to avoid the construction activities of the applicant. Even if a primary, usual route is not blocked or clogged by construction activities, the construction on other surrounding roads takes away our ability to re-route when needed for an accident, weather concern, or normal county road work. The applicant is essentially taking over the local rural road network, leaving farmers and residents with fewer choices for regular travel, and in our case, fewer safe and appropriate routes for our crews and equipment. For example, having to avoid Carpenter Lane east of Cottrell and being forced onto Bluff Road via either Cottrell Road or Altman Road is extremely dangerous and stressful for our employees, and that is in normal traffic conditions. When the applicants heavy construction trucks start using Cottrell to Bluff, it will be impossible for our equipment to share the road with the amount of dump trucks and other heavy vehicles flooding the small rural road without causing massive delays to the construction schedule and major disruptions for regular traffic. (Please see videos referenced at the beginning of this document, V1.0, V3.0 and V4.0 show these particular roads with tractor and dump truck encounters). Referring back to the original mis-quoted statement, it is important for the Hearings Officer to see that the analyses and conclusions drawn in these reports by Mr. Prenguber are often misguided, misinterpreted and misreported. It is reasonable to question if, in the hundreds of pages of rebuttals and dismissive conclusions, this is the only place Mr. Prenguber has mis-quoted myself or a fellow farmer, slanting our testimony to meet the needs of his subjective conclusions.

Consultant: The personal experience of Water Bureau staff attending a meeting with Surface Nursery in 2018 included Lusted Road being closed for County road work, and having to detour around the closure in order to access Surface Nursery's headquarters. Inherently, part of the accepted farm practices for using the public road network is detouring around road closures for utility installation in the right of way.

RESPONSE: The fact that this consultant, who allegedly has studied in depth numerous farms in the area and their practices for several years, yet has only even encountered one instance of a road segment being closed for county road work supports the fact that it is NOT part of farmers' accepted farm practices to alter routes due to road construction and lane closures. In fact, this statement also reinforces that road construction, especially extensive, widespread and ongoing lane closures and delays, is very much out of character for this entire area. Detours encountered on public roads are brief, typically lasting only a few days or even less. As clearly evidenced by the deteriorated condition of our roads, there are very few instances of road construction. These roads are outside the urban growth boundary, so there is little if any infrastructure construction, nor utilities installed in the right of way, because those are things associated with development which is not allowed in agricultural zoned land outside the UGB. *Daily route planning*, including but not limited to checking road closures daily, contacting road construction foreman, navigating around widespread construction activity, and forcing employees to deal with increased stress from maneuvering through and/or around delays, lane closures and added traffic counts is a significant change to my accepted farming practice. Additionally, this change comes with an increase to operating costs in the way of added time for route planning every morning, and ensuring every employee that will be driving has a smart phone so they can check delays and routes before they leave for a location. This amount of orchestration would also require an employee at headquarters to be dedicated to communication with construction foreman and Water Bureau personnel, as the applicant has suggested as a mitigation measure, as well as coordinating with employees. And lastly, employee retention is going to cost more. Employees that will have to endure years of daily delays and detours during their commute to and from work as well as during their work day, and a huge change in accepted farming practices and expected work environment on a farm, are more likely to seek employment at a nursery not experiencing these operational

disruptions. This is a reasonable concern because repeated encounters with delays and detours create added stressful conditions. Employee retention efforts equates to increased costs. For all these reasons, the construction plan required to achieve the applicant's proposed project does force significant changes in and costs to our accepted farming practices, and should be denied based on approval criteria of MCC 39.7515 C.

Consultant: Explanation of how nurseries manage vehicle mobility is explained in the Farm Traffic Report. Surface Nursery utilizes many accepted farm practices for farm travel flexibility and mobility. Those practices significantly reduce negative impacts related to construction activity that occur in the public right of way. For Surface Nursery, those include: 1) use of farm road networks which reduce public road travel, 2) re-routing on roads to use alternative field access points as needed which can include customary field access points but also include alternative locations to exit from public roads where there are no impediments to tractor or other off-road vehicle access, 4) hauling equipment on trailers to destinations, particularly when the location is more distant from headquarters and 5) altering the sequence of travel to fields to reduce total road travel time when it is common to farm several fields in a single day.

RESPONSE: It is unclear how Mr. Prenguber came up with this list. In reality, we (all farmers, not just Surface), 1) Use farm roads primarily as interior pathways in our fields. If we travel on a public road it is because there is no other acceptable route to access that field. 2) We rarely, if ever, use alternate accesses to our fields from public roads. It is not up to our individual employee to choose an alternate access point. Field access points are designated places where many factors have been considered, including safety exiting and entering the public road, line of sight, farm road surface such as dirt or gravel, seasonal or wet weather restrictions, potential hazards or obstacles like irrigation lines or subsurface infrastructure, and property lines. It is not an accepted farm practice to enter and exit a field from a random point just because there is no ditch preventing a tractor from doing so; it *is* an accepted farm practice to have designated points of entry to fields. (There is no #3 in this list). 4) Hauling tractors on trailers is *not* a common practice for us. Our operation has approximately 55 tractors, but we don't have 55 trucks and trailers to haul tractors from field to field just to comply with the applicant's proposed mitigations, which assumes that a truck hauling a tractor on a trailer can travel at regular posted speeds on our rural roads and avoid their construction-related delays. Tractors are most commonly driven on roads to fields, even the fields most distant to our headquarters such as our Bluff Road fields. Tracked equipment is the most common thing that is hauled by a truck and trailer, and I can assure you that the truck hauling the trailer is not traveling at posted speeds. 5) This last 'common practice' as reported by Mr. Prenguber is not clear. The only thing that determines the sequence of road travel to fields is operational needs. The only factor that would force a change in our usual route is the very rare occasion of an accident, an icy road, or the presence of road construction. It is not an accepted farming practice to check our usual, regular routes every day for the presence of delays or detours; doing so would delay us further and cost time in paying an employee to verify routes prior to departure. While we do farm multiple fields apart from the main location every day, it is an accepted farm practice that travel to and from those fields is independent to each location.

Consultant: Furthermore Mr. Nerison's comments emphasize slow-moving tractors driven on roads. Mr. Nerison, in his public testimony, said tractors average 13 miles per hour, much higher than tractor speed in his written testimony. Surface Nursery can also move tractors loaded on trucks and trailers. Furthermore, most trips are taken by non-tractor farm equipment on roads that travel at speeds more commonly at or near the posted road speed limit. This includes crew buses, pick-up trucks for supervisors and managers, supply vehicles, and larger trucks. In these cases, the resulting delay times are minimal. It is a mischaracterization to indicate that most farm vehicles are moving "slower than the regular traffic."

