

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Approval of an Amendment to the)
Yamhill County Transportation System Plan, a part)
of the Transportation Element of the County)
Comprehensive Plan, Acknowledging the County)
Purchase of an Approximately 12-Mile Segment) Ordinance 904
of a Former Union Pacific Rail Corridor and)
Immediate Plans to Develop a Multi-modal Trail in)
the Segment of the Corridor Extending from the)
City of Yamhill, South to the City of Carlton)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on May 15, 2018, Commissioners Mary Starrett, Richard L. "Rick" Olson and Stan Primozych being present.

WHEREAS, the county, using grant money obtained from the Oregon Department of Transportation and the Oregon Department of Parks and Recreation, has purchased an approximately 12-mile segment of (generally) 60-foot wide rail corridor from the Union Pacific Railroad and has obtained from private donors additional connecting easements; and

WHEREAS, in 2012, by Ordinance 880, the county amended its Transportation System Plan "to Accommodate the Yamhelas 'Rails to Trail' Project," and established county support for "the Hagg Lake to McMinnville Rail With Trail Project (Yamhelas Westider Trail Project)," indicating that the county "considers [the project] important to both the County's rail and trail/bikeway systems;" and

WHEREAS, the county has received additional grant funding to begin planning and construction of one trail bridge, and to develop plans for two additional trail water crossings within a segment of the planned trail from Highway 240 just east of the City of Yamhill, into and through the City of Carlton; and

WHEREAS, the Transportation System Plan amendment proposed by this Ordinance and draft findings in support of this Ordinance were considered by the Planning Commission at a duly noticed public hearing on May 3, 2018; and

WHEREAS, following receipt of testimony and evidence, the Commission voted unanimously to forward the proposal to the Board without a recommendation; and

WHEREAS, following an additional public hearing held on May 15 before the Board of Commissioners, the Board voted two to one to approve this Ordinance, NOW, THEREFORE,

THE BOARD ORDAINS AS FOLLOWS:

Section 1. The application is approved for the reasons stated in the findings attached as Exhibit "A" and incorporated into this ordinance by this reference.

Section 2. The Yamhill County Transportation System Plan, a part of the Transportation Element of the County Comprehensive Land Use Plan, is amended to add the following paragraph to page 139 of the plan, as amended by Ordinance 880 (new language is underlined):

"5. HAGG LAKE TO MCMINNVILLE RAIL WITH TRAIL PROJECT
(YAMHELAS WESTSIDER TRAIL PROJECT)

"In 2002, Union Pacific Railroad proposed to sell 17-miles of abandoned railway for \$9 million. In 2012 the asking price was reduced to \$2.4 million. The abandoned railway runs from McMinnville to Hagg Lake. The corridor connects the cities of McMinnville, Carlton, Yamhill and Gaston. The majority of the railway is in Yamhill County, with 1.75 miles entering into Washington County. (See Figure 31.1)

"The Hagg Lake to McMinnville Rail with Trail project is a multi-faceted solution to multiple issues. It would allow alternative access to destinations, increase tourism, and assist with the movement of goods in the Willamette Valley. Hagg Lake provides various facilities to the public and cycling communities greatly utilize the roads surrounding the lake. From this destination and traveling south, the only access for cyclists is along a busy state highway (Hwy 47). There is a lack of off-stree recreational trails in this area.

"The proposed trail would also enhance economic development. Presently tourism and the mobility of goods from Portland to Yamhill County happen via highway 47. The long term goal of this project is to have a rail line along with the trail component. The Rail with Trail project will improve regional accessibility for business owners and allow the connection to to other rail lines in the future. Yamhill County is known for its agricultural production and wine industry. This project will also be a critical factor towards the long term viability for manufacturing and tourism in the valley."

In 2017, the county purchased and obtained through donations approximately twelve miles of the Yamhelas Westsider corridor, using 1.4 million dollars in grant funding obtained from the Oregon Department of Transportation and Oregon

Department of Parks and Recreation. At the same time, owners of trail segments within the City of Carlton donated easements to accommodate trail uses. The county now has the right to develop the entire corridor for trail uses, and intends to begin development of the proposed trail segment between Oregon Highway 240 east of the City of Yamhill into the City of Carlton.

The county continues to support the original plans for use of the corridor as outlined above. Development at this time of a trail connecting the cities of Yamhill and Carlton promotes the county's transportation goals; will provide a safe alternative to Oregon Highway 47 for bicyclists; will provide a safe transportation alternative for students in the Yamhill-Carlton school district; will accommodate equestrians; and will demonstrate that trail uses can be made to be compatible with farm uses and farm practices, thereby promoting the long-term goals of the plan for development of the entire envisioned trail as an interim use, and even longer-term goal of development of a rail and trail project in the corridor.

