

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 Docket G-01-18)
 On Second Remand from the Land Use Board of)
 Appeals; Granting Yamhill County Authority to)
 Operate a Public Multi-modal Trail in an Approxi-)
 mately 2.82-mile Segment of the 12.48-mile)
 County-Owned Segment of the Yamhelas Westsider) Board Order 20-164
 Rail-Trail Corridor, as it Exists Between State)
 Highway 240/Main Street, Yamhill, and the City)
 Limits of the City of Carlton, Tax Lot 4403-01300)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on May 28, 2020, Commissioners Casey Kulla, Mary Starrett and Richard L. “Rick” Olson being present.

IT APPEARING TO THE BOARD as follows:

A. 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;”

B. In November, 2017, the county, using grant money obtained from the Oregon Department of Transportation and the Oregon Department of Parks and Recreation, obtained title to 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;

C. 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, to the city limits of the City of Carlton;

D. The county has also received grant funding to develop a Master Plan for the entire trail corridor;

E. On May 31, 2018, the Board adopted Ordinance 904, amending the county’s Transportation System Plan, part of the Transportation Element of the county’s Comprehensive Land Use Plan, to recognize the county’s purchase; to adopt findings addressing farm impacts; and

to establish conditions for the establishment of a public use multi-modal trail in the segment of corridor from Highway 240/Main Street, Yamhill, to the City Limits of the City of Carlton;

F. By a Final Opinion and Order issued on December 20, 2018, the Land Use Board of Appeals remanded Ordinance 904 to the county after concluding that the proposed trail is a conditional use in the county's EFU districts and must be considered by the county under quasi-judicial hearing rules;

G. Following quasi-judicial procedures, the Board held a remand hearing on Docket G-01-18 on March 7, 2019 and, following open record periods for written submittals, adopted Board Order 19-94, reapproving public trail uses in the corridor, on March 28, 2019. That decision was remanded to the county on October 11, 2019, LUBA No. 2019-047;

H. Following notice to all interested persons and adjacent landowners, a hearing on second remand, on written submittals, was subsequently held on April 30, 2020. That submittal deadline was extended to May 21, 2020, when the Board invited a representative of the opponents and the applicant/county to present oral testimony on the limited issues identified by LUBA in its October 11, 2019 remand;

I. The record subsequently remained open until May 26, 2020, for the final statement of the applicant/county, which was in the form of draft findings for approval on second remand. Following deliberation on May 28, 2020, the Board voted 2 to 1 this Board Order, NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Docket G-01-18, before the Board on second remand from the Land Use Board of Appeals, is hereby approved.

Section 2. This decision is based on the records settled by the Land Use Board of Appeals in LUBA No. 2018-061 and 2019-047, and on the testimony and evidence placed before the Board and not rejected during the second remand proceedings.

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Section 3. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of, and as part of, this Order.

DONE this 28th day of May, 2020 at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair


CASEY KULLA

By: 
Deputy Carolina Rook

Voted "no"

Commissioner MARY STARRETT

FORM APPROVED BY:



Christian F. Boenisch
County Counsel



Commissioner RICHARD L. "RICK" OLSON

Exhibit A
Board Order 20-164

Findings in Support of Approval of
Docket No. G-01-18 on Second Remand, and Conditions of Approval

Nature of the Decision

On October 11, 2019, LUBA remanded to the county Board Order 19-94, a conditional use approval for a transportation facility—a trail—in an existing, county-owned, plan-designated transportation corridor between the cities of Yamhill and Carlton. The county has requested and been granted consideration on remand of the Board’s decision in Van Dyke v. Yamhill County, LUBA No. 2019-047. It is the county’s position that the issues addressed in these findings are the only issues that were remanded by LUBA, for resolution by the county Board of Commissioners. Some rebuttal findings are also made, but not to issues previously resolved by LUBA.

On this remand, the county is required “to adopt new findings, based on new evidence, regarding compliance with the farm impacts test, including the efficacy of the fence the county proposes to construct between the Trail and surrounding land in farm use.” (at 18) Because many of the findings adopted as part of Board Order 19-94 were not overturned by LUBA or were specifically upheld, they are appropriately part of the findings on second remand, in their original form and as edited and included in these findings. The Record on second remand includes all records settled by LUBA in previous appeals of Docket G-01-18, along with all materials submitted into the record on this remand.