RESPONSE: There are many errors in this rebuttal by Mr. Prenguber. First, our tractors are not all the same size and speed. Of our 55 tractors I spoke with Mr. Prenguber about, it is true that many do average 13 mph. It is also true that many only travel 3-8 mph because they are slower or are pulling an implement requiring them to drive slower. Still yet, we have tractors that travel at 10 mph while pulling a cultivator. It is common farming knowledge that a fleet of farm tractors do not all travel the same speed, perform the same function, or are the same size. It is also common farming knowledge that accepted farming practices include driving tractors on public roadways. It is why farming takes places in areas zoned for agriculture

and not cities. For Mr. Prenguber to imply that my testimony contradicts itself is further evidence of his lack of a comprehensive understanding of nursery stock farm practices.

Consultant: Mr. Nerison states "a typical workday is from 7:00 AM to 4:30 PM but shifts to earlier times when operationally necessary." Mr. Nerison also states that "Most if not all nursery work, especially field work, is done during daylight hours, so the work schedule might change throughout the year to accommodate the available hours of daylight." The severe alleged impacts on Surface Nursery are unfounded. At a high level, as explained in the Farm Traffic Report, the transportation engineer has shown that the road network has the capacity to handle the traffic impacts of construction with Travel Demand Management (TDM) strategies proposed by the Water Bureau. More specifically here, the description of work hours means that in late spring, summer, and early fall months, farm equipment will often be on the road before pipeline construction crews and construction vehicles begin operations. Much of the first daily movement of Surface Nursery vehicles will occur with no interruption or delay from construction activity. It also means that at the end of the day farm vehicles will be returning to headquarters before the main afternoon commute traffic. Regarding employee travel to Surface Nursery, given the early start of field operations, employees will also arrive at the farm headquarters before the start of both pipeline construction and the construction vehicle traffic on roadways each workday. There is no reason to make the claim that employees will seek work elsewhere.

RESPONSE: Only on paper can the applicant's consultants show that our local, rural road network will not experience significant delays and failed intersections as a result of their construction activities on the roads, the pipelines, and the main site. In reality, cars will stack up simply waiting for slow-moving, heavy construction vehicles like dump trucks to proceed away from a stop sign or make a turn. Tractors pulling wide implements will encounter construction traffic too large to pass by in the oncoming lane, forcing the construction vehicle to back up and yield to the tractor. Regular traffic will be forced to wait for the hundreds of dump trucks maneuvering around tractors, a frustrating added condition on top of the common and accepted practice of sharing the road with farm equipment. Mr. Prenguber has also misinterpreted my comment by trying to show that our farm traffic will not be using the road during construction hours. This couldn't be more wrong and certainly doesn't mean what he thinks it does. Just because crew hours shift earlier when needed doesn't mean every crew and tractor has left headquarters at 6am, or even 7am. It simply means that most of our work takes place during daylight hours and the work day is usually 7am – 4:30pm but *can* shift earlier if *operationally necessary.* It can also go later, when necessary, too. Another accepted farming practice for nurseries such as ours is that crews and equipment move from field to field all day long and come back to headquarters at whatever point their task are completed. They also leave headquarters in the morning at various times. Nurseries don't send out one mass exodus of crews and farm traffic early in the morning that, at the end of the day, all comes back at once. Also, hours only shift earlier if it is operationally necessary, at realistic times. Mr. Prenguber draws a broad and incorrect assumption that this happens consistently throughout late Spring, Summer, and early Fall. This is another example of how these consultant reports lack the expert authority and experience that we, the actual farmers, have. These reports fail to comprehend accepted farm practices and normal operations in the nursery stock industry, and they consistently misrepresent our conversations and misinterpret our statements about our operations.

Consultant: Mr. Nerison has stated "Trips per day between the main farm location and off-site fields range from 1 to 10 round trips or more, and involve tractors, pickups, and our employee farm buses." While many trips may occur per day it is impractical for most of those trips to be slow-moving tractors moving back and forth from fields to the headquarters. Rather, crew buses and supervisor and supply vehicles that travel at or near posted road speeds are the primary vehicle traffic.

RESPONSE: This is another example of information I supplied being used to try and show a specific conclusion, even when it is in error. It's difficult to come up with a single number that reflects our overall farm traffic movements because farming is fluid and dynamic, with many unmitigable conditions such as weather and live crops. On a busy day, there could be half my fleet of tractors heading to off-site fields. Reviewing my statement referenced above, it's actually more likely that we have, *on average*, 1-10 *tractor* trips per day – I believe in an earlier estimation I said at least 8, which is still a conservative number – *in addition to* crew buses, foreman, and other farm traffic. Mr. Prenguber claims, based on absolutely zero nursery experience besides a handful of observations over the period of a coupe of years, that "it is

impractical for most of those trips to be slow-moving tractors…" I have no idea where Mr. Prenguber came up with this conclusion, but I, and any other farmer, can assure you that it is incorrect. We have 55 tractors and only 4 crew buses. *Of course* we have more tractors on the road than crew buses, supervisors and support vehicles. It is just a simple fact that us, like other farmers in the affected area of the applicant's project, have a long-standing history of using the roads as accepted farm practices, and that involves slow-moving equipment. The scope of construction involved with the proposed project will absolutely cause serious impacts to our operations. Simply saying that the majority of our farm traffic are vehicles that can travel at posted speeds doesn't make it true, and clearly is an attempt to further dismiss our very valid and reasonable concerns. Mr. Prenguber's incorrect and biased assumption about our farm traffic is another example of how his conclusions are purely speculative and overwhelmingly in favor of his client. In addition to being very anti-farmer, the conclusions in these reports are based on limited observations and information obtained from conversations not fully comprehended about a specialized industry in which the consultant has no actual experience.

Consultant: The Water Bureau has a pipeline constraint (See page 6 of the Farm Traffic Report, constraint #7) to keep Dodge Park Boulevard east of Cottrell Road open with one lane of passage when working on pipeline construction for the express reason that Surface Nursery and other farms can continue to use Dodge Park Boulevard to reach their fields in Lusted Flats near the Sandy River. The Water Bureau is providing access on Dodge Park Boulevard to accommodate Surface Nursery and other nurseries that wish to only use this route for farm equipment travel. This will support tractors and other slow-moving vehicles that Surface Nursery wants to send down that road. Furthermore, pipeline construction constraint #2 supports farm traffic by restricting construction on Dodge Park east of Cottrell to August through October, the period of time during the year that nurseries indicated their traffic is at its lowest. This was specifically included in order to maintain 2-lane traffic the rest of the year during busier farming seasons.

