

Liz Fancher, Hearings Officer
c/o Multnomah County Land Use Planning
1600 SE 190th Avenue
Portland, OR 97233-5910

May 9, 2025

Participants in Review of Multnomah County Case File T3-2022-1622
Portland Water Bureau Filtration and Pipeline Projects

I have received, from Multnomah County, a copy of a 32-page document comprised of e-mail correspondence between Cynthia Bennington and Multnomah County Senior Planner Lisa Estrin. The document has been included in the record and labeled Exhibit T.1. All e-mails in Exhibit T.1 are dated May 8, 2025. In one Exhibit T.1 e-mail, Ms. Bennington objects to the record on the basis that three documents her phone indicates were sent on “Monday” and “Last Week” to “LUP Hearings” are not included as a part of the record. The partial titles of these e-mail documents (hereinafter the “missing e-mails”) are: (1) “Natural Predator-Prey Cycle – Tree Photos;” and (2) “Case File T2-2024-0061 ICW PWB Remand Submittal Regarding Adverse Effects;” and (3) “West of Sandy River Land Use Plan, 2002.”

Exhibit T.1 includes information from Senior Planner Estrin that the County did not receive any of the missing e-mails. Ms. Estrin says she looked in LUP-hearings@multco.us and in the County’s spam folder and did not find any of the missing e-mails.

At the land use hearing on May 16, 2025, the deadlines for filing post-hearing evidence and argument were established. The deadline for filing open record period documents was set at May 5, 2025 at noon. Assistant County Attorney Katherine Thomas advised participants in attendance at the hearing that all documents, including e-mails, must be received by County staff by the deadlines I established for post-hearing submittals. Ms. Thomas made it clear that the time of receipt of an e-mail by the County – not when it was sent – would be used to determine whether a document was timely filed. Ms. Thomas also advised parties to follow the instructions provided to participants in the Notice of Hearing that is Exhibit N.3 of the record. Exhibit N.3 advises

parties “that written submissions must be received for admission into the record prior to the close of the record or prior to the deadline established by the Hearings Officer.” Given the fact that none of the three listed e-mails were received by Multnomah County on or before the May 5, 2025 at noon deadline I established for filing open record submittal, I find they may not be included in the record as open record submittals.

According to Exhibit T.1, Ms. Bennington may have forwarded some or all of the missing e-mails to Ms. Estrin on or about May 8, 2025. The forwarded missing e-mails are not, however, included as a part of Exhibit T.1. I, therefore, do not know the content of the missing e-mails.

I also do not know whether the missing e-mails Ms. Bennington says she forwarded on or about May 8, 2025 were received by the County. The only e-mail forward by Ms. Bennington that is included in Exhibit T.1 is an e-mail that is Exhibit S.18 of the record. It is not one of the missing e-mails. It was also not sent at the time claimed by Ms. Bennington as evident from the time shown on the forwarded copy of Exhibit S.18. I, therefore, am uncertain whether any other e-mails were forwarded to Ms. Estrin or whether what was forwarded was a missing e-mail.

It may be that the missing e-mails contain information that might be able to be accepted by the County as rebuttal evidence. Rebuttal evidence is evidence that challenges (rebutts) information provided to the County during the post-hearing comment period. If so, Ms. Bennington may wish to:

- (1) File a written document with Multnomah County requesting that one or more of the e-mailed documents be included in the record as rebuttal. If this is the route chosen, Ms. Bennington should identify the material filed in the record during the first post-hearing comment that is being rebutted and explain why her e-mails are rebuttal. I will only consider the e-mails if they are, in fact, rebuttal. Evidence in the missing e-mail (s) that is not rebuttal should be stricken by Ms. Bennington before filing the document.
- (2) Prepare one or more new documents that rebut comments filed during the post-hearing comment period that incorporates information from the missing e-mails that qualifies as rebuttal evidence, as defined in (1), above.

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If Ms. Bennington does not act as outlined above, the “missing e-mails” Ms. Bennington may have forwarded to Ms. Estrin on or about May 8, 2025 will not be included in the record.

I request that County staff include this order in the record and send a copy of it to Ms. Bennington by e-mail today or Monday, May 12, 2025 at the latest.

Sincerely,

Liz Fancher

Liz Fancher
Hearings Officer for Multnomah County



Lisa Estrin <lisa.m.estrin@multco.us>

Letter Order Responding to Objection by Cynthia Bennington

1 message

Liz Fancher <liz@lizfancher.com>

Fri, May 9, 2025 at 12:37 PM

To: "lisa.m.estrin@multco.us" <lisa.m.estrin@multco.us>, LUP Hearings <lup-hearings@multco.us>

Cc: Megan Gibb <megan.gibb@multco.us>, Scott Robison <scott.robison@multco.us>

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

Please include this order in the record and send a copy of it to Ms. Bennington by e-mail today or Monday, May 12, 2025 at the latest.

Liz Fancher

Liz Fancher, Hearings Officer

541-385-3067 (telephone)

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**Letter Order re Bennington Objection 2025-05-09.pdf**

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