Section 3. Prior to formally opening a multi-modal trail in the segment of corridor between State Highway 240 and the City of Carlton:

(a) Fencing, capable of preventing dogs and people from entering adjacent farm fields, shall be installed by the county along the entire trail segment, unless an owner of adjacent land indicates that such fencing is not necessary to separate that owner's land from the trail corridor; and

(b) Signage shall be installed at each point of trail entry from a public right-of-way or trailhead, directing and warning trail users not to trespass onto adjacent lands; not to touch, pet, or otherwise harass livestock; indicating that agricultural uses are taking place in the area, and to expect potential dust, noise, agricultural and pesticide smells; and indicating that, at designated agricultural trail crossings, delays may occur, and that farm operators and machinery have the right-of-way over pedestrians and other trail users.

Section 4. Prior to trail construction (other than initial bridge construction) a final plan or master plan, which shall be a collaborative and coordinated effort, will be approved by the Board, outlining additional trail design, management and mitigation measures, measures that are not necessary to meet state farm impact standards but will help to ensure long-term minimization of conflicts between trail users and neighboring landowners.

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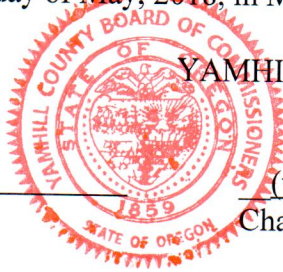
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DONE this 31st day of May, 2018, in McMinnville, Oregon.

ATTEST



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

(voted "no," unavailable for signature)

Chair

MARY STARRETT

By: Carolina Rook

Deputy Carolina Rook

Richard L. Olson
Commissioner

RICHARD L. "RICK" OLSON

FORM APPROVED BY:

Timothy S. Sadlo

Senior Assistant County Counsel

Stan Primozych
Commissioner

STAN PRIMOZICH

EXHIBIT A – Ordinance 904
Amendment to Transportation System Plan Component of the
Yamhill County Comprehensive Plan
Findings to Address Potential Impacts to Farm Costs or Practices
Associated With Development of a Segment of the Yamhelas Westsider Trail
Between the Cities of Yamhill and Carlton

1. Introductory Matters.

DOCKET NO.: G- 1-18

REQUEST: Amend the Transportation System Plan component of the Yamhill County Comprehensive Plan to add findings addressing ORS 215.296.

APPLICANT
AND OWNER: Yamhill County

TAX LOT: 3421-0190

LOCATION: East of, and running roughly parallel to Oregon State Highway 47, between the cities of Yamhill and Carlton

ZONE: EF-80, AF-10

1.1 These findings have been developed by county legal counsel to address ORS 215.296 in anticipation of the development of a hiking, biking and equestrian trail between the cities of Yamhill and Carlton. Public notice is being provided generally within Yamhill County, and specifically to all property owners whose property is wholly or partially within 750 feet of the transportation corridor previously owned by Union Pacific Railroad, and purchased from UPRR in November, 2017.

1.2 On December 6, 2012, the county adopted Ordinance 880, amending its comprehensive plan to specifically “acknowledge the potential future use of a 15.25-mile section of Union Pacific Railroad right-of-way between McMinnville and Gaston as a bicycle and hiking trail, and to provide for potential future use of the same right-of-way for commuter and/or freight rail.” These findings support the adoption of an additional amendment to the county’s comprehensive plan acknowledging the ownership of approximately 12 miles of the corridor by the county, and designating the segment between and including the cities of Yamhill and Carlton as the first trail segment to be constructed through grant funding that the county is in the process of receiving.

1.3 Policy 5.5 of the county’s Comprehensive Land Use Plan, entitled “Air/Rail/Water/Pipeline Plan,” was amended by Ordinance 880 to add the following sentence:

B.O. 18-156

“4. Yamhill County supports the Hagg Lake to McMinnville Rail With Trail Project (Yamhelas Westsider Trail Project) and considers it important to both the County’s rail and trail/bikeway systems.”

1.4 Under the heading “A. Yamhill County Bikeway System Suggested Improvements” the county added:

“HAGG LAKE TO McMINNVILLE RAIL AND TRAIL PROJECT

Vicinity:	North Central Yamhill County
Section:	Union Pacific Railroad From McMinnville to Hagg Lake
Length:	15.25 miles in Yamhill County
Alignment:	Horizontal Predominantly flat
Recommended Action:	Construct a multi-use path along the existing railroad right-of-way
Estimated Cost:	TBD (ROW acquisition is \$2.4 million)”

A map shows the trail starting just north of St. Joseph, and running north to cross Scoggins Creek, in Washington County, labeled “Hagg Lake to McMinnville Rail with Trail.”