RESPONSE: Slow-moving farm traffic travelling on a single lane of passage during pipeline work on Dodge Park will create massive delays for regular traffic traveling on the same road. There is not alternative route, it is not that we *wish* to use Dodge Park Blvd east of Cottrell, it's simply the only available route to reach our fields in Lusted Flats. Mr. Prenguber confirms this in his Farm Traffic Analysis included in Exhibit H.3. Another error in the consultants response is that nurseries indicated August through October are our lowest farm traffic volume months. I have discussed this earlier in this document, and other farmers are noting this as an inaccurate representation of our operations in their own rebuttal statements.

Consultant: It is highly speculative to assume that service providers will stop offering services to Surface Nursery. It is also not based on an accurate understanding of the traffic impacts. This comment assumes significant ongoing delays and disruptions to road travel. However, analysis by the Water Bureau's transportation engineer shows that intersection delays due to Water Bureau construction vehicle traffic will be minimal and mitigated.

RESPONSE: There is nothing minimal about the construction plans necessary to accommodate the applicant's proposed project. Massive amounts of road construction just to bring the roads up to standard so that they can handle the applicant's construction and operational traffic. Miles of pipelines being constructed alongside busy rural roads. Hundreds of construction vehicles on the roads everyday from the main site to the pipeline activities. I believe 749 heavy truck trips per day have been estimated for the main site alone. This amount of heavy, slow construction trucks, that take longer to approach and proceed through intersections and make turns, constantly going back and forth from the main site to a yet undisclosed dump site will bring this community to a halt. It is not unreasonable at all to consider that service providers will suspend or alter service and deliveries.

Consultant: It is speculative and unfounded to argue that drivers of vehicles contracted to the Water Bureau would pass farm vehicles unsafely. All construction trucks will be operated by trained, licensed drivers that receive comprehensive safe driver training and are directed to follow this training at all times. This training will include safety related to slow moving vehicles such as tractors that are on the roads. Mr. Nerison also points to nursery shipping truck drivers for their operations who "are not from this area and are not familiar with our community's network of rural roads." Page 4. It is disingenuous to be concerned about Water Bureau drivers but not the truck drivers that service his and other nursery operations.

RESPONSE: The comment to which Mr. Prenguber refers is “Facing delays and detours or interference from increased traffic could create unsafe situations on these roads because the reduced speeds at which we safely drive will cause drivers unfamiliar with our roads to want to pass unsafely.” This has been misread by the consultant, as it does not single out or specify - or even mention - Water Bureau drivers. In fact, our concern includes any driver unfamiliar with our rural network of roads that might want to pass our slow-moving farm equipment because they are frustrated with widespread construction delays. Commercial over the road trucks, the drivers which Mr. Prenguber assumes were disingenuously omitted from my concern, are not omitted at all. If they too are “drivers unfamiliar with our roads” they, too, could try and pass unsafely. The reason this comment is targeted to out-of-town drivers is because locals know where safe passing areas are, such as flat, wide sections in the road, and they know that the local farm traffic will yield as soon as they can safely do so. Local drivers also understand tractors pulling an implement can’t back up, so there is less delay when a situation arises where one driver must physically back up and yield to the tractor. The concern is that drivers with no experience with, or familiarity of, our local rural roads will be in an extra hurry due to construction delays, or may be taking a new route unfamiliar to them because of construction activities. In our years of experience as local residents, this leads to a greater likelihood that upon encountering slow-moving farm equipment, which can and does happen at any time during the day, those drivers will attempt to pass without realizing there’s a blind corner ahead, a school bus stop near the edge of the road, or a place where the tractor could have safely pulled over and allowed the car to the pass. Ironically, this concern wasn’t targeted at Water Bureau drivers at all, as I assume they will quickly become familiar with the area. It does, however, include the Water Bureau’s contracted dump truck drivers who are paid by the load, not the hour, which will be travelling our roads over hundreds of trips per day. Even though those drivers have CDL’s and allegedly will be given extra safety training regarding farm equipment, they are still capable of getting in a hurry and making a mistake. It also includes the very high number of drivers who drive our roads in search of recreational spots such as hiking trails, swimming holes, parks and fishing access along the Sandy River. Dodge Park Blvd and Lusted Road, as well as Oxbow Drive and Bluff Road are all main roads that connect the greater Gresham, Troutdale, Sandy and Portland areas to the Sandy River recreational areas. This traffic is very heavy during the warm, dry months when construction activities affecting our roads and traffic will be at their peaks, for as long as 7 years. Every injury accident I am aware of in our area has involved an at-fault driver that was not from the local area, and speed has been the biggest factor. My concern that construction activities and the hundreds of new trucks and vehicles on the road will cause unsafe situations especially involving drivers unfamiliar with the area is valid and reasonable, and presents a real threat that cannot be mitigated or conditioned to avoid.

Consultant: Furthermore, Surface Nursery drives through the middle of their field south of the filtration facility, according to their own statements, many times per day with tractors, pickups, and other diesel equipment.

RESPONSE: The statement the consultant is mis-quoting is likely that we move farm equipment and crews *between fields* multiple times a day. We don’t drive through the middle of our fields multiple times a day with tractors, pickups and other diesel equipment. Once a tractor reaches a field, it begins its task in that field. The crew bus arrives to the field and parks near the work site and stays there, it doesn’t drive through the fields throughout the day. Pickups and ‘other diesel equipment’ would only drive to a certain location, perform a work task, and leave. However, all driving on interior and perimeter farm roads is an accepted farming practice, and done with care by farming professionals. Construction activity alongside our trees and within our fields is not an accepted farming practice, and any mitigation of those activities is a significant change to accepted farm practices.

Consultant: This dirt farm road route of travel goes directly next to their trees on both sides of the road. This well-travelled farm dirt road has handled many Surface Nursery vehicles emitting diesel and gasoline particulates and kicking up dust on dry workdays for many years to farm both this field and to reach and return from 3-4 fields further south and east. Surface does not manually wash these trees to remove diesel particulate (or dust). Also, for approximately 5 months of the year from late spring to fall, Surface Nursery frequently applies sprinkler irrigation water which washes the leaves of their trees as the water drops to the ground as moisture for plant growth. Furthermore, wind will blow dust off leaves. This movement of dust is a natural way dust impacts are mitigated.