FINDINGS OF FACT:

A. Background Facts

1. *Parcel/tract size:* The entire tract, Tax Lot 4403-01300, is approximately 91.81 acres, existing as a corridor approximately 12.48-miles long and generally 60-feet wide. This application is for the 2.82-mile segment of the corridor extending from Yamhill (East Main Street, Highway 240) to the City Limits of Carlton.
2. *Access:* There are multiple access points along the 12.48-mile corridor, where the corridor intersects with county roads (including East Main Street/Highway 240, Fryer Road, and Merchant Road (a dead end) with regard to the 2.82-mile segment). The first cross street in Carlton is Roosevelt, at the location of the New Carlton Fire District Main Station, 343 West Roosevelt Street, Carlton, Oregon, which abuts the trail corridor.
3. *On-site Land Use and Zoning:* The corridor is zoned predominantly EF-80 Exclusive Farm use. At one point, the eastern part of the corridor is zoned AF-10, a rural residential zone. There are no plans, at this time, to develop trail uses in the portion of corridor within the AF-10 zone. Until and unless zoning ordinance amendments are made, trail uses will be confined to the 30-foot wide western one-half of the corridor adjacent to the AF-10 zone. The Bus Barn property is zoned

“Heavy Industrial” and trail uses are not currently allowed in the zone outright, conditionally, or as a “similar use.” Use of the Bus Barn property as a trail and trailhead will require subsequent zoning approval (not subject to the farm impact standard). The property was established as a rail corridor in 1872, and was used for over 100 years for the transport of passengers and freight. Track was removed in the early 1980s. Many parts of the corridor contain a footpath/trail, and much of it is vegetated/overgrown.

4. *Surrounding Uses:* The neighboring properties are in farm use, with some dwellings. The predominant farm use adjacent to the 2.82-mile segment of trail between Yamhill and Carlton appears to be the production of hazelnuts, grass seed and/or pasture. A large (approaching 10,000 trees) hazelnut orchard was planted along the eastern edge of the corridor in recent years, and even more recently, grass seed fields just south of the county’s Bus Barn property were converted to the production of hazelnuts. At the location of the first-mentioned 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 the 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. The other, most recently planted hazelnut orchard is in two fields transected by the county’s property. The owner of those orchards is reportedly crossing the corridor to reach his western field, but there is no known record of an easement or license, at that location, to cross the corridor. A condition of approval addresses the county’s obligation to in good faith attempt to resolve all farm access issues related to the county’s corridor. Testimony was also received that there is a farm where livestock are kept and a dairy is being operated. A tenant at that location has regularly encroached upon, placed barriers on and grazed livestock on the parts of the county’s property that are not ballast/roadbed. There is also a four-acre farm between the county’s property and Highway 47 raising alpacas, turkeys, chickens, and miscellaneous food crops.

5. *Water:* No on-site water is required for the proposed use. County property that is part of the trail property just south of and adjacent to Highway 240 has water service from a well (“Bus Barn Property”).

6. *Sewage Disposal:* No on-site sewage disposal is required for the proposed use, and/or if necessary and required to meet applicable standards, would be provided as specified in a master plan under development. Sewage disposal facilities (subsurface septic) are available at the Bus Barn Property. At least two portable toilets are required by the Conditions of Approval, at either end of the trail.

7. *Fire Protection:* Yamhill Fire Protection District, New Carlton Fire District. The New Carlton Fire District Main Station abuts the corridor on the northern edge of the City of Carlton.

8. *Soils:* The segment of corridor between Yamhill and Carlton passes through soils of the following classifications:

Soil Type	Soil Class	Soil Value
Wc - WAPATO SILTY CLAY LOAM	III	NHVFL

Dc - DAYTON SILT LOAM, THICK SURFACE	III	HVFL
Am - AMITY SILT LOAM	II	PRIME
WuB - WOODBURN SILT LOAM, 0 TO 7 PERCENT SLOPES	II	PRIME
WuC - WOODBURN SILT LOAM, 7 TO 12 PERCENT SLOPES	II	PRIME

It should be noted that the listed soils, where they existed especially in the center of the corridor, were significantly disrupted and compacted beginning in 1872, with the addition of large quantities of ballast. The existing record establishes that there is, generally, a 12-20 foot wide ballast/gravel roadbed in the center of the corridor for its entire length. It is known that soils and other materials were placed in various parts of the corridor at different times, but it is not known precisely where those materials were placed. For these reasons, the above chart may not accurately reflect the soils actually present in the Yamhill to Carlton segment of corridor, or the quality of those soils.