1.5 Ordinance 880 also added a Section 5. to a section entitled “H. Other Transportation Projects,” as follows:

“5. HAGG LAKE TO McMINNVILLE RAIL WITH TRAIL PROJECT (YAMHELAS WESTSIDER TRAIL PROJECT)

In 2002, Union Pacific Railroad proposed to sell 17-miles of abandoned railway for \$9 million. In 2012 the asking price was reduced to \$2.4 million. The abandoned railway runs from McMinnville to Hagg Lake. The corridor connects the cities of McMinnville, Carlton, Yamhill and Gaston. The Majority of the railway is in Yamhill County, with 1.75 miles entering into Washington County. (See Figure 31.1)

The Hagg Lake to McMinnville Rail with Trail project is a multi-faceted solution to multiple issues. It would allow alternative access to destinations, increase tourism, and assist with the movement of goods in the Willamette Valley. Hagg Lake provides various facilities to the public and cycling communities greatly utilize the roads surrounding the lake. From this destination and traveling south, the only access for cyclists is along a busy state highway (Hwy 47). There is a lack of off-street recreational trails in this area.

The proposed trail would also enhance economic development. Presently tourism and the mobility of goods from Portland to Yamhill County happen via Highway 47. The long term goal of this project is to have a rail line along with the trail component. The Rail with Trail project will improve regional accessibility for

business owners and allow the connection to other rail lines in the future. Yamhill County is known for its agricultural production and wine industry. This project will also be a critical factor towards the long term viability for manufacturing and tourism in the valley.”

These amendments were added by a unanimous vote of the Board of Commissioners following a duly noticed joint hearing between the county Planning Commission and the Board.

1.6 ORS 215.283 lists the uses allowed outright and conditionally in EFU zones, in ‘non-marginal land’ counties, including Yamhill County. ORS 215.283(3) states:

“(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529 Oregon Laws 1993.”

1.7 The reference in ORS 215.283(3)(b) is to LCDC’s Transportation Planning Rule. OAR 660-012-0065, entitled “Transportation Improvements on Rural Lands” subsection (3) states:

“(3) The following transportation improvements are consistent with Goals 3, 4, 11 and 14 subject to the requirements of this rule:

* * *

(h) Bikeways, footpaths and recreational trails not otherwise allowed as a modification or part of an existing road;”

1.8 Subsection (5) then states:

“(5) For transportation uses or improvements listed in subsections (3)(d) to (g) and (o) of this rule within an exclusive farm use (EFU) or forest zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:”

The three subsections that follow impose requirements, in addition to ORS 215.296, that must be addressed for uses or improvements listed in subsections (3)(d) to (g) and (o). A memo dated May 19, 2015 and written by a DLCD planner concluded that subsection (5) “indicates that, in EFU and

forest zones, all listed uses not subject to the additional criteria, including 'bikeways, footpaths and recreation trails,' are subject to the ordinary ORS 215.296 criteria."

1.9 The county does not agree with DLCD staff's analysis. It is possible that a court or LUBA would agree with DLCD staff's interpretation of the rule, and it is also possible that DLCD staff's interpretation would be rejected. DLCD staff's interpretation requires an assumption that the section "indicates" that ORS 215.296 applies to all uses on the list, while section (5) specifically excludes, by reference, "(h) Bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road."

1.10 OAR 660-012-0065 states that a recreational trail is consistent with Goals 3, 4, 11 and 14, and does not require that a local government comply with ORS 215.296 or the additional requirements of OAR 660-012-0065. The rule is ambiguous, and is not an appropriate basis for requiring that the county comply with a statute (ORS 215.296) that, by its terms, applies only to conditional uses listed in ORS 215.283.

1.11 These findings concerning the Transportation Planning Rule are offered in the way of explanation. The county and its Board of Commissioners have indicated an intent to identify all potential conflicts between use of the corridor as a trail, and all nearby property owners and uses, including potential impacts to the costs of farming or to farm practices.

2. Applicable Law. ORS 215.296 states, in relevant part:

"Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards. (1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective. * * *

2.1 As explained in Schellenberg v. Polk County, 21 Or LUBA 425, 440 (1991) and subsequent cases, the ORS 215.296(1) test requires that the county identify the accepted farm and forest practices occurring on surrounding farm lands, and then consider whether the proposed use will force a significant change in, or significantly increase the cost of, identified practices. ORS 215.203 defines "farm use," and contains the following definition of "accepted farming practice" that is appropriate to reference in this circumstance. ORS 215.203(2)(c) states:

“As used in this subsection, ‘accepted farming practice’ means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.”