RESPONSE: This statement further demonstrates the consultant’s lack of understanding of nursery stock

farming practices, and is simply an attempt at painting a picture that they are remotely comparable to massive construction activity. Hundreds of truck trips, including dump trucks being loaded with and hauling over a million yards of dirt and that are much larger than average farm equipment and pickups, is nowhere near similar to the amount of activity on our dirt farm roads by employees who try their best to avoid creating dust, even in dry conditions.

Consultant: I have personally observed Surface Nursery's workers staking trees walking near a tractor and trailer carrying stakes and ties in the nursery field at the filtration facility site. Not all fieldwork is conducted far from moving tractors and the noise of tractors, indeed it is necessary and accepted farm practice for some work — such as staking — to have a team approach where some workers are operating vehicles and others are assisting on foot.

RESPONSE: The consultant attempts to discredit my statement that "normal farm operations and accepted farm practices include regular work in the fields on foot performing essential tasks such as hand pruning and trimming, working on or moving irrigation, hand spraying, planting, digging, and more. During these activities, the fields are quiet and free of equipment stirring up dust." However, his observation of an activity he is unfamiliar with does not counter my statement in any way. Mr. Prenguber describes an activity where a group of employees on foot are moving down rows near a tractor pulling a trailer. The employees are quite a few feet or even yards away from the exhaust, and the tractor is moving at or slower than walking speed so no dust is being created. Employees working near a single tractor is a far different scenario than employees conducting their duties within feet of excavation and pipeline construction activities and hundreds of heavy trucks trip going past at regular posted speeds, whether on paved roads at 25mph or more or within the construction sites at 10 mph. Please reference the applicants videos to show the amount of dust created by a single, light pickup truck, and ow multiply that by about 50 dump trucks going back and forth constantly. The amount of equipment that will be onsite in our fields during pipeline construction is not comparable to employees staking trees near a single, slow-moving and low noise-output tractor. One is an accepted farm practice, the other is an accepted construction practice. Farm employees should not be subject to construction activities that are not part of regular farm operations.

Consultant quotes Surface Nursery comment — "We also have a 3-year loss of revenue from an area in one of our fields between Lusted Road and Dodge Park Blvd, because PWB told us they would be installing a pipeline through that area. PWB instructed us to mark off the area where the pipeline was going to be placed and avoid planting or farming near it. After 3 years, PWB informed us they changed their plans, and that area would not be used and that we could plant on it again. However, we still have a 3-year loss of approximately 4 acres of farmable land. One acre of land planted with our typical stock (in this case we used 5000 acer Griseums and 5000 Double sub-cherries per acre) yields, after cullage and average customer discounts, approximately $307,104 per acre over a 3-year cycle. The total loss of these 4 acres of production over this 3-year period is a loss of approximately $1,228,416.00."

Consultant: Even if there was a loss of crop area, the gross revenue is not the suitable measure of loss because it omits the cost of production, and loss of revenue is not a change in the cost of farm practices.

It is unclear which field or property this comment refers to. It appears to reference Schoepper's property, referenced as Farm Use Property "F10" in the Operations Report, which Surface Nursery leases. The Schoepper property is directly to the east of the Ekstrom property, where the finished water pipeline crosses from Dodge Park Blvd to the intertie at Lusted Road following an existing farm road.

The Water Bureau has negotiated with Schoepper — but not signed —a temporary construction easement agreement for approximately 0.9 acres of land in order to allow the needed room to install the pipeline just on the other side of the property line. The easement agreement will be executed after land use approval and is not currently in effect.

The easement will not include crop area. The Water Bureau performed a survey to verify where the crop area starts on the Schoepper property and tailored the temporary construction easement area to only include land that was within the field edge, i.e., not in the crop growing area of the field.

The Water Bureau did not instruct Surface Nursery — or any other farmer — to mark off potential easement areas or to avoid planting or farming near those easement areas. The Water Bureau does not advise landowners or farmers to change their practices in advance of the official appraisal and final negotiation and execution of an easement, or

condemnation of the easement if needed. Furthermore, in reviewing imagery captured by Google Earth for time periods from 2019 to 2023, there is no indication of any change in where the planted area ends along the western boundary of this field. There is no evidence that the project has forced Surface Nursery to lose 4 acres of crop producing area on the Schoepper property.

RESPONSE: This is another example of why we, along with the other farmers on record, have extremely low confidence in the consultant's analyses and conclusions. An agent for the Water Bureau absolutely came to the property in question and physically marked off the proposed easement using stakes, noting there needed to be a 50' wide buffer where no trees should be planted. We sent an employee to the site to confirm the 50' wide buffer zone so that we would avoid planting trees on that ground. There are multiple errors in Mr. Prenguber's rebuttal of our statement. First, the property in question is not owned by the Shoeppers, it is property we lease from Jennifer Hart. We assume the consultant would be able identify the property in question due to his proclaimed extensive, years-long analysis of the properties affected by the Water Bureaus eminent domain, right-of-way, and any other proposed easements or impacts. In addition to indicating that our statement contains the fallacy of the Water Bureau staking off productive farm land, it is necessary to point out, once again, that Google Earth's satellite view is not an accurate indicator of what is planted or planned on the land in question. For example, in a report submitted to Clackamas County claiming to analyze the compatibility of an access road through EFU land with surrounding agriculture, the consultant mistakenly identifies a quarter-acre blueberry field as B&B nursery stock because he relied on Google Earth images. Either these images aren't clear enough, or the consultant is not familiar with, the differences between a small blueberry patch that is not connected to any farm road or nursery, and B&B nursery stock in a field. Again, it just shows that Google Earth is not an adequate method for analyzing crop loss to farmers. The *evidence* that the applicant's project has caused us to lose approximately 4 acres is simply the fact that *they* came out and staked it off and told us *not to plant trees* within 50 feet of the staked area. Bare root nursery stock has a 3-year growth cycle and they can't be dug or disturbed in that time frame, so until we know the applicant's plans for certain, we will follow their direction and refrain from planting trees in that zone so as to not lose an entire crop if construction were to begin before the completion of the growth cycle.