9. *Flood Hazard:* The Stag Hollow area near the northern end of the Yamhill to Carlton corridor segment is FIRM panel 41071C0183D. The Stag Hollow area is the only mapped floodplain along this segment of the corridor. It is split between an unnumbered “A zone” where the base flood elevations (BFEs) have not been determined and an area where the BFE has been determined “AE zone”. The only other FIRM panel is 41071C0191D, which shows no floodplain within the area of the corridor under consideration. It should be noted that on September 19, 2019, the Federal Emergency Management Agency issued a “Letter of Map Revision” establishing that none of the county-owned property at the site of the recently under construction county access bridge is within a floodplain or floodway.

10. *Previous Actions:* The project is identified in the 2009 Carlton Transportation System Plan (TSP) as a pedestrian and bicycle priority improvement project. Yamhill County adopted an amendment to add the facility to the Yamhill County TSP in December 2012. The current TSP, originally adopted in 1996, includes a policy objective of pursuing the conversion of abandoned rail lines to trails that connect with the County's trail/bikeway system. Yamhill County’s TSP update, adopted in 2015, includes the Yamhelas Westsider Trail. Docket G-01-18 resulted in the adoption by the Board of Commissioners of Ordinance 904, on May 31, 2018. By Order dated December 20, 2018, the Land Use Board of Appeals (LUBA) remanded Ordinance 904 to the county, with instructions. The county then, on March 28, 2019, rescinded Ordinance 904 and adopted Board Order 19-94, granting conditional use approval for development of the segment of corridor between Yamhill and Carlton. By decision dated October 11, 2019, LUBA remanded the county’s decision for additional evidence and findings supporting the county’s decision.

11. *Narrative:* The original request was to adopt amendments to the county’s Transportation System Plan (TSP), a component of its Comprehensive Land Use Plan, to begin development of the segment of corridor between Yamhill and Carlton, as a public hiking, biking and equestrian trail. The original TSP, adopted in 1996 (Ordinance 605) established plan policies in favor of using the rights-of-way of abandoned rail lines for public trails. In 2018 the county approved Ordinance 904 under legislative proceedings, to amend the Transportation System Plan, and to address ORS 215.296. Ordinance 904 stated, in relevant part:

“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-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.

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."

The above referenced aspirations of Ordinance 904 were affirmed in Board Order 19-94, and are reaffirmed on this remand. LUBA has directed the county, on this remand, to address specific aspects of the farm impact standard and the county's conditional use standards in a quasi-judicial proceeding. The county has done so, accepting and reviewing hundreds of pages of new testimony and evidence (mostly testimony).

B. Ordinance provisions and analysis

1. The conditional use criteria of YCZO Section 1202.02 are as follows:

- A. *The use is listed as a conditional use in the underlying zoning district;*
- B. *The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use;*
- C. *The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features;*
- D. *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;*
- E. *The proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use; and*
- F. *The use is or can be made compatible with existing uses and other allowable uses in the area.*

2. **Regarding criterion (A):** The request is consistent with criterion 1202.02(A) above in that YCZO 402.04(N) lists: "Roads, highways and other transportation facilities and improvements not allowed under Subsection 402.02(K) or 402.04(J), subject to compliance with OAR 660-12." The proposed trail is a transportation facility and improvement. The same category of uses is not listed as a use allowed outright or conditionally in the AF-10 zone or the HI zone. For that reason, unless and until text amendments are made to the zoning ordinance, trail development will not take place within the HI zone, or the AF-10 zone, but will be confined to the 30-foot wide western side (zoned EF-80) of the corridor where it is adjacent to the AF-10 zone. An omnibus land use

ordinance is scheduled for review at this time that would conform zones through which the corridor extends to the comprehensive plan policies discussed above. The planning Commission has continued its hearing on the ordinance to July. The ultimate authority to amend the zoning ordinance is with the Board of Commissioners, in legislative proceedings. Farmland protection laws do not apply to either of these zones. OAR 660-012-0065 states that a recreational trail is consistent with Goals 3, 4, 11 and 14, and does not contain additional requirements for the establishment of a recreational trail. It is presumed that a facility that provides a “recreational” trail and is also a pedestrian transportation alternative to a dangerous state motor vehicle highway is similarly consistent with Goals 3, 4, 11 and 14.

3. Regarding criterion (B), the Yamhill County goals and policies do not provide standards or criteria for review of transportation facilities. The following findings interpreting the county’s Comprehensive Land Use Plan are established by the Board in support of its decision on second remand.