2.2 For purposes of this analysis, the “area” under consideration includes all farm operations wholly or partially within 750 feet of the (generally) 60-foot wide transportation corridor. The portion of the corridor where trail development is expected to occur first runs from approximately 750 feet north of State Highway 240 south to the northern city limits of the City of Carlton.

2.3 All farms and farm operations wholly or partially within the area extending 750 feet north of State Highway 240 and within 750 feet of the corridor to the city limits of the City of Carlton have, or should have, received mailed notice of these proceedings. A hearing was held before the Planning Commission on May 3, 2018. At the hearing, farm managers and operators within the notice area and from elsewhere in the county supplemented the record with additional, more specific evidence and testimony regarding the types of crops and/or livestock and related farm practices taking place in the area, along with the types of costs that might be incurred by farm operations in the area if the corridor is developed and used as a pedestrian, bicycle and equestrian trail.

2.4 A spreadsheet and maps were entered into the record, along with basic information about the corridor and the types of farm uses that appear to be taking place in the area.

2.5 Crops grown in the area typically include hazelnut and fruit orchards; grass seed; hay; pasture; clover; Christmas trees; and row crops. No specific livestock operations were identified within the 750-foot notice area, but horses appear to be stabled or grazed on some farms in the area, and testimony was received at the hearing of alpacas kept on property adjacent to the corridor segment under review. Following the public hearings on this matter, a person testified to the Board that he has milking cows within 750 feet of the trail corridor. Other crops that might be present because they are common in Yamhill County include sweet corn, raspberries, marion berries, beans, cherries, arborvitae (nursery stock). Testimony was also received regarding cattle and sheep being raised or maintained in the area or along other segments of the corridor. The area also includes riparian and forested areas where no farm uses are currently taking place.

2.5 Plowing, burning, application of herbicides and pesticides, disking of orchards and machine harvesting are accepted farm practices in the area under the ORS 215.203(2)(c) definition. There are also, likely, organic and sustainable agricultural practices taking place. Farm labor is likely employed in the area to tend and harvest many of the crops noted. Farm machinery is routinely transferred from field to field in the area, and in some cases must routinely cross the corridor. Testimony was received regarding the harvesting of grass seed, and the need to regularly cross the corridor during harvest and other times of the year. (The county has indicated its intent to honor existing easements and to accommodate other farmers and farm operations that would benefit from a legal arrangement allowing them to cross the corridor for farming purposes.) Fields may be irrigated by well or direct withdrawal from surface water sources. No commercial forestry

has been identified in the area, although forest and small woodlot uses accessory to agricultural uses likely take place.

2.6 The predominant farm use adjacent to the trail appears to be the production of grass seed and/or pasture. Additionally, a large (approaching 10,000 trees) hazelnut orchard was recently planted along the eastern edge of the corridor. At the location of the orchard, the corridor is heavily wooded, buffering informal trail use apparently being made of the corridor. There is also a dwelling, and State Highway 47, to the east and within 150 feet of western edge of the orchard. The owner of the orchard also maintains an accessway (dirt road) adjacent to the corridor, further buffering (by distance) the corridor from the hazelnut orchard.

2.7 In prior meetings and hearings before the Board of Commissioners and/or Planning Commission, and at the May 3, 2018 hearing, testimony has been received outlining perceived and/or anticipated impacts from public use of the corridor as a public trail. It has been asserted that new rules first proposed by the U.S. Environmental Protection Agency, and now proposed by the Oregon Occupational Safety and Health Administration, will prevent a farm operator raising filbert trees from spraying those trees located within 150 feet of the trail, and within 150 feet of Highway 47. The allegation includes an assertion that it is the presence of the trail and trail users that will cause the farm operator's costs to rise significantly, and to include the loss of profits from an inability to properly manage the area within 150 feet of the trail.

2.7.1 In these proposed findings, county staff recommends that this claim be rejected, for the following reasons. First, state and federal law currently prohibit the spraying of pesticides and/or herbicides and/or fungicides (herein, "pesticides") or other substances potentially harmful to human health on people or on property other than property owned or otherwise under the control of the farm operator. Pesticide labels, generally, indicate that they should not be sprayed on workers or others, on livestock or other animals, or applied in a manner likely to cause them to "drift" off-site. (*see* ORS 634.372(2) and (4)). Farmers or spray operators who allow pesticides to drift can currently be held "strictly liable" because such activities can be considered "abnormally dangerous." Actions for trespass and negligence are currently not foreclosed by right-to-farm laws, even as those laws provide limited protection to farm operators for pesticide use that is "done in a reasonable and prudent manner." (*see* ORS 30.939) It is not the county or anyone else associated with the trail or its use that is proposing rules that might limit spraying within the boundaries of a farm, and any increased cost due to a new administrative rule adopted by the federal or state government is not a cost that can logically be attributed to users of the proposed trail.