Consultant: Surface Nursery claims it will lose substantial income from eminent domain proceedings by the Water Bureau to take land from their property south of the filtration facility for an access road to that facility.
The Water Bureau is required by fire code to have two entrances to the filtration facility site, which forces the agency to acquire this easement from Surface Nursery. At Surface Nursery's request, this location was chosen along the far eastern edge of their farm property, following an existing farm road / solar power generation facility road. This location, using the existing farm road across the Surface Nursery property, is the nursery's preferred location as stated by the nursery in multiple meetings. The Water Bureau has also worked diligently to take the least amount of cropland necessary for the road which is required to meet road width fire code standards.
The Water Bureau is meeting all requirements of Clackamas County and the EFU zoning, which is the zoning of the Surface Nursery property. The EFU zoning imposes its own test similar to the farm impacts test in the filtration facility site's MUA-20 zone. Even if it were in Multnomah County, for the impact test of land use approval, the road property easement itself is not in the Surrounding Lands, it is part of the project area.
Furthermore, the Water Bureau will compensate Surface Nursery for the permanent loss of farmland for the new road. While Surface Nursery claims their current road is gravel surface, it is actually primarily a dirt farm road which presumably will also be a dirt road when it is relocated. There is no cost to construct a dirt farm road. See Response to Loss of Agricultural Land.

RESPONSE: The applicant is currently seeking land use approval for an emergency access road through EFU land owned by Surface as well as one other EFU property. The application is being disputed in Clackamas County and no decision has been made yet, although eminent domain proceedings have been initiated which are significantly changing my daily farming practices as I now have to focus on fighting for our land, and researching ways to keep the costs of those practices from rising due to the increase in cost per tree sold. The consultant's comments focus heavily on meeting our 'requests,' however, what we have requested is that they don't take our farm land. We are currently following the guidance and advice of our attorney to do our best to prevent the Water Bureau from condemning and taking our property. In addition

to the land they are trying to take for their road, there absolutely will be costs involved that are impacts to the surrounding area, such as replacing the current dirt road and having to do so in what is currently planted, productive land. In addition to these less tangible cost increases, we have to replace the farm that is on our property that we use to access our field. Mr. Prenguber states there is no cost to construct a dirt farm road. However, farmers the actual experts when it comes to farming nursery stock, understand that constructing a farm road, even one that is only dirt, does not come without cost. First there is the cost of moving existing subsurface infrastructure that should not be driven on. In this case, irrigation mainline and at least one air vent will have to be relocated. Trees cannot be planted on top of or directly abutting to these either, because the area has to be accessible for repairs and maintenance. Second is the cost of moving trees that are currently planted where the new farm will need to be built. Third is the loss of farmable land by number of rows that will be used for the farm road. In this case there is also a 2' wide buffer required by PWB between the EAR and any farm activity, which includes driving equipment. The road will need to be built with enough space for a 16' wide implement to travel on. Currently, the farm road width is not an issue because the implement can over hang or extend to the area on either side of the road without causing interference. Once the emergency access road is built and operational, farm equipment will not be allowed within 2' of it, so the new farm road must be 2' from the EAR, 16' wide plus a foot of space on either side to accommodate avoiding ruts, and the nearest trees must be 6' from the farm road as they are now. This is in total a 26' wide section of land to be permanently converted from farmable acreage to a farm road. It is worth pointing out that Google maps only offers a single, 'moment in time' once a year view which is often not entirely accurate. For example, Google maps shows Carpenter Lane as connecting to Bluff Road, which it most definitely does not. We suggest that the satellite view of Google maps is not an appropriate tool for determining what crops are planted within a field or area. And finally, fourth, there *are* indeed labor and equipment costs to constructing a farm road, even a dirt one. Unless the consultant knows of someone who will come work for free?

Consultant: Although compensation is not relied on to reduce impacts on accepted farm practices below the level of significance in my analysis, the payments will cover lost income from foregoing the opportunity to raise nursery crops on this private land.

RESPONSE: We adamantly dispute this statement. Surface Nursery has been served papers addressed to Debra Surface, who is not currently in the area, for immediate possession of the area of permanent easement. Land use in Clackamas County for their emergency road to be sited in EFU land has not been approved. No money has been paid. No offer has been made that accounts for the perpetual three-year cycle of lost revenue and subsequent increased operating costs, nor for the costs stated above of constructing a new farm road in the surrounding lands, nor that would be sufficient to replace the lost land through purchase of new land. The ridiculous low 5-figure offer won't even cover attorney fees to fight for our land. As I have stated in other testimony, our land, per acre, conservatively generates $300,000 or more every 3-year cycle, depending on types of trees planted. Losing an acre of producing farmland has further cost impacts beyond that lost revenue. The significant increase to our farming costs is because our labor force stays the same, even when we lose an acre of 10,000 trees. Due to this land lost to eminent domain, our nursery has fewer trees to sell but the same amount of employees to pay, so our labor costs increase because the cost per tree sold increases as there are less profits to offset labor expenses. I am certain the agricultural economist understands cost of goods sold, and in the bare root nursery industry that is a 3-year quantitative number that is not limited to one-time digging costs, but rather a 3-year cycle of plant care involving a dedicated labor force.

Quoted Comment — "We have approximately 55 tractors, so I would say there is probably an average oy about eight at a time in different locations. We have seven locations. The tractors drive back and forth. With this traffic, some of our tractors average about 13 miles an hour. That's not going to happen. If you can picture our SMVs and signs on the back and flashing lights, and dump trucks want to pass a tractor going that slow, it's not going to be good."

Consultant: Each of these comments have been addressed previously in my response to Mr. Nerison's written testimony. Note that this testimony contradicts previous testimony by Mr. Nerison where he said many of their tractors travel at 3 to 8 mph.

RESPONSE: The verbiage 'some of our tractors' does not contradict the verbiage 'many of our tractors.' Farm experts understand that tractors of different sizes and functions travel at different speeds. Our 55

tractors do not travel at the same speed.

RESPONSES to consultant comments on other farmer's testimony

Consultant: A notable quantity of this testimony is identical to Surface Nursery's testimony, discussed above. To the extent the concepts are similar or identical, the responses above are applicable here as well. (In reference to H.22a Written Testimony by Pat Holt, R & H Nursery (Farm Operator Q).

RESPONSE: Numerous farmers have identical concerns about the impacts of this project. It is reflective of the overall impact to the local ag industry, and the *amount* and *similarity* of concerns should be considered with the utmost seriousness. Collectively, the farmers represented in the opposition have hundreds of years of experience of successfully operating local, multi-generational nursery stock farms, and therefore should be considered the real farm experts and the only authority on local accepted farming practices.

Consultant: R& H claims that their concerns expressed in interviews were not addressed.
Mr. Holt does not indicate what specific concerns he expressed that were not addressed in the Water Bureau reports. However, his concerns were included in farmer concerns discussed on pages 113 — 115 in the Operations Report and also in the Farm Traffic Report.