3.1 The Transportation System Plan, a part of the Transportation Element of the county’s Comprehensive Plan, specifically addresses the “Yamhelas Westsider Trail” that is the subject of this remand. The corridor is a transportation facility under the Plan, and has been considered a transportation corridor by the county since at least 1996. In 1996, by Ordinance 605, the county adopted a ”Transportation Master Plan” entitled: “In the Matter of an Ordinance adopting the Yamhill County Transportation System Plan as an Element of the Yamhill County Comprehensive Plan, Planning Docket G-3-95; and Declaring an Emergency.” Section 5.5, entitled: “Air/Rail/Water/Pipeline Plan,” included the following “Freight Rail Transportation Plan Policies:

“1. Yamhill County does not support further rail abandonment or diminishment of service.

2. Yamhill County supports improvement of rail line conditions to retain railroads as effective freight carriers in Yamhill County.

3. Yamhill County will pursue, whenever possible, conversion of abandoned rail lines through the federal ‘Rails to Trails’ program and seek to integrate these abandoned lines into the county’s trail/bikeway system.”

3.2 In this case and pursuant to established county land use policies, the county sought, for many years, to purchase the Yamhelas Westsider Trail transportation corridor from Union Pacific, after its merger with Southern Pacific, long-time owner of the corridor, and to secure it for future public uses. On December 6, 2012, through Ordinance 880, the county added the following Policy 4 to the Transportation Element of its Comprehensive Land Use Plan:

“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.”

3.3 Ordinance 880 also contained a detailed narrative describing the Yamhelas Westsider Trail and its positive attributes. 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.”

3.4 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.”

3.5 When 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,” it established the primacy of transportation uses in the corridor when weighed against other goals, including the county’s agricultural goals and policies. Containing as it does a 12-20-foot wide ballast and gravel roadbed, it’s “highest and best use” is as a transportation corridor. Interim trail use facilitates the long-term availability of the corridor for both trail and rail uses, as an alternative to Highway 47, a motor vehicle corridor that is too dangerous for pedestrian use.

3.6 Ordinance 904 acknowledged the ownership of the trail, addressed the farm impact standards, and established conditions of approval for development of the Yamhill to Carlton segment of trail. Ordinance 904 was repealed, and replaced with Board Order 19-94, which included an acknowledgement of the goals of Ordinance 904. That acknowledgement is continued in support of approval on second remand—use of the corridor for trail and rail transportation purposes outweighs all other goals raised by opponents as in conflict, including agricultural goals, and is consistent with economic goals.

3.7 Petitioners specifically cite to County Goal 1, and 2, Policies A. and H. The Board specifically rejects the interpretation of the opponents regarding these policies. As noted, the “soils” in the corridor include a significant area of ballast and gravel, with no relationship to soils that might have been present prior to 1872 when railroad track was laid there. In the Board’s view, the corridor is zoned for farm uses not because it has ever been farmed, is suitable for farming, or is more suitable for farming than other uses. The corridor has only incidentally been farmed (by a neighbor ignoring a surveyed property line) and is best suited for its linear shape and width, resembling a county road. Goal statement 1 and Policy A. are too general to conflict with the very specific designation and description of the corridor as a transportation priority, in Ordinance 880. Policy H. is satisfied—the trail is not being “justified solely or even primarily on the argument that the land is unsuitable for farming or forestry or, due to ownership, is not currently part of an economic farming or forestry enterprise.” It is being justified for a host of public policy reasons including providing a pedestrian/bicycle connection between Yamhill and Carlton, which share a unified school district; the obvious need for present and future alternatives to internal combustion engines as a transportation priority at a time of climate change; and for the mental and physical health of a population that needs places to run, walk and ride horses.

3.8 Plan policies concerning water resources, fish and wildlife and open spaces are important, but similarly outweighed by comprehensive plan policies establishing the primacy of rail and trail uses in the corridor. In the case of the Yamhill to Carlton segment, compliance with State and federal environmental laws is required at all times whether not a condition of approval also requires such compliance. A bridge is being constructed across Stag Hollow Creek at this time, with all state and federal environmental clearances, in compliance with all state and federal law, establishing the feasibility of such compliance. The only other water crossings are two culverts, the hydrology of which are being studied by the county’s consulting engineers. It is also

feasible for the county to comply with all applicable law with regard to the installation of the two culverts, and with regard to any other drainage issue raised in this proceeding or existing in the county's right-of-way. Managing 700 miles of county roads, the county is in excellent position to manage stormwater related to the right-of-way, just as or better than railroad companies did for over 100 years. The Comprehensive Plan's Goals and Policies are less specific than detailed state and federal requirements for the protection of natural resources and do not govern or weigh against development of a trail in the county's corridor between Yamhill and Carlton.

