

**To:** Alan Rappleyea, Hearing Officer  
Lisa Estrin, Senior Planner Multnomah County Land Use and Planning Division  
**From:** Charles Ciecko, 3630 SE Hosner Ter.; Gresham, Or. 97080  
**Date:** August 25, 2023  
**Subject:** T-3-2022-16220- Rebuttal Testimony In Opposition

This testimony is submitted in response to Exhibit I.96, a memorandum from ESA Consultants (August 4, 2023) and Exhibit I.75, Construction Supplemental Information, PWB, (no date).

This testimony is divided into two sections. Section 1 responds to specific statements and assertions made in Ex I.96 and Ex I.75.

Section 2 documents numerous points raised in my testimony, (Exhibit E.9, June 28, 2023) that were not addressed by Applicant's consultant in Ex.I.96.

### **Section 1.**

- a. Ex I.75, pg. 2: Applicant purports to address issues related to massive amounts of diesel emissions by stating that "The city of Portland participates in the Clean Air Construction (CAC) Program" and "Contractors working on the Bull Run Filtration Project will need to certify that all applicable diesel equipment or vehicles are registered and in compliance with the CAC Program or have a valid exemption."

**Response:**

- While this is intended to sound impressive, there is no evidence presented that compares likely emissions without the CAC Program to the likely emissions with the CAC Program. The reality is that diesel engines (including those equipped with the latest emissions technology) are a significant source of a variety of hazardous emissions that are a known threat to human health, air quality and a significant contributor to the climate crisis.

- Notwithstanding the above, Ex I.75 makes no effort to provide an explanation of what is meant by the phrase "unless exempted" or "have a valid exemption". Additionally, there's no effort to refute the estimated emissions presented as evidence in my June 28, 2023 testimony, the negative health impacts of even short term exposure to diesel emissions, the storage and ongoing use of diesel (50,000 gals stored on site) and thousands of chemical deliveries and sludge disposal trips that will occur every year if

the project is approved (see pg.5-7). Applicant is simply attempting to “green wash” this issue. Diesel emissions represent an undeniable and unavoidable “adverse impact to natural resources” and “hazardous condition” that cannot be remediated or mitigated through any condition of approval.

b. Reference Ex. I. 75 pg 1 “Noise Management”

Applicant states: “The contractors have developed and will implement a Noise Pollution Control Plan during construction. The contractor will use a sound meter to check for sound level verification. Among other noise control best practices, the plan requires that: no equipment will be used that has unmuffled exhausts and all equipment will comply with pertinent standards of the US Environmental Protection Agency (EPA); practices pertaining to dump trucks will limit avoidable practices that generate excess noise such as compression brakes; and contractor will construct temporary or portable 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:**

Applicant’s statements should be viewed with skepticism for the following reasons:

- If, in fact, “contractors *have* developed a Noise Pollution Control Plan, why has Applicant failed to submit it into the record as they have done with the literally hundreds of other exhibits they have submitted so that it can be critically reviewed and responded to by opponents?
- A sound meter is referenced “to check for sound level verification”, however, no information is provided regarding what threshold noise levels would be sampled for and no information is provided regarding actions that would be taken to address exceeded levels or consequences of exceeding the noise thresholds.
- Applicant refers to “pertinent standards of the EPA, however, no reference/ citation is given to allow review of these standards. The EPA website states the following with regard to “noise”:

“The Role of EPA

Under the Clean Air Act, the EPA administrator established the Office of Noise Abatement and Control (ONAC) to carry out investigations and studies on noise

and its effect on the public health and welfare. Through ONAC, the EPA coordinated all Federal noise control activities, **but in 1981 the Administration concluded that noise issues were best handled at the State and local level.** As a result, ONAC was closed and **primary responsibility of addressing noise issues was transferred to State and local governments.** However, EPA retains authority to investigate and study noise and its effect, disseminate information to the public regarding noise pollution and its adverse health effects, respond to inquiries on matters related to noise, and evaluate the effectiveness of existing regulations for protecting the public health and welfare, pursuant to the Noise Control Act of 1972 and the Quiet Communities Act of 1978.” (source, EPA website)