RESPONSE: Numerous farmers have shared this concern, not just Mr. Holt. In a recent meeting, every farmer in attendance that had been interviewed by the consultant stated that their concerns were not addressed adequately, and in some cases at all, in the reference reports. Those concerns Mr. Prenguber references on pages 113-115 were in most cases voiced before the construction TIA and the farm traffic report came out. Had we, the farmers, known what Mr. Prenguber was going to say about farm traffic routes and field accessibility, the conversation would have been very different. Many farmers quoted in the consultant's reports still do not feel that our concerns were adequately addressed, including in the Operations Report or Farm Traffic Report.

Consultant: R & H Nursery contends that converting the City of Portland property to non-farm use is alleged to possibly "forever change the scope of urban sprawl."
This land use application does not request a zoning change for any property.
The main reason for the past loss of farmland in the Surrounding Lands, and the impetus for future loss of farmland, is that land use planning has allowed residential development to expand in so many places within the Surrounding Lands. This has in turn brought about the need for more public services and infrastructure.

RESPONSE: None of the development requiring the need for more public services has happened within MUA-20 or EFU lands outside the urban growth boundary. This statement is inflammatory and irrelevant to the surrounding lands, which are outside this UGB. Furthermore, the precedent that would be set by allowing this scale and scope of a community services that primarily serves a community 40 miles away could very well indeed change the scope of urban sprawl. This is exactly why land use laws and approval criteria are so strict and are intended to protect Oregon's agriculture.

All construction trucks will be operated by trained, licensed drivers that receive comprehensive safe driver training and are directed to follow this training at all times. This training will include safety related to slow moving vehicles such as tractors that are on the roads.

RESPONSE: Even professional CDL-licensed drivers, despite comprehensive safe driver training, have accidents. The applicant has also approved the use of apprentices for construction, which did not exclude construction and heavy truck drivers.
Some relevant statistics relating to professionally trained drivers and construction work zones:
In fatal large truck crashes in 2019, 75.4% of the drivers had a valid commercial driver's license (CDL); 19.8% had no CDL; and many of the rest had a CDL that was expired, revoked, or suspended. (FMCSA, 2021) (Source: https://driving-tests.org/driving-statistics/). In 2021, 954 people were killed and 42,151 people were injured in work zone crashes. Work zone crashes are defined as taking place within the boundaries of a work zone or on an approach to or exit from a work zone due to activities, behaviors, or controls related to traffic moving through the boundaries of a work zone. (https://injuryfacts.nsc.org/motor-vehicle/motor-vehicle-safety-issues/work-zones/). Of the 954 fatalities: 468 were in construction zones; 403

were in work zones of unknown type; 66 were in maintenance zones, and 17 were in utility zones. This is proof that even safe drivers, specially trained, can be involved and even contribute to accidents.

Consultant: R & H will be able to reach the small fields they farm north of Carpenter Lane with minimal delay during road construction. Road construction for both Cottrell Road and Carpenter Lane will be conducted in half road-width increments to accommodate local access, including R & H Nursery. There are no ditches or other physical barriers to entry of these fields along Carpenter Lane which gives easy access to nearly every field edge on that road. The field to the east of Cottrell Road near Carpenter Lane can also be accessed because farm vehicles have only a shallow ditch to traverse. Some farm equipment can exit R & H from a driveway on Cottrell Road and avoid the intersection of Cottrell Road and Carpenter Lane.

RESPONSE: Mr. Prenguber has neither the operational knowledge, expertise, nor authority to dictate farm traffic routes including accessibility to and within our fields. The conversations that we, the farmers, had with him mostly centered around educating him on nursery practices in B&B, bare root, and container stock, which he was previously unfamiliar with. A farm cannot be operated by looking at Google maps and determining operational mobility. There is no entry/exit point on Cottrell Rd that is on farm property and that can be used regularly, safely, and year-round. The accepted farming practice is for *farmers* to determine where employees and equipment are best suited to enter and exit fields, not an outsider best guess based on Google maps.

Consultant: Construction vehicles carrying excavation materials traveling by the R & H headquarters on Carpenter Lane and on Cottrell Road will have loads watered as needed during the dry season to mitigate for fugitive dust.
Other airborne particulate will not impact the trees because diesel particulate will not fall on leaves in sufficient amounts to constitute a problem with tree health. Furthermore, a nearby nursery has a dirt farm road passing through the middle of their field. Dust and exhaust fumes reach trees within feet of the dirt road. Nurseries have stated they drive on their roads many times per day. On dry days, significant levels of particulate are in the air from driving on these dirt roads, as video provided by the Water Bureau graphically illustrates. Accepted farm practices for farm travel generate significant dust and other airborne particulates. Nurseries provide no protection for their trees from this dust other than sprinkler irrigation in dry periods of the year. Since construction vehicles will follow dust control procedures as needed and the vehicles meet air emission standards, construction activity during the temporary construction period will not significantly impact plant growth.

RESPONSE: Please reference Surface Nursery's earlier response to proposed dust mitigation. This is also another example of a comment by the consultant demonstrates an inaccurate understanding of farm practices. Please refer to earlier statements regarding dust and airborne particulate impacts.

Consultant: R & H Nursery states that the security of their headquarters is jeopardized by the presence of the filtration facility in the nearby area.
Regarding security during operation of the filtration facility, there will be a maximum of 10, busy employees at any shift and again due to the distance between the R & H headquarters and the facility site, there is no expectation that security at R & H headquarters would be compromised by "wandering" personnel. There will be few visitors to the filtration facility, particularly as the request for public tours was removed from the application. There is no reason to expect visitors will "wander" outside the fenced perimeter of the facility site, but instead will have a specific reason for needing to visit the filtration facility, fulfil that purpose, and leave. If any construction personnel, employees, or visitors are leaving the site, they will be driving or riding in vehicles with no reason to stop before reaching their intended destination.

RESPONSE: Once again, the concern has not been heard but instead quickly dismissed. Increased visibility from any out-of-the-area 'traffic' poses a risk the security of a commercial ornamental nursery stock business. We have expensive plants and trees sitting in pots near the road, and often people mistake a container or B & B nursery for a retail nursery. Those people may come back on a weekend, thinking we'll be open to the public, and wander into the nursery headquarters or holding yards. Many times, there are no employees in the immediate area, and this creates potential for theft or worse, injuries. It's a valid concern for all nurseries in the area but especially R & H since their container yards are street front. Instances of people wandering into container yards looking for retail sales have happened in the past to many of us, and have only ever involved someone from outside this community, which the filtration plant will absolutely introduce to the area.