3.9 With regard to "economic" plan goals and policies, a multi-modal trail provides benefits to the people who use it in terms of health and well-being, and benefits to the economy of the area it serves by connecting people in a different way to goods and services available at either end of the trail. The trail in question does not "conflict" with the "agricultural character" of the area—people and their interaction with agricultural areas is part of the "agricultural character" of the area and an important part of rural and small town economies.

3.10 The Board finds in these second remand proceedings that, weighing all applicable goals of the comprehensive plan, the designation and use of the corridor for transportation uses, and at this time especially multi-modal trail uses, outweighs all other goals. The more specific goals promoting the trail outweigh more general agricultural and natural resource goals, and testimony received strongly supports the economic benefits likely from the trail. It would be a departure from established policy, implemented through countless CUP's, for the county to conclude that this CUP is prohibited by the county's agricultural or natural resource goals and policies, and there is no basis for the Board to so depart in this case.

3.11 The Board has weighed the importance of Policy 5.5, sections 4 and 5 against the remaining Plan goals and policies, and concludes that the plan policies first established in 1996 supporting 'Rails to Trails' and the 'Hagg Lake to McMinnville' Policy, expanded upon and made more specific in the Comprehensive Plan by Ordinance 880, outweighs all other potentially applicable goals and policies in this case. The proposed use is consistent with those goals and policies of the Comprehensive Plan that apply to the proposed use, as interpreted by the Board in these findings.

4. Regarding criterion (C), the parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features.

4.1 Starting on page 85 of its decision, LUBA addressed petitioners' claim that the county failed to address "location," when it concluded that "the parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features." The following original findings from Board Order 19-94 are amended, below, to address the petitioners' objections in conformance with LUBA's decision.

4.2 The "location" of the county's ownership ("parcel"), Tax Lot 4403-01300, extends almost to the City of Gaston at its northern terminus to south of Gun Club Road as its southern terminus—12.48 miles. The property is a pre-existing transportation corridor that is generally 60 feet wide, and wider in places (including in the area that includes a segment of Stag Hollow Creek, where it is 80 feet wide). It includes property adjacent to Highway 240 that the county is currently

leasing to Gene Belt, whose sub-tenant is Mid-Columbia Bus Company (the “Bus Barn” property). Even along the AF-10 segment of the corridor, the corridor in the EF-80 zone currently available for trail uses is 30-feet wide. The county has initiated proceedings to amend the text of the AF-10 and HI zones to allow trail uses. In the Af-10 area (a residential zone, currently being farmed adjacent to the trail) trail uses are expected to occupy only 12 feet of the width of the corridor, and can be accommodated within the existing EF-80 half of the trail. For most of the corridor, that leaves a potential buffer area of up to 24 feet on both sides of the proposed trail. Adjacent to the AF-10 segment, the buffer available between the proposed trail and uses in the EF-80 zone is 18 feet, with a 30-foot buffer between trail uses and uses in the AF-10 zone. No state law prohibits trails or transportation facilities in AF-10 or HI zones, and it is feasible for the county to amend those zones to allow such facilities. The farm impact standard does not apply to uses in either of those zones. The size of the parcel is suitable for trail uses.

4.3 The shape of the corridor is largely straight, which was appropriate for rail uses and is likewise appropriate for use by walkers, runners, bicyclists and equestrians. The shape of the parcel is unique, in that it was assembled by purchase from numerous individual property owners, mostly in the 1870’s. Its unique shape is highly suited to construction of a road, re-establishment of rail uses, and for a multi-use trail. The trail is proposed to accommodate walkers, runners, bicyclists and equestrians, for recreation and for travel between the cities of Yamhill and Carlton. The linear shape of the corridor is well suited for the proposed use.