- Applicant refers to “practices that will limit avoidable practices that generate excess noise such as compression brakes...” but fails to: define “avoidable practices”; provide any information about what the “practices” that will limit excess noise entail; or explain how these “practices” could ever be enforced or monitored with the hundreds of thousands of heavy truck trips that would be utilizing rural roads.
- Applicant states: “...contractor will construct temporary or portable 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).” Applicant offers no explanation of “if required”. What individual or agency could require noise barriers and under what conditions? Applicant also observes that noise barriers “could be used” around “other *stationary* equipment” but fails to acknowledge that the vast majority of the construction equipment is not stationary and significant construction activity is proposed to be “located close to property boundaries”. In any event, the efficacy of “noise barriers” is not in evidence in Applicant’s materials.
- Regarding the placement of “noise barriers” at the raw water tunnel portal, it should be noted that the tunnel portal is located at the bottom of a significant slope (designated SEC-h) that is interspersed with residences. In a best case scenario, the result of those “noise barriers” will only be to redirect some of the noise up-slope.

In summary, Applicant’s vaguely worded, unsupported and mis-leading response to construction noise falls woefully short of addressing concerns regarding the

negative impacts to the myriad of wildlife known to utilize habitat within or proximate to proposed project components. **Note: Attachment 4 to Applicant's Pre-hearing Submission, 6/29/23 specifies estimated construction times for Raw Water Pipelines as: shaft/tunnel- approx. 36 months.; pipeline connections-7 months; raw water pipeline to the tunnel portal- 26 months.** Additionally, these lengthy construction periods are in direct conflict with the quiet nature that is a defining element of this rural community's "character of the area".

Applicant has failed to meet its burden. The "will not adversely impact natural resources" and "is consistent with the character of the area" criteria are not met.

c. Reference Ex. I.96, pg. 3-6 (memorandum from ESA Consultants, 8/4/2023): "Woody Vegetation Removal"

This section attempts to downgrade the number of deciduous and coniferous trees located in the ROW along the north and south sides of Dodge Pk. Blvd. as a result of the proposed construction of the finished water pipeline. Ex A. 216 (memorandum from Winterbrook, 3/24/23) indicates that only one pipeline will be constructed instead of the two that were originally proposed. Consultant memorandum, 8/4/23 states: "More than 200 trees will be retained....."

### **Response:**

Ex A.216 refers to updated drawings LU 201, 202, 203 that depict "proposed conditions" with reduction to one pipeline in Dodge Pk. Blvd. dated 3/22/23 . There is no reference to changes in the "existing conditions" drawings so it is assumed they are accurate (including the surveyed trees that currently exist). Careful review of the updated drawings in Ex A.214 (Appendix A.2.a) continues to show all of the existing trees previously included on "existing conditions" drawings will be eliminated and replaced with "road side seeding" . Applicant's consultant points out that no trees in the ROW along the north side of Dodge Pk. Blvd west of Cottrell road will be removed including in the SEC overlay area. A review of the video (Ex. E.38 j) shows why.....there are no trees located in the ROW on the north side of Dodge Pk. Blvd. west of Cottrell Rd. In fact, no trees were noted on the north side in this area in my testimony that exposed this issue. A review of the updated drawing LU 201, however, shows all the trees located in the ROW located east of Cottrell Rd. are eliminated on both the north and south sides of Dodge Pk. Blvd. and replaced with "road side seeding".

**In summary, reducing the number of pipelines in Dodge Pk. Blvd does not reduce the number of trees that will be eliminated. That number remains at**

**324 trees eliminated along with the environmental values they provide as discussed in my previous testimony.**

d. In addition to the information noted above, Applicant's consultant attempts to diminish the value of the trees that would be eliminated within the Dodge Pk. Blvd ROW by describing them as "less than 6" diameter"; "less than 12" diameter"; "small percentage are mature canopy trees"; "non-native"; "single line of saplings and trees" "wildlife habitat functions are limited...."

Applicant's consultant then attempts to diminish the value of the wildlife that benefit from this habitat by describing it as "common birds and small to medium-sized mammals habituated to living in urban environments....."

**Response:**

While consultant offers no evidence to support their desperate claims, the implication that "urban wildlife" has little value or that its habitat is not worthy of consideration is absolutely astounding and should be rejected. To be sure, a proposal to eliminate 324 trees in the City of Portland would not be treated with such arrogance and disregard.

e. Consultant suggests that non-native trees (ie sweet cherry, English hawthorn) lack value for wildlife.

