

June 6, 2025

VIA EMAIL

Multnomah County Hearings Officer
1600 SE 190th Ave
Portland, OR 97233
LUP-Comments@multco.us

Re: Portland Water Bureau Filtration Facility and Pipelines
County Case File T3-2022-1622
Objection to PWB Final Written Argument

Hearings Officer Fancher:

Opponents Cottrell Community Planning Organization and the Multnomah County Rural Fire Protection District #1 (collectively CPO/RFPD1) object to the Portland Water Bureau's 275-page final written argument as new evidence.

ORS 297.797(9)(b) defines "evidence" to include "information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision." This final submittal explains for the first and only time how it believes the facts in the record "demonstrate compliance" with LUBA's decision and MCC 39.7515(B) and therefore, constitutes new evidence. The testimony offered by PWB during the open record period set forth a wide and indiscriminate array of statements with no explanation or analysis of how these facts must be evaluated to show that the standard is satisfied. By attempting this demonstration for the first time in its final written argument, PWB is introducing new evidence that prejudices this process. This defect permeates PWB's submittal but some examples to illustrate the point include:

- Offering an interpretation of "adversely affect" that considers only changes that produce "actual harm" that is "more than *de minimis*" asserts facts for how the hearings officer should apply the criterion is new. Whether it takes "linguistic dexterity to understand the meaning of 'adversely affect'" is a new fact offered for the first time. Pp 19-22.
- What conclusions the hearings officer should draw from the 1977 legislative history including highlighting various excerpts and drawing conclusions about what these various passages show or do not show with respect to resource lands are new facts. The highlighted passages on pp 23-24 do not exist in this form in the record. Pp 22-25.

- Which components of project construction activities that may not be considered as part of the use when evaluating adverse impacts based on an interpretation of construction impacts that excludes impacts that extend after construction concludes and operations begin are new facts.
- Quoting passages from a USGS report as a demonstration that PWB should be excused from never checking sediments in Johnson Creek either before the start of construction or subsequent to the massive excavation for contamination sets forth new facts. Pp 245-247. Again, the USGS report is in the record. The point is that it is not until the final written argument did PWB identify which portions of this report served to demonstrate that the criterion was satisfied.
- Explanation that scenic resources do not qualify as protected natural resources because emotional descriptors are used is a new fact. Relying on components of the 2023 initial review as a demonstration that these issues were fully considered is a new fact in that is offered for the first time here in response to MCC 39.7515(B). Whether the “extensive” screening and buffering added to the project during the remand would “only provide additional screening and buffering and aesthetic value” is a new fact. Identifying what is the most prominent feature in the landscape or what other conclusions the hearings officer should discern from images in the record are similarly new facts. Pp 224-231 and elsewhere.

Ultimately, what is offered here is the first and only instance where the applicant attempts to demonstrate that the applicable approval criteria are satisfied. In all cases, land use review is commenced by the filing of a land use application explaining how the applicant believes the applicable approval criteria are satisfied. The very first and only demonstration of the applicant’s perspective was not offered until the record was closed allowing parties to respond. This approach is fundamentally unfair and prejudices the opponents’ substantial rights.

Very truly yours,



Carrie A. Richter

CAR:kms

cc: Client

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

T3-2022-1622 - PWB Objection

1 message

Carrie Richter <crichter@batemanseidel.com>

Fri, Jun 6, 2025 at 11:34 AM

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

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Hello,

Attached please find objections filed by opponents in the above-referenced case. Please confirm receipt and place them in the record for this proceeding.

Thank you,
Carrie

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