4.4 The topography of the parcel is relatively flat, with a grade that was appropriate for rail uses and is likewise appropriate for use by walkers, runners, bicyclists and equestrians. A railroad expert’s testimony indicated that, as a rail corridor, the county’s ownership and the corridor it connects to on either end has the best grade available between McMinnville and the Portland metropolitan area. There are drainageways that cross the corridor, including Stag Hollow Creek and two unnamed drainages. Railroad facilities crossed those drainages without difficulty, and it is feasible for the trail to cross the same drainages. The county has obtained a grant to plan for and design three bridges, and to build a bridge across Stag Hollow Creek. The bridge was designed by an engineering firm, that also obtained all state and federal environmental clearances for construction of the bridge. The culverts are being designed by engineers and hydrologists to be properly sized to convey all anticipated, existing stormwater and to hold the same vehicle loads as Stag Hollow Bridge.

4.5 After obtaining a Letter of Map revision from FEMA in September, 2019, the county recognized that no other land use approvals were needed to construct and use the bridge only for county access to that portion of Tax Lot 4403-01300 for maintenance and fire control. The bridge is under construction, but will not be available for use as a public trail until adoption of a master plan and the installation of all required fencing and signage, as was required by Ordinance 904, Board Order 19-94, and as recommended in these proceedings.

4.6 With regard to the “existence of improvements,” much of the corridor, including parts of the corridor between Yamhill and Carlton, already contain a 12-20 foot wide roadbed of well-drained ballast and an established foot path. The consolidation of the ownership into a single tax lot since 1872 and use until the early 1980’s as a transportation corridor make the subject linear

property more suitable for trail/transportation usage than any other use. No other “improvements” are necessary to accommodate construction of a paved path as envisioned.

4.7 With regard to “natural features,” the corridor passes through a scenic part of Yamhill County, and already contains some vegetative features (trees) that may be available (following and as a part of master planning) as a partial buffer between trail uses and neighboring uses at various locations. Additionally, the corridor crosses Stag Hollow Creek just south of the Bus Barn. The county obtained of Letter of Map Revision (LOMR) from FEMA establishing that a pedestrian and emergency services/vehicle access bridge could be built without the need for a county Floodplain Permit. Upon obtaining the LOMR, the county obtained all other necessary state and federal environmental certifications for ODOT and the Federal Highway Administration, and began construction of the bridge, which the county recognizes cannot be used for a trail without trail approval and, until then, can only be used for county and emergency vehicle access.

4.8 With regard to location, the location of the parcel makes it eminently suitable for the proposed use.

4.8.1 The location of the parcel allows a trail located within it to directly connect two important Yamhill County cities that share a unified school district. It its easy to consider athletic teams of those schools using the corridor to train, and school children riding in groups or on their own to and from school. The location—connecting two communities by foot—is something that was lost when Highway 47 became crowded with semi-tractor trailers and automobiles, and inherently dangerous for pedestrians and bicyclists. Due in part to the location of the parcel, so close to Yamhill and transecting Carlton, people of all ages will be able to enrich their connections between the two communities and with the countryside around them and the farming taking place on those lands. As for claims of petitioners’ that the location is unacceptable because it traverses farmland, that position cannot be correct. Seven hundred miles of county roads are located adjacent to, and transect farms throughout Yamhill County, and many more miles of public roads. Since the beginning of Yamhill County, those roads, many of them “market roads,” have been considered an essential part of farming and were necessary to get crops and other farm products to market.

4.8.2 The county is not relying on findings regarding farm impact standards to make findings with regard to criterion (C). This is a local standard that the Board interprets as focusing on the suitability of the parcel itself based on the characteristics of the parcel. In this case, the fact that it is located through farm fields does not distinguish it in any way from any other road or highway in Yamhill County, where both pedestrians and bicycles have a current right to be. The parcel is suitable for the proposed use, and the proposal meets criterion (C).

5. Regarding criterion (D), the proposed use “will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district.” This is a local standard, and the county is entitled to deference for its reasonable interpretation of the standard. The county does not equate this standard with the farm impact standard. Information in the record establishing compliance with the farm impact standard also supports findings of compliance with this standard,

but that additional information is not necessary to the conclusions in these findings regarding criterion (D).

5.1 Webster's Third New International Dictionary (unabridged) defines "substantial" with reference to its root, "substance," and equates it with "MATERIAL." The proposed use would need to alter the character of the area in a materially destructive way in order to substantially limit, impair or prevent the use of surrounding properties for farming. Likewise, limitations that are "seeming," "elusive," or "imaginary" do not implicate criterion (D).