**Response:**

In fact, these species provide important foraging opportunities, cover and nesting sites for a variety of species as well as important habitat for native pollinators. My previous testimony noted the "environmental services" provided by hedgerows including carbon sequestration, heat attenuation and stormwater runoff filtration. In addition to wildlife value, none of these important functions are addressed by Applicant's consultant and all will be lost if this proposed project is approved.

f. Despite the consultant efforts to diminish the value of the "hedgerow" vegetation and the wildlife that benefits from it, consultant then states on pg.6 : "More than 200 trees will be retained in the Dodge Park Road ROW which **will maintain substantial hedgerow function for wildlife.**"

**Response:**

Consultant provides no evidence to support the claim that 200 trees will be retained. This testimony challenges the veracity of that statement as noted

above. Moreover, the assertion that hedgerow function along Dodge Pk. Blvd will be maintained should be viewed with a great deal of skepticism in light of consultant's documented efforts to diminish its value throughout their memorandum. Consultant cannot have it both ways. This is "double talk" and should be rejected.

g. Similar wording is used to diminish the value of the 24 trees that would be eliminated within the raw water project area including: "small saplings, up to 3 inches in diameter"; "Most (approximately 90%) of the remaining trees are 12 inches or less"; "mix of native and non-native species"; "only a handful of canopy trees will be removed". Applicant's consultant does not dispute that the trees will be eliminated but instead claims the eliminated trees are "part of a larger wooded landscape that would retain its wooded character".

**Note:** Applicant's consultant had the capability to provide a detailed inventory of all the trees that will be eliminated in both impact areas because Applicant has surveyed all of the trees and included them in "existing conditions" drawings. Identification of trees to be eliminated and those allegedly retained would have been a relatively easy task by comparing "existing conditions" drawings with "proposed conditions" drawings just as was done in my June 28, 2023 testimony and again in preparation of this testimony. However, consultant did not make the effort suggesting specific inventory would likely compromise the desire to gloss over this issue. General, vague and unsupported statements should be rejected.

h. To offset the significant damage that will occur if the proposed project is approved, consultant proposes "mitigation" at the filtration plant site and claims it "will compensate for the removal of woody vegetation within the Dodge Park Road ROW and the unfiltered water pipeline alignment off of Lusted Road and no adverse impacts to wildlife are anticipated to result."

**Response:**

- This proposed "mitigation" is only brought forward at this late point in the land use process because the Applicant was called out on their plan to eliminate 348 trees. The Applicant never volunteered this information.
- Much, if not the majority, of the proposed "mitigation" is to be located within SEC areas on the filtration plant site. All of these areas have previously been shown to receive native plants in the landscaping plan (Ex A.212.h, 00-LU-306, dated 9/02/22) submitted well ahead of this issue being raised.

- The addition of some trees and shrubs planted in a line and calling it a “hedgerow” will not provide the same function or benefits that the habitat proposed for destruction currently provides. This is because a large portion of the “mitigation” would be located immediately adjacent to a large block of existing forest negating any need for a hedgerow in the first place.
- Applicant’s consultant claims that the filtration site will be quieter and result in less disturbance. There is no evidence to support any claim that an industrial water treatment plant operating 24/7/365 will provide better habitat or be quieter or result in less disturbance.
- Even if additional plantings were to provide clear benefit for the wildlife that will be displaced by Applicant’s proposal, review of the specified planting materials shows all the materials would be “bare root” materials of small diameter and height. This means that any benefit would be a decade or more in the future and after a 5 year construction period.
- Notwithstanding the points above, The Conditional Use criterion requires the Applicant to prove the proposed project “will not adversely impact natural resources”. The criterion is clearly stated and unequivocal. There is no allowance for adverse impacts to natural resources *“if mitigated”*.

In summary, Applicant’s consultant attempts to understate the extent of damage that the proposed project will create, diminish the quality of the habitat that will be eliminated, and downgrade the value of the species utilizing that habitat. Applicant then proposes to mitigate the lost habitat (tacit acknowledgement of adverse impact) with a questionable planting plan in areas that were already proposed for native plantings well before this issue was brought to light. The proposed plantings would not provide any claimed benefit for approximately 10 years after a lengthy construction period. The proposed project does not avoid or mitigate impacts to wildlife habitat as claimed in the memorandum from Applicant’s consultant.