2.7.2 The argument from opponents is that the existence of the trail will put additional persons in potential harm's way from pesticide drift, and that farm/spray operators will incur additional, "significant" expenses to prevent drifting pesticide spray from landing on users of the trail. "Reasonable and prudent" pesticide application is, under ORS 30.939, "considered to be a farming practice" for purposes of state farming protection laws.

2.7.3 To date, testimony has been received from one farm operator who farms a hazelnut orchard adjacent to a segment of the corridor that is not subject to this application, and from several farm operators along the segment of corridor in question who grow grass seed. The

hazelnut farmer stated that he farms 35 rows of hazelnut trees between Highway 47 and the corridor. When discussing an EPA rule, now being considered (in modified form) for adoption by the Oregon Occupational Safety and Health Administration, he stated that he would not be able to spray the eight rows of trees closest to the highway. If the trail is developed, he would not be able to spray the eight closest rows to the trail. He stated that the trees need weekly foliar sprays in the morning when tree sugar is at a certain level. He also discussed the need to manage filbertworm outbreaks, and eastern filbert blight that kills trees three years after it first appears. He stated that there are newer, more resistant varieties, but those trees can still be killed by the blight, ten years after it appears. Testimony received from a second farmer, who grows hazelnuts near Wheatland, was to the effect that the county should indemnify farmers against potential claims by trail users that they have been harmed by pesticide drift.

2.7.4 Written testimony submitted into the record indicates that the proposed Oregon OSHA rule has nothing to do with the trail, or any other public transportation facility. That testimony indicated that the proposed Oregon OSHA rule is for the purpose of protecting “workers (and occupants of labor housing) and is not intended to apply outside the farm (even in re workers at an adjacent farm).” Under the proposed rule, the responsibility of farm operators to avoid spraying people and to prevent the drift of pesticides off of their property is unchanged.

2.7.5 Under existing spray regulations, it is possible that reasonable and prudent precautions can be taken, at little cost, to minimize potential conflicts between farmers and/or spray operators and trail users. It may be possible to schedule spraying in the early morning or at other times when trail use is light. Signs can be posted on the trail at both ends of a stretch of trail near locations where spraying is scheduled to take place. Such signs are currently available, and have been seen in use along the corridor near Gaston. Temporary barriers, with signage, might be employed to prevent trail users from risking contact with pesticide drift. State law already requires that farmers and spray operators be trained in proper methods of applying pesticides and that they follow the label instructions of the spray being applied. Off-site pesticide drift is not allowed. The county, or other trail operator, is capable of cooperating fully with neighboring farm operations to ensure that reasonable and prudent steps are taken by all parties to avoid accidental poisoning of trail users.

2.7.6 Testimony has also been received indicating that the smell of pesticide might drift off of the property to which it is applied, and that trail users who smell it might think they had been sprayed, leading to expensive complaints and time consuming inspections of farm operations by governmental agencies. However, these impacts, which are attributed to the perception of individuals who smell pesticides and who would then create bureaucratic headaches for farmers, are speculative. This type of complaint is no different from the same types of complaints that might currently be generated by travelers on the numerous existing roads in the county. Testimony was received indicating that trail users are more exposed than individuals driving on county roads, and are more likely to complain about dust, noise and obnoxious odors routinely produced by farm operators.

2.7.7 Testimony has also been received indicating that signage can be effective in both warning and educating trail users about potential farm odors, pesticide odors, dust, noise, and/or smoke that visitors may experience while using the trail. Signage can also be used to warn

trail users of the prohibitions on touching or interacting with livestock maintained on private property; of trespassing on private property; of littering; of vandalism and/or camping in the corridor or on adjacent lands. Appropriate signage at trailheads and at appropriate locations along the trail can effectively minimize potential conflicts between trail visitors and farming uses and practices.

2.7.8. With regard to the indemnification of farm operators against possible lawsuits arising from spray drift—as noted, Oregon has right-to-farm laws that currently limit lawsuits against farmers following accepted farming practices. Counties do not currently indemnify farmers against claims by users of county roads that they have been harmed by pesticide drift. Although testimony was received that other jurisdictions provide such indemnification, no specific examples have been identified. No rational basis has been identified for what would seem to be an extraordinary program of protecting farmers and/or farm operations from liability for practices that may or may not be “reasonable and prudent.”