Consultant: The multiple nursery driveways plus the well-developed internal road system allows the nursery to follow its accepted farm practice of flexible access and mobility. If, for example, one driveway is temporarily occupied by a vehicle or a large supply delivery, another driveway may be utilized to reach other areas of the nursery. The only exception is the driveway at the loading dock. Otherwise, any of the major driveways can be entered to travel to any other location in the nursery.

RESPONSE: This is another incorrect evaluation of a satellite image on Google maps. R & H Nursery has one entrance on Carpenter Lane for employees, vendors, deliveries, and all farm equipment. The loading area entrance is used for shipping and large truck deliveries. There is one access on Holt property that is used only if necessary due to inclement weather as it is part of a residential property and not part of the farm. If the property lessee were to change, this access would not be available at all and therefore cannot be included in Mr. Prenguber's evaluation of farm access points. The other two access points on Carpenter Lane associated with the property owned by Ron and Mary Roberts are the driveway to the residence and have no through access to the farm headquarters area.

CONSULTANT: Mr. Beckwith indicated that westbound traffic could potentially queue on Carpenter Lane ahead of the intersection with Cottrell Road during peak construction traffic. While queuing on a public road would not prevent access to the loading dock or other driveways, it could make it less convenient or cause some delay for an exiting R & H vehicle. For this reason, the Water Bureau will include in the project's Traffic Control Plan a requirement that accommodation be made to ensure driveway access to R & H's loading dock and nursery plant holding area is not unreasonably delayed. That traffic control accommodation can be in the form of stop control or a flagger or other measures that would create a gap in traffic to allow R & H nursery traffic to exit the site. Mr. Beckwith indicated that these types of traffic control measures can be used for temporary traffic control to facilitate traffic movements and create gaps in traffic at the loading dock access. With extremely low existing traffic volumes, these types of measures are feasibly implemented.

RESPONSE: The initial grading project requires the excavation and removal of, at minimum, 1.25 million cubic yards of dirt. It will take 30 trucks, hauling 20 yards each, making 6 round trips a day for 413 days to move that amount of dirt. That totals *180 round trips per day*. Clearly, PWB doesn't have 413 days to dedicate for just the initial grading project, so we'll assume the actual numbers of round trips per day will likely be much, much higher. But even just these 180 round-trips by dump trucks will inevitably cause significant delays to farm traffic, commercial shippers, and deliveries coming into and exiting the loading areas; tractors, crews and other equipment trying to go from the main farm entrance to fields on the north side of Carpenter as well as those on other roads; and employees coming to and from work.

The conclusion that "overall, the traffic on Carpenter Lane will not force a significant change in accepted farm practices nor force a significant increase in cost in those accepted farm practices for R & H Nursery," is outrageous, as any actual farmer would agree. At our recent meeting, we discussed the fact that that this conclusion would change if the nurseries had hired the same consultant first.

Consultant: Mr. Ekstrom has greatly overestimated the loss of cropland acreage. He indicates it is approximately 5 acres, but my analysis is the loss of net cropland is between 1.8 and 1.9 acres with the new easement areas. I assume the difference is that Mr. Ekstrom is not considering the disturbed land will return to crop production. However, the Water Bureau will follow a rigorous plan to return the soils to high productivity and will permit the nursery to grow plants up to and even over the pipelines using appropriate precautions to keep tree roots and all field work a safe distance away from the pipelines. The revised easement areas do not create any change in the analysis or conclusions regarding farm use property "F11" in the Operations Report.

RESPONSE: Please see the rebuttal of the Soils Restoration Plan that has been made earlier in this document by Surface Nursery.

Consultant: Note that the farm will benefit from the use of the all-weather gravel road that will be built to replace the dirt farm road.

RESPONSE: An "all weather gravel road" is rarely a farmer's preferred choice for interior roads on

farmable land. The addition of gravel requires maintenance and prevents tracked vehicles from being able to use the farm road, and land that has had gravel on it is not restorable to pre-compaction productivity.

Consultant: With soil restoration and the small amount of land lost to crop production, there will be no significant change in accepted farm practices and there will be no significant increase in cost to continue farming the field using the accepted farm practices.

RESPONSE: This conclusion is incorrect because as stated before, soil restoration efforts generally fail to restore soil to pre-disturbance quality, and there are no guarantees it will be successful and, in most cases, it is not. This has been well established in the record with supporting journal articles and firsthand experiences noted in farmer testimony.

Consultant: Regarding Mr. Ekstrom's estimate of revenue loss, this is not the proper factor because cost is the element for consideration for the impact test. There will be no changes in accepted farm practices conducted in this field and the costs will not significantly increase because a minor amount of the land area is removed from crop production.

RESPONSE: Lost revenue is equivalent with an increase in costs. To conclude that any land taken out of production does not result in a significant impact in either changes to or costs of accepted farming practices is simply incorrect, as any farmer or true farm expert will confirm. Again, if Mr. Prenguber had been hired by the farmers first, we think the conclusions in these pages would be very different.

Consultant: Mr. Steve Ekstrom is concerned that they will need to build a road on the field side of the temporary construction easement area to drive equipment and they will take extra time getting to fields. An area on the field side of the temporary construction easement would require about 0.43 acres to temporarily drive farm vehicles. There would be compaction of soil that would be remediated. Loss of plant growing area would be compensated but again this is not relied upon in order to assess the significance of the potential impact. This small amount of land temporarily lost to crop use that is restored to productivity does not result in a significant change in accepted farm practices or significant increase in costs for accepted farm practices for growing nursery crops on this farm unit.

RESPONSE: Please refer to testimony on record regarding the unfeasibility of soil restoration post-compaction. Furthermore, soil restoration is outside normal accepted farm practices, as is removing crops to build additional farm roads where a usable one already exists. Both of these examples of significant changes to farming practices also drive up the cost of doing business and increase the cost per tree sold, including labor for unplanned, unnecessary activities such as removing and replanting trees, building a new temporary road, and the careful, tedious work of attempting to restore soil back to productive, pre-disturbance levels. Even though the applicant agrees to pay for the cost of restoring the soil, farmers will undoubtedly incur costs relating to the overall disruption in their operation, including supervising any attempts by outside contractors to restore the soil. Paying labor for these tasks that are only a result of the applicant's proposed project are significant costs not otherwise incurred as part of accepted farming practices.