Applicant has not met its burden. The “will not adversely affect natural resources” criterion is not met.

i. Reference Ex. I.96, pg. 8-9 (memorandum from ESA Consultants, 8/4/2023): “General Wildlife and Oregon Conservation Strategy”

This portion of the Applicant consultant’s memorandum seeks to diminish the credibility of my June 28, 2023 testimony by pointing out that the ODFW data “are from large scale landscape mapping efforts **that require site specific evaluation** and are not intended to indicate confirmed presence for a particular parcel.” The consultant memorandum draws special attention to the fact that the

“filtration site does not reflect current mapping of the northern spotted owl nor Columbia white-tailed deer. The nearest critical habitat designation for the northern spotted owl.....is located in the Mt. Hood Nat’l Forest more than 10 miles west of the project area.....” (10 miles west of the project area would be somewhere in the City of Gresham)

## **Response:**

- As noted above by the consultant, the operative words are “**that require site specific evaluation**”. As described below “a site specific evaluation” has not occurred.
- Although consultant certainly had the time and presumably the capacity, no effort has been made to conduct a credible inventory of the species present within or proximate to the project sites. A credible inventory would have involved multiple visits to project areas during each season to capture seasonal variations related to migration, hibernation, and/or estivation. A thorough inventory would have involved a variety of strategies including but not limited to: scent traps, motion activated wildlife cameras, game trail cameras, scat samples etc. (mammals); seasonal visits during migration and breeding seasons utilizing visual and audio point surveys (avian); egg mass surveys in ponds/wetlands during late winter and spring months to determine the presence of amphibian species (ie long-toed salamander, pacific salamander, red-legged frog, rough-skinned newt ).
- However, no effort was made to conduct any inventory. According to previous consultant testimony (“Raw Water Pipeline Wildlife Conservation Plan”, 5/27/22, Exhibit A.67, G1, pg 4) only 1 site visit was made to raw water pipeline project area on October 19, 2020. The finished water pipeline was never mentioned in previous consultant testimony and likely not visited until after the hedgerow destruction issue was raised in my June 28, 2023 testimony.
- Instead, consultant’s 5/27/22 memorandum simply makes a conclusion of “no impact” because the raw water pipeline would be bored underneath the SEC-h area. There is absolutely no evidence to support this conclusion nor could there be without answering the fundamental question about what species are present within or proximate to the project areas.
- In fact, the consultant memorandum (Ex. I.96, 8/4/23) represents the first time “wildlife” is even discussed. Consultant assertions are undocumented, speculative and/or based on a “review of existing information”.

- While the caption under Figure 4, (Exhibit E.9, pg15), lists Spotted Owl and Columbia white-tailed deer, it also lists coho salmon and steelhead trout. Both of the latter listed species are present in both the Sandy River and Johnson Creek proximate to the proposed plant and pipeline project areas. Moreover, the caption for Figure 4 specifically states: “Species are listed in Table 1”. Table 1 (Exhibit E.9, pg.16,17) includes a substantial list of other species (fish, amphibian, avian, mammal, and other). Consultant makes no effort to refute the list. More importantly, consultant has made no effort to determine the presence of the species included in Table 1 that includes both ESA listed species and species listed by Oregon Dept. of Fish and Wildlife as “sensitive” and “protected”.
- Consultant statement that the proposed project areas are far from northern spotted owl and Columbia white-tailed deer is irrelevant. An assertion that the existing habitat is not rare or designated critical or crucial habitat by state or federal agencies does not diminish its value for regional or local wildlife resources.

In summary, consultant has made no effort to undertake a credible inventory of “wildlife” resources utilizing habitat within or proximate to the proposed project areas and consequently is in no position to draw any supportable conclusions regarding the project’s impact on these natural resources.

Applicant has failed to meet its burden. The “will not adversely affect natural resources” criterion is not met.

j. Reference Ex. I.96, pg. 9 (memorandum from ESA Consultants, 8/4/2023):  
Consultant states: “Additionally, the pipeline alignments will be restored to natural ground cover following construction using native seeding and/or woody plantings to benefit local and migrating wildlife species.”