2.7.9 Without additional evidence to the contrary, county staff concludes that the existence of a trail through the existing 60-foot transportation corridor is unlikely to force a significant change in accepted farm or forest herbicide and/or pesticide spraying practices on surrounding lands, or to significantly increase the cost of spraying in the surrounding area. Clear and objective conditions establishing coordination with neighboring farms and spray operators; signage and the possible use of temporary barriers during times of spray application will further minimize potential conflicts between applications of pesticides and use of the corridor by hikers, bikers, and equestrians.

2.8 The county has also received testimony from numerous farmers, including some that are located within the notice area for this proceeding. Some of those farmers have indicated that trail users will trespass on their property, significantly impacting farm practices and/or costs. Examples given included: trail users defecating and urinating in surrounding farm fields and orchards; littering and illegal dumping in surrounding farm fields; dangerous or harassing interaction between trail users and livestock; and crops trampled by trail users seeking photo opportunities. Some have likened the proposed use of the corridor as a hiking, biking and equestrian trail to the Springwater Corridor in SE Portland, and have indicated that they fear homeless people and clueless tourists will wander onto their land trampling crops, littering, doing drugs, interrupting spray operations, stealing, committing acts of vandalism, or setting up makeshift camps. A farmer also testified that “fire” was an issue. There is no reason to believe that trail users present any greater risk of fire than is posed by users of other public rights-of-way in the county. Additionally, a developed trail will provide greater access for fire response vehicles to areas adjacent to the trail.

2.8.1 In the area of the proposed trail, Yamhill County is rural, with a far lower incidence of homeless persons attempting to establish camps than the Springwater Corridor, which is a relatively dense urban and suburban area. Problems related to homelessness in the Springwater Corridor reached crisis levels at a time when the city, as a matter of policy, stopped enforcing laws along the corridor prohibiting overnight camping. This type of problem can be minimized regarding a trail in the Yamhill corridor, through appropriate signage; through the establishment

of rules governing use of the corridor that prohibit camping within the corridor, and through the enforcement of existing laws prohibiting trespass on private property.

2.8.2 It is possible that trespassing, and all that it potentially brings—damage to crops, vandalism and other criminal activities—could significantly impact farm practices and significantly increase the cost of farming. However, there are effective management and design mechanisms to reduce the potential threat of trespass and its impacts, including fencing, signage and policing. Additionally, hiking, biking and riding horses are activities that attract law abiding citizens and families, the presence of which has been found to be a natural deterrent to crime along other, developed trails. Especially in areas that might attract trespassers, signage and fencing can be used to hinder or prevent most trespassers and to alert law-abiding citizens to the presence of trespassers. Trail design should also include use of bollards and/or gates that can be accessed by law enforcement personnel traveling on or in motorized vehicles, to allow law enforcement patrols and rapid police response to reported criminal incidents. Conditions are proposed requiring the establishment and maintenance of trail features (including fencing and signage) designed to minimize the potential for trespass and to improve the ability of law enforcement to respond quickly. With such conditions, it is possible to prevent trespassing that might otherwise significantly impact accepted farm practices on surrounding lands dedicated to farm use or significantly increase the cost of farming such lands.

2.9 It should also be noted, with regard to potential impacts to farm uses generally: the corridor is, for the most part, at least 60 feet wide. Trail uses are expected to occupy only 12 feet of that width. That leaves a potential buffer area of up to 24 feet on both sides of the proposed trail. Within that buffer area, there is room for fencing as well as landscaping to potentially block views of neighboring farms and farm operations, or to enhance the security of fencing.

2.10 It should further be noted that farm uses have, for the most part, peacefully co-existed with nonfarm uses and existing transportation corridors in Yamhill County and throughout the state and nation for many years. Farmers and spray operators appear, for the most part, to accommodate travelers of county roads, and state and federal highways, without undue expense and without significantly impacting the use of accepted farm practices. The same methods used to protect existing users of existing roads are available to protect trail users, and should not be significantly more expensive or impactful when protecting persons walking, on bicycles or horses, than those on bikes, in cars or on motorcycles on the county's many roads, with a smaller buffer area than is potentially available with the proposed use.

2.11 It is the county's intent to mitigate and attempt to minimize all perceived and potential impacts to farming from use of the rail corridor as a trail. It appears feasible for the county to minimize those impacts and expenses.

2.12 Although the initial trail development will extend into the city limits of the City of Carlton, those areas are plan and zone designated for urban uses. The county intends to mitigate and minimize potential impacts to those uses and property owners as well, but is not required to address those uses under ORS 215.296.

