MEMORANDUM

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

Date: *5/19/2025*

From: Ian Courter, Lauren Courter

RE: Rebuttal to S.31, "Biohabitats Response to Comments in the Record"

EXHIBIT S.31 SUMMARY

Exhibit S.31 supplements the previous expert report by Biohabitats (Exhibit N.55) by attempting to address some of the public comments on aquatic resources and water quality impacts of the filtration project and associated pipelines. Biohabitats asserts that, despite concerns raised, the project will not have long-term adverse effects on local waterways such as Johnson Creek, Beaver Creek, and the Sandy River. Biohabitats claims that the project will improve water quality and reduce sediment and pollutant loading compared to the area's prior agricultural use. During construction, temporary issues with sedimentation and water management were reviewed and with DEQ oversight, Biohabitats surmise that with further system improvements they ensure minimal impact. Post-construction, enhanced stormwater controls, native plantings, and daily inspections will protect and stabilize aquatic habitats, benefiting species both named and unnamed in earlier reviews. Biohabitats concludes that the filtration facility's operations will have a net positive effect on the region's aquatic ecosystems.

GENERAL REBUTTAL

While Exhibit S.31 asserts that the Bull Run Filtration Project will not have a long-term adverse effect on natural resources, it inherently contradicts the county's strict land use requirement that a project have no adverse effect—not just minimal or mitigated ones. Biohabitats acknowledges negative impacts such as sedimentation, turbidity, and erosion, and proposes mitigation as a solution, which by definition confirms the presence of adverse effects. This directly violates the county's "no adverse effect" standard, which does not allow for harm followed by mitigation. Furthermore, the argument that the project improves upon pre-development agricultural conditions is flawed, as agriculture itself is designated a natural resource under county policy. Therefore, impacts from a large, industrial-scale infrastructure project—no matter how well-managed—are categorically more intensive and disruptive than those of agricultural use, which is inherently aligned with the preservation of natural resource land. Comparing the two to justify the project is a false equivalence that undermines the intent of the land use code.

Although descriptions of "mitigation" and "Best Management Practices" were included in PWB's original land use application, and again in Exhibit S.31 and Exhibit N.55, we have observed significant adverse impacts during the initial construction phase—despite the applicant's unsupported claims to avoid them by relying on mitigation thresholds not

contemplated in the standard itself. These include water quality degradation and dramatic flow changes in Johnson Creek, groundwater pumping, soil excavation and relocation, erosion, large-scale tree removal, loss of farmland, light and noise pollution, air pollution, and aesthetic degradation. This clearly demonstrates that assurances and optimistic projections by the applicant and their contractors are insufficient and cannot substitute for rigorous, objective data collection and analysis of potential effects. Biohabitats' expert report (Exhibit N.55) and its supplement (Exhibit S.31) do not provide actionable, empirical evidence. Instead, they rely heavily on subjective assertions such as "our expert opinion is …," which lacks credibility without supporting data and hypothesis-driven analysis. As qualified biologists who have been engaged to complete habitat assessments throughout the Pacific Northwest, it is our expert opinion that no qualified scientist or natural resource professional would consider Biohabitats' assessment (Exhibit N.55) to be objective or adequate to demonstrate compliance with Conditional Use Criteria MCC 39.7515(B).

What is customary industry standard for evaluating potential natural resource impacts for a project of this type would involve substantial data collection and analysis. For biological resources, terrestrial and aquatic species surveys that comprehensively document presence of plants, resident and migratory animals, and insects are needed. Elected methods should be described in detail. Surveys should follow published protocols found in either peer-reviewed literature or agency reports (see Exhibit N43 for examples) and occur over a three-year timeframe, consistent with standard scientific practice to capture natural variability in abundance. Surveys would also need to occur frequently enough (weekly or monthly) to document seasonal fluctuations in species presence. The life-history of each native species documented on or near the site should be described, along with habitat requirements and known threats or limiting factors. A literature review should also be performed to include presence/absence of rare and cryptic species known to inhabit the area. Pre-construction baseline conditions should be documented with foot and aerial surveys, camera traps, or direct capture methods to estimate density of each species. Habitat quality and quantity should also be estimated with field surveys.

A simulation, or prediction of conditions during, and post-construction should be developed and used to compare habitat changes and approximate project impacts on each species under different prospective scenarios. This type of comparative analysis is commonly used when conducting assessments of biological impacts prior to initiating a project of this scope and scale. Similarly, a comparative analysis of soil, trees, scenery, groundwater, surface water, and agriculture conditions pre, during, and post-construction should be provided, as those are also considered natural resources. Again, assessments cannot simply be descriptive with general conclusions and opinionated statements from PWB contractors. The assessments need to be objective, data-driven, and repeatable to be considered scientifically credible.

Finally, Biohabitats response to comments (Exhibit S.31) fails to comprehensively or thoroughly address public and expert testimony submitted by Cottrell CPO, the Pleasant Home Community Association, and others. Instead, the authors selectively addressed a limited number of topics and offered only superficial responses. Their rationale for choosing these specific topics—while

ignoring others of equal or greater importance—is unclear. In our rebuttal here, we directly respond to the issues raised by Biohabitats in Exhibit S.31; however, we emphasize that many additional, substantive concerns raised in opposition to the project were not addressed by the applicant's Exhibit S responses.