## Response:

- There is no evidence to support this assertion. As noted previously, Ex A.214 (Appendix A.2.a) shows the vast majority of the disturbed ROW replanted with “roadside seeding” (no definition). Only the small SEC area (just west of Cottrell Rd on the north side of Dodge Pk. Blvd.) is identified for “SEC seeding”(native grasses and forbs).
- A review of Ex A.214.I, LU-200 shows virtually all of the disturbed area related to the raw water pipeline seeded with “pasture seeding” except for a tiny strip along the south property line.

In summary, consultant’s statements are conclusory, contradicted by submissions in the record from the Applicant, and undefined.

The Applicant has failed to meet its burden. The “will not adversely impact natural resources” criterion is not met.

## Section 2

This section provides a list of significant issues raised in my June 28, 2023 testimony that neither Applicant or the consultant have refuted or otherwise responded to:

- pg 6- Health Impacts of exposure to diesel emissions even at low concentrations and through short-term exposure.
- pg 7- Continued exposure to harmful emissions even after lengthy construction period.
- pg 11- Negative Impacts to “wildlife” from extended exposure to construction noise, ground vibration/blasting, and harmful diesel emissions. **Note: Attachment 4 to Applicant’s Pre-hearing Submission, 6/29/23 specifies estimated construction times for Raw Water Pipelines as: shaft/tunnel- approx. 36 months.; pipeline connections-7 months; raw water pipeline to the tunnel portal- 26 months.** Applicant’s Noise Control Plan discussed in Section 1 above does not even mention “wildlife”.
- pg 11- The value of “edge habitat” to a variety wildlife/avian species.
- pg 18- USFWS-Birds of Conservation Concern known to utilize habitat within or proximate to proposed raw water pipeline project area.
- pg 19- Consultant misrepresentation of ODFW correspondence regarding “impacted habitat”.

- pg 19/20- Consultant failure to reconcile their assertions regarding “habitat quality” with conflicting views of multiple expert sources.
- pg 20- Applicant failure to conduct wetland inventory in raw water pipeline project area.
- pg 21- Failure to consult with Oregon Division of State Lands.
- pg 23- Likely damage from use of “pipeline drains” in raw and finished water pipelines.
- pg 28- Significant elements of the proposed project are not addressed in the land use application thereby making complete assessment of project impacts impossible.

## **Conclusion**

Applicant has failed to provide a thorough or persuasive response to the environmental and public health threats that will accrue to this rural community from the ongoing exposure to toxic diesel emissions. These emissions represent a “hazardous condition” and an “adverse impact to natural resources” that cannot be addressed through any “conditions of approval”.

Applicant’s “Noise Pollution Control Plan” is vague, unsupported by evidence, and misleading. The impacts of construction noise that Applicant acknowledges will last for years is significant and un-refuted in regards to both wildlife and the character of this rural area.

Consultant misrepresents the scope of damage associated with proposed finished/raw water pipeline projects; attempts to diminish the value of the habitat that will be lost and the wildlife that will be displaced; and proposes a questionable “mitigation plan” within an area of the filtration plant site that was already proposed for native plantings. All of this occurs within the context of the consultant never having undertaken a credible inventory of wildlife, vegetation, or wetlands.

Applicant has failed to respond to significant issues raised in previous testimony that provided evidence documenting “adverse impacts to natural resources”.

Based on the foregoing, Applicant has failed to meet its burden with regard to the “is consistent with the character of the area”; “will not create hazardous conditions” and “will not adversely impact natural resources” criteria included in “MCC 39.7015 Conditional Use Approval Criteria”.

Application T-3-2022-16220 should be denied.

Thank you for considering my testimony.



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## Rebuttal Testimony in Opposition to PWB Application T3-2022-16220

1 message

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**Charles Ciecko** <cciecko51@gmail.com>  
To: LUP-comments@multco.us

Tue, Sep 5, 2023 at 8:07 PM

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

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Please enter into the record the attached rebuttal testimony in opposition to PWB Application T3-2022-16220.  
Thank You  
Charles Ciecko

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 **Ciecko Rebuttal.pdf**  
114K