2.13 Successive county Boards of Commissioners have supported the development of a trail in the existing corridor stretching roughly from Hagg Lake to McMinnville. Benefits include increased recreational opportunities, greater tourism, greater opportunities for agri-tourism, and an alternative to automobile use for commuters and children attending the schools in the Yamhill Carlton School District. In the case of the corridor segment between Yamhill and Carlton, those two communities already share a school system, which would likely benefit from a safe bicycle route between schools and students living in both communities. This community connection also raises the potential that the trail will receive adequate funding for design, maintenance and security, furthering community and trail development goals of preventing trespass and crime generally within the corridor.

2.14 In summary: the trail is proposed for development in a pre-existing rail corridor, constructed beginning circa 1872 and now owned by the county, where freight and passenger trains operated for approximately 100 years. It will provide low impact, passive recreation and transportation opportunities. The potential farm impacts that have been raised to date are impacts from farming on trail users—e.g.: overspray, and use of poisons that might accidentally kill someone's trespassing pet. The exception is impacts to farm uses by trespassers. There are mitigation and minimization practices and technologies that can be employed to minimize most of the impacts alleged. The corridor is (generally) at least 60 feet wide through rural areas, and trail uses will likely occupy no more than 12 feet of that 60 feet. Fencing and signage alone will minimize potential trespass impacts to farm practices and costs to a level at which they can no longer be considered "significant." Additional mitigation, to farm impacts and to other non-farm uses and practices, can be established and employed through a final design or master plan to further minimize potential trespass impacts. Trail users can be warned by way of appropriate signage regarding spray practices in areas where neighboring farmers insist on spraying up to the corridor. Right-to-farm laws limit the liability of farmers following accepted farming practices. Other existing laws prohibit the application of herbicides and/or pesticides in a manner that allows those substances to leave the property of the user, or to come into contact with humans or animals. It therefore appears that the potential impacts to farm uses identified to date can be minimized by appropriate fencing and signage. Additional mitigation, not necessary to meet the farm impact standards in ORS 215.296, can be provided through final design and/or a master plan established prior to the formal opening of the corridor for use by the general public.

2.15 The following findings address the consistency of the proposed plan amendment with the Statewide Land Use Planning Goals.

2.15.1 Goal 1—Citizen Involvement. Goal 1 directs local governments to adopt and to administer programs to assure citizen involvement in all phases of the planning process. In this case, the notice of hearing and all other elements of the hearings process before the Planning Commission and Board of Commissioners complied with applicable law and provided full opportunity for citizen involvement. All of the hearing held regarding the proposed Ordinance and other aspects of trail acquisition and planning have been well attended.

2.15.2 Goal 2—Land Use Planning (Coordination and Factual Base). Goal 2 requires that the county coordinate its land use decisions with the plans of other affected governmental units. Affected governmental units are those local governments, state and federal

agencies and special districts that have programs, land ownerships, or responsibilities within the area affected. The county, all state agencies, and many federal resource agencies, have long-established coordination programs to facilitate review of land- and resource-use proposals. It is the county's standard practice to notify relevant state and local governments and agencies of proposed land use actions, and that practice was followed in this case.

Goal 2 also requires that the county establish a factual basis for its decisions. A factual basis for this decision has been established through the course of the application and review process and was supplemented through the hearing process. The county's decision is supported by substantial evidence.

2.15.3 Goal 3—Agricultural Lands. Goal 3 directs local governments to preserve and maintain agricultural land. The trail corridor is situated in a farm zone, but has been covered with ballast, compacted, and used as a railroad corridor for approximately 100 years. Much of the corridor is no longer suitable for growing crops, and the corridor remains suitable as a transportation corridor that has remained relatively intact since circa 1882. The county has considered potential impact to agricultural uses, practices and costs under ORS 215.296, and has weighed potential agricultural impacts against the many safety, recreational, transportation, and other social benefits of use of the property for a trail. In this case, conflicts between use of the site for a recreational trail and reserving it for other transportation uses and agricultural uses in the surrounding area have been considered and addressed.

2.15.4 Goal 4—Forest Lands. Goal 4 directs local governments to “conserve forest lands.” The segment of corridor in question is zoned EFU. Parts of the corridor are forested, but for the most part the trail location is compacted soil and ballast, not suitable for forest uses, and more suited for trail/recreational uses.