5.2 The "character of the surrounding area" is rural, and oriented toward farming. The character of the area is described in detail in the existing record(s). Significant testimony was received from parts of the farming community that a passive-use trail is not compatible with farm uses, and especially not the farm uses taking place adjacent to the corridor. That testimony described the character of the area as a forbidding place where children and animals are not safe from being sprayed with pesticides, and where trail users will commit criminal acts against each other and otherwise render the area entirely unsuitable for farming. The Board rejects that view as overblown and hyperbolic, in part based on the reality of existing trails in Oregon and around the country, including the Banks to Vernonia Trail. Farming has always taken place immediately adjacent to public rights-of-way. The Yamhelas corridor and uses proposed have no different or more significant impact on farming or other adjacent uses than other rights-of-way common and coexisting with farm uses in farm areas throughout the county.

5.3 As stated, a road network exists in Yamhill County where people are free to walk or to ride their bicycles day or night, without asking or notifying anyone. Since it is not an "accepted farm practice" to spray those people with harmful chemicals, farmers must all, currently, manage their farm operations by using spray methods that do not put those persons at risk. Farm operators can manage their spray buffers entirely on their own properties, or take the risk of spraying someone by using the public's right-of-way and the properties of their neighbors as spray buffers. They do so at a risk that they will spray a neighbor or a neighbor's property, and must calculate their own risk that they might spray a neighbor, a car, a pedestrian or a bicyclist. In any case, spraying property not owned by a farm operator is not an accepted farm practice, and neither is threatening to spray someone else's property by using it as a label-required spray buffer. The "status" of the county's property is that, regardless of the use that is made of it, spray operators have no right to use any part of it to comply with a spray label setback/buffer requirement, without the county's consent.

5.4 Likewise, owners of property adjacent to a farm operation, whether or not they are actively farming, have a right to enter, walk upon, maintain and enjoy their property without fear that they will be sprayed with pesticides or herbicides because they have entered the "buffer" of one of their neighbors' spray operations. Fundamental principles of property ownership protect persons using public rights-of-way and neighboring property owners from being required to accommodate a neighbor's spray buffer, under any circumstance that is not consensual.

5.5 The county is a fiduciary of the public buildings, parklands, rights-of-way and rail/trail corridors that it owns, and has a responsibility to maintain that real property in the public interest. In Van Dyke II, LUBA issued a land use decision that appeared (in worst light) to sanction

the use by certain trail opponents, of the county's property for their pesticide/herbicide buffers, without the consent of the county. Although it is within LUBA's jurisdiction to interpret state land use law in the first instance, it should not do so without ensuring that its decisions do not deprive the county of the basic right to enter its own property—every inch of it—without any threat whatsoever that it is entering the label-required buffer area for application of dangerous pesticides.

5.6 The county interprets the subsection (D) standard as being met if the record accurately describes the surrounding area and addresses claims that the propose use will alter the character of the surrounding area in some way. All development alters the parcel on which it occurs, and all development alters the surrounding area in some way, if only by changing the view or emitting sounds that were not there before. The character of the surrounding area is always changing. To deny an application on the basis that it fails to meet this standard, the Board would need to find that the application, if approved, will in fact “limit,” “impair,” or “prevent” the use of surrounding properties. It has always been the county's position that, even then, if conditions can minimize potential impacts to an insubstantial level, the use should be approved with conditions. If evidence is submitted supporting a conclusion that the proposed use “substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district,” the county's usual course is not to deny, but to impose conditions intended to diminish identified substantial impacts.

5.7 In this case, as the Board interprets the term, “substantial” as requiring a much greater impact than can possibly be attributed to a trail in an established transportation corridor that transects farmland, not unlike the 700 miles of county road. Humans currently have the right to drive, walk or ride their bicycles on more than 700 miles of county roads, and do not appear, in doing so, to cause any impact significant enough to ‘limit, impair or prevent the use of surrounding properties for farm uses.’ Farming is thriving in Yamhill County, in part because it is, generally, welcome to visitors who contribute to the local farm economy by visiting farm country.

5.8 In consideration of its interpretation of this standard, the county has no basis in this case for departing from its course in consideration of the other 26 separate categories of non-farm uses that are allowed in farm zones as conditional uses. Many of those proposed uses are routinely found to comply with criterion (D), and there are very few situations where appropriate conditions of approval cannot be imposed to ensure that the standard is met. In this case, the standard is met, and the proposed conditions of approval will ensure continued compliance with criterion (D). Those conditions include offers of cooperation with the spray schedules of farm operators, but definitely do not allow neighboring farm operators to use the county's property as a spray buffer without the consent of the county. As stated, it takes two to cooperate, regardless of LUBA's unsupportable view of basic property rights inherent in Van Dyke II.