SPECIFIC RESPONSES

"Additional Species"

Summary of Biohabitats' Submittal: Some species like river otters, macroinvertebrates, freshwater mussels, and crayfish were not specifically listed in the earlier memorandum, but Biohabitats believes they will still benefit from the project. This is because they assume the project will improve water quality and aquatic habitat—such as reducing sedimentation, pollutants, and temperature impacts—supporting all aquatic life in the area, including those species not previously mentioned.

Response: This assertion reflects a subjective, unscientific, not qualified and overly optimistic opinion that general water quality improvements will yield universal ecological benefits. Biohabitats' rationale lacks site-specific analysis or supporting data to substantiate positive effects on species with no habitat assessment to evaluate impacts. Without evidence, no reasonable person would necessarily conclude that water quality improvements necessary to support urban-scale development would have no impact on surrounding natural resources. An evidence-based assessment is necessary to determine whether the project would provide measurable benefits or pose risks to these species before any such conclusion could be drawn.

"Filtration Facility Stormwater Management During Construction"

Summary of Biohabitats' Submittal: Although there have already been problems with sediment transport and water management during construction, Biohabitats asserts these were corrected under DEQ oversight, and they will not cause long-term harm to natural resources like Johnson Creek. Biohabitats insists that future construction activities will use improved stormwater systems and discharge controls that are designed to prevent adverse effects, and additional measures like enhanced plantings and daily inspections will further protect water quality during the remainder of construction.

Response: Biohabitats' statements rely on unverified assurances that prior construction-related impacts have been fully mitigated and that future compliance will be achieved through improved practices. However, similar assurances were made in previous submittals to Multnomah County and were not borne out in practice, as evidenced by documented violations and adverse impacts. Harm has already occurred, which undermines confidence in Biohabitats' assurances, particularly in the absence of supporting data, independent verification, or a detailed corrective action plan. Without such documentation, the claim that future construction activities will not adversely affect Johnson Creek remains unsubstantiated.

"Sandy River"

Summary of Biohabitats' Submittal: Biohabitats believes the project will not adversely affect the Sandy River's water quality or aquatic habitat because stormwater discharge rates will be reduced and improved compared to pre-development conditions, and the only project discharge point that ultimately flows toward the Sandy River is over 1.25 miles away—providing additional protection.

Response: This is factually inaccurate. There is currently direct stormwater runoff from the project site east towards the Sandy River (Figure 1). PWB's raw water pipeline and the raw water pipeline portal area will also require substantial groundwater pumping and stormwater discharge towards the Sandy River, using Bear Creek and other stream courses and natural draws in the landscape to convey the water away from their facilities, towards the Sandy River.

Figure 1. Picture of ephemeral stream formed during a storm event on February 22, 2025 along the east side of PWB's project site (a). Same stream shown looking west toward the project site with water flowing east down the neighboring Walter property towards the Sandy River (b).

"Stormwater Management Post-Construction (Operations)"

Summary of Biohabitats' Submittal: Once the filtration facility is operational, Biohabitats believes stormwater will be managed in a way that prevents adverse impacts on Johnson Creek and other waterways—especially compared to the site's previous agricultural use, which they claim caused significant sedimentation and pollution. The project's design includes measures like sediment removal, flow control, and native plantings which they believe will stabilize soils and reduce erosion, presumably leading to long-term improvements in water quality and habitat conditions.

Response: Similar assurances have been made in prior submittals and were not supported by outcomes, as evidenced by documented violations and observed impacts. The assertion that a large-scale industrial facility with approximately 40 acres of impervious surface will produce less runoff-related harm to water resources than the site's previous agricultural use is not substantiated by any scientific modeling, monitoring data, or comparative analysis. In the absence of such documentation, Biohabitats' claims remain as nothing more than speculative and judgements and conclusion that are not based on any empirical evidence.

CONCLUSION

PWB has failed to meet the burden of proof required under MCC 39.7515(B) to demonstrate that the project will result in no adverse effect to natural resources. The reliance on mitigation, speculative benefits, and unsupported expert opinion stands in direct contradiction to the County's standard, which prohibits harm, not just mitigated or minimized harm. Observed impacts during construction, including erosion, sedimentation, water quality degradation, and habitat disruption, clearly indicate that assurances in the application have not held up in practice. Furthermore, the applicant's comparisons to pre-development agricultural use are misleading, as agriculture is a protected natural resource use under County policy, while the filtration facility represents a fundamentally more intensive and disruptive industrial-scale project. The absence of rigorous, site-specific data and comprehensive environmental assessments undermines the credibility of the applicant's conclusions. Without objective, empirical evidence, claims of compliance remain unsubstantiated, and the County cannot reasonably find that the project meets the required threshold of no adverse effect.

Multnomah County

LUP Hearings <lup-hearings@multco.us>

#T3-2022-16220: Response to S.31

1 message

Cottrell CPO <cottrellcpo@gmail.com> Mon, May 19, 2025 at 10:20 AM
To: LUP Hearings <LUP-hearings@multco.us>

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

LUP,

With regards to the remand of T3-2022-16220, attached is our response to S.31.

Please acknowledge receipt of this email.

Thank you,
Cottrell CPO

Courter-CPO-PHCA Response to S.31.pdf
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