2.15.5 Goal 5—Open Spaces, Scenic and Historic Areas and Natural Resources. Goal 5 is “To conserve open space and protect natural and scenic resources.” The proposed trail will cross Stag Hollow Creek, and at least two unnamed watercourses. None of the identified watercourses are inventoried Goal 5 resources. All necessary permits will be obtained prior to constructing bridges across the identified watercourses.

2.15.6 Goal 6—Air, Water and Land Resources Quality. Under Goal 6, local governments must ensure that land uses do not threaten to violate, or violate, state or federal environmental standards. All necessary permits will be obtained by the county prior to constructing bridges across identified watercourses. Otherwise, the uses promoted by the trail—biking, walking and horseback riding, are passive and generally non-polluting uses.

2.15.7 Goal 7—Areas Subject to Natural Disasters and Hazards. Goal 7 directs local governments to protect life and property from natural disasters and hazards. Construction of the initial trail segment from Yamhill to Carlton will require at least three bridges across watercourses and their associated floodplains. The county regulates development in floodways and floodplains, and will obtain all necessary approvals prior to proceeding, consistent with Goal 7.

2.15.8 Goal 8—Recreational Needs. Goal 8 directs local governments to plan for the recreational needs of its citizens. A major benefit of use of the existing corridor as a multi-modal trail is that it will provide a safe place to walk, to ride a bike, or to ride a horse between the cities of Yamhill and Carlton. The proposal promotes Goal 8.

2.15.9 Goal 9—Economic Development. Goal 9 directs local government to provide adequate opportunities for continued economic growth in Oregon. The focus of Goal 9 is on commercial and industrial development, primarily in urban areas. However, extensive testimony has been received regarding the potential economic benefits of a multi-modal trail in promoting agri-tourism in the county, including the wine industry and other elements of the county's extensive agricultural economy. The trail is expected to benefit the county economically, especially the cities of Yamhill and Carlton.

2.15.10 Goal 10—Housing. Goal 10 is to provide for the housing needs of citizens of the state. No housing is proposed, nor will this proposal remove potential urbanizable land that could be used for housing from any inventory. Goal 10 is not relevant to this plan amendment.

2.15.11 Goal 11—Public Facilities and Services. Goal 11 is "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." This plan amendment will not negatively impact any identified public facilities or services.

2.15.12 Goal 12—Transportation. Goal 12 directs local governments "to provide and encourage a safe, convenient and economic transportation system." In this case, the county has purchased a transportation corridor that was used for passenger and freight transport for approximately 100 years, and has planned since at least 2012 to use it as a multi-modal trail and to preserve it for future rail or other transit uses. The proposal to develop an alternative transportation facility to allow travel between the cities of Yamhill and Carlton on foot, bicycle or horse directly promotes Goal 12. The only other transportation facility available, Oregon Highway 47, is not suitable for these uses.

2.15.13 Goal 13—Energy Conservation. Goal 13 declares that: "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles." By promoting a safe and appealing facility for non-automobile travel between the cities of Yamhill and Carlton, the proposed plan amendment promotes Goal 13.

2.15.14 Remaining Goals. None of the remaining Statewide Land Use Planning Goals are relevant to this ordinance.

3. Additional Findings on Reconsideration. On reconsideration of this matter, the Board finds as follows:

3.1 The conditions imposed by Ordinance 904 address and mitigate the impacts that landowners and other interested persons described in hearings on this matter that might otherwise have forced significant changes in accepted farm practices on surrounding lands, or might

otherwise have increased the cost of farming in the surrounding area. That is, the conditions ensure that trespass onto neighboring farms by trail patrons will be effectively reduced to insignificance or eliminated, along with a host of impacts identified in hearings on this matter that are the result of trespass and might otherwise occur without fencing and signage.

3.2 The conditions imposed by Ordinance 904 also require establishment of a final plan for development of the Yamhill to Carlton segment of the corridor, and/or a master plan for development of the entire corridor that includes final plans for the Yamhill to Carlton segment. Such plans are required prior to construction (other than initial bridge construction) of a multi-modal trail in the segment of corridor between State Highway 240 and the City of Carlton. While not adopted through a land use process and not necessary to meet the farm impact standards, these plans are an important part of the mitigation process, to ensure the least impact possible to all adjacent owners and residents, including farm owners, operators, and residents. The best final or master plan is one that is established in collaboration with and coordinated with interested parties, especially adjacent owners, operators and residents. Such an effort necessarily includes a requirement that the county communicate with and meet with adjacent owners, operators and residents seeking to participate in the development and implementation of a final or master plan. The conditions require approval by the Board of any design, management and mitigation developed through the planning process. The conditions also require that the plans presented to the Board be developed through a collaborative and coordinated effort, prior to their presentation to the public and to the Board.

END