RESPONSES to consultant comments on farmer testimony as reported in Exhibit I.84 by Global Transportation Engineering:

Consultant quotes Traffic Engineer Mike Ard: Movements of farm vehicles that extend across more than a single lane are problematic, especially when conflicting vehicles include heavy dump trucks, tankers, and when construction limits roadway widths.
Consultant comment: This is an incorrect assumption with no data to back the assertion.
Large farm vehicles will be accommodated around construction work zones.

RESPONSE: Please refer to the videos submitted by Cottrell CPO referenced at the beginning of this submission, specifically V1.0, V3.0, and V4.0. They show actual evidence, in the way of visual data that indeed backs up this assertation. The video shows a tractor pulling a 16' wide harrow. The tractor is using the new route to Surface's Bluff Road fields, because we are no longer allowed to access that property via the safer and

more direct route on east Carpenter Lane using a farm road on Water Bureau property. The tractor is driven by one of our most experienced employees who regularly drives farm equipment to and from fields. The new route is Cottrell to Bluff Road. The two videos capture an aerial and dash-view of the tractor maneuvering past a 5 and 6-axle dump truck, similar to what we expect to be making the hundreds of trips per day on these same roads, as part of the applicant's construction plan. On the wider road, Bluff, the tractor has plenty of room to swing over to the side. This is possible unless there is a roadside obstacle such as a mailbox, power pole, or landscaping. Still, the dump truck is forced to slow down and traffic in both directions is slowed as well. The other video shows the tractor encountering another dump truck on Cottrell Road. Here the tractor is unable to pull far enough to the side of the road because of a mailbox. Pulling a large implement also makes it very difficult to back up without jackknifing, so the oncoming traffic must yield and pull off the road to allow the tractor to pass. In this case, the dump truck attempts to pass on the shoulder, but realizes there is not enough room and finally backs up into a private driveway, forcing the car behind it to also back up. Once the tractor passes, the cars behind the tractor must follow until the tractor is through the narrow section of the road where Johnson creek flows under and has room to pull over into R & H property. This scenario would be near impossible if this tractor was trying to get around cars and be 'flagged through' a single-lane closure even on Dodge Park Blvd, the widest and flattest of our local roads that will be impacted by lane closures.

Consultant: Furthermore, according to Globalwise, winter harvest is the primary time wide farm loads are on public roads. This is when trees are taken to headquarters. At other times of the year there are few incidences of wide loads carrying farm equipment.

RESPONSE: This is an incorrect statement and has been explained in testimony by Hans Nelson Nursery as well as myself and others. The fact is that the consultant has confused shipping operations with daily farm operations. They are not exclusive of each other and field work that involves large, wide implements takes place all year long, regardless of shipping season. In fact, winter months are the least likely to see large, wide implements and equipment in the fields because of the wet weather. Instead, July through October are very busy months for field work with large implements and equipment, as are the drier months in Spring and Summer. For example, we use wide discs, grain drills, and cultipackers year-round when weather permits. This would be the same consideration a construction project of this magnitude will also have. We do not see how the two activities can co-exist without forcing significant changes to accepted farming practices, such as moving large implements and equipment without delay to and from fields as necessary.

Consultant: Farmers also use accepted farm practices to reach fields and improve their mobility. These include: 1) maximizing use of private farm roads 2) tracking road conditions and using alternative routes as indicated, 3) re–positioning farm equipment in fields at the end of the day for the next day's field activity,
4) entering fields at alternative access points or any point with minimal barriers to access such as shallow ditches, 5) using early start times seasonally when there is early morning daylight, and 6) adding Saturdays for workdays when seasonal work requires it.

RESPONSE: These 'practices' identified by a non-farmer consultant are misleading. 1) Private farm roads are not located within our fields and farm property, and are irrelevant to farm traffic mobility between fields and locations. 2) tracking road conditions is not an accepted farm practice. I don't know any farmer or employee who regularly checks usual routes for travel between headquarters and off-site fields. As noted in Exhibit I.80, the last time there was a road detour observed on Lusted Road was 5 years ago. 3) Equipment & crews return to headquarters at the conclusion of the work day. For security and maintenance reasons, tractors are rarely, if ever, left in fields overnight. 4) Entering fields at alternative access points is not an accepted farming practice; rather, the accepted farming practice is to use designated points of access to minimize road degradation and potential damage to equipment. It is not common for a field to have to multiple access points from the same public road, or to have no designated access points at all. 5) Adjusting the start time relevant to impacts from outside sources such as construction is not an accepted farm practice. The accepted farm practice of adjusting the work day hours is solely determined by and related to operational needs. Impacts that would force us to change our hours that are not related to our farming operation qualify as a significant change to our farming practices. 6) Additional work days are also added only as operationally necessary. Doing so for any other reason, including to make up for impacts and delays from construction activities, forces an increase in operating costs in the form of overtime or additional staff, and would violate the criteria of MCC 39.7515 C.

In conclusion, there are numerous other comments we would like to answer, but we know that the hearings officer has thousands of pages of testimony and evidence to review. To that end, please accept this document as a statement that is representative of the expertise that only comes from our hundreds of years of farming experience between us, our collective effort to protect our livelihoods and the local industry to which we have spent our whole lives shaping, and our commitment to the land for which we care, our employees and customers who make it possible, and our families who will carry it forward, as we have, for generations to come. Thank you for your time and consideration.

Respectfully,

Shawn Nerison, Surface Nursery, 38 years as a Nurseryman
In Partnership with following:

Patrick Holt, R & H Nursery, 46 years as a Nurseryman
Jesse Nelson, Hans Nelson & Sons Nursery, 25 years as a Nurseryman
Ryan Marjama, Don Marjama Nursery, 30 years as a Nurseryman
Kurt Clemence, Tree Source, 5 years as a Nurseryman
Jim Ekstrom, Steve Ekstrom & Brandon Schmidt, Ekstrom & Schmidt Nursery, 48, 13, and 18 years as Nurserymen

Multnomah County

LUP Comments <lup-comments@multco.us>

Case File No. T3-2022-16220

1 message

Amalia Bruley <Amalia@surfacenursery.com> Wed, Sep 6, 2023 at 11:54 AM
To: "LUP-comments@multco.us" <LUP-comments@multco.us>

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

Please find the attached document for entry into the record re: T3-2022-16220.

Surface Nursery, Inc.

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Trees for Life
SURFACE NURSERY INC.

Surface and Farmers Responses to Consultant Rebuttals.pdf
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