5.9 With conditions imposed by the Board, the proposed trail will not alter the character of the area in a manner that limits, impairs or prevents the use of surrounding properties for permitted uses. Uses will be limited to use as a passive-use trail to connect the cities of Yamhill and Carlton and the schools of the Yamhill-Carlton School District. The transportation and recreational uses envisioned are decidedly low impact compared to vehicular transportation uses that occur near the proposed trail and throughout Yamhill County, in close proximity to residential, commercial and farm uses.

6. Regarding criterion (E), the proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use.

6.1 This is a local standard, and the county is entitled to deference for its reasonable interpretation of the standard. A use is “appropriate,” if public facilities and services, existing or planned for the area affected by the use, are “adequate.”

6.2 Findings addressing this standard with regard to emergency services (other than fire suppression) and police services were not contested on appeal, and are not subject to reconsideration on this remand. Police, fire protection and emergency medical services are available throughout Yamhill County, and including the corridor segment under consideration.

6.2.1 Police services are provided by the County Sheriff’s Office, police departments in both the Cities of Yamhill and Carlton, and by the State Police. The Sheriff’s office has indicated that it has adequate vehicles and staff to respond to incidents occurring through the entire trail corridor, including the Yamhill to Carlton segment. He has also testified that proposed access to the corridor is adequate, especially if removable bollards are installed at the four known trail access points: Highway 240, Fryer Road (for entry south and north) and at or near Roosevelt Street in the City of Carlton.

6.2.2 The trail segment under review is located within two fire districts. The chief of the Carlton Fire Protection District with jurisdiction over the trail segment in question testified regarding his concerns about fire and fire access, but also indicated that a 12-foot wide paved surface, as proposed, would accommodate fire and emergency vehicles. There is evidence in the record (submitted with the application in 2018) that there is an existing 12-20-foot basalt gravel roadbed in the corridor that was first constructed in 1872 and was maintained by Southern Pacific Railroad until the 1980’s. The Fire Chief also asked questions regarding funding for fire and other emergency services that are all fair questions that should be answered by the people who live and work within the District, but are not necessary to resolve in this proceeding. The proposed trail may one day be part of a regional trail, with “regional” trailheads and expectations for regional use. That is not what is proposed in Docket G-01-18. Paving a 12-foot by 2.82-mile foot and bicycle path connecting a city of just over 1,000 residents with a city of just over 2,000 residents is unlikely to “create a major hardship” for any Fire Protection District, funding or otherwise. The southern segment of the proposed trail is served by the New Carlton Fire District. Its Main Station (built in 2009) abuts the trail at its southern terminus at Roosevelt Street in Carlton. It is feasible to provide direct access to the trail from the District’s Main Station for emergency vehicles. The presence of the trail so close to the Carlton Main Station almost guarantees fast access to the trail by fire suppression and other emergency vehicles.

6.2.3 In response to expert and other testimony regarding potential fire risks posed by the trail to surrounding lands, and by surrounding lands to the trail, the county has designed and partially built a bridge across Stag Hollow Creek, just south of the Bus Barn, to hold all legal loads, including a 60,000 pound fire truck. For reasons explained in the following findings, such a truck is seldom used for the kind of brush fire anticipated in or near the corridor. There are very few dwellings near the trail that would benefit from trail access by a full-size fire

truck, but the current design of the trail and bridge will allow access by all manner of emergency vehicle, including a full-size fire truck.

6.2.4 The trail is not a road, and the Fire Chief of the Carlton Fire Protection District has not pointed to any law that would require vehicle turnouts on a trail designed for pedestrians and bicycles. Nevertheless, a proposed condition of approval requires that such turnouts be constructed as are required by any applicable fire code, or a variance taken if one is reasonably available and appropriate. It should be reasonably presumed that, if turnouts are not required by law, they are probably not necessary. If they are required, it is feasible to provide them within the 60-foot corridor, and they will be provided as required by law. It is anticipated that, during an emergency, emergency personnel will coordinate in order to avoid conflicts with each other and are unlikely to prevent each other from reaching the site of an emergency or fire.

6.2.5 The Board finds that the bridge being constructed across Stag Hollow Creek is designed and being constructed to allow access, in an emergency, by emergency vehicles including police cars; police four-wheel off-road vehicles (currently available and maintained by the Sheriff's Office); all ambulances; a 60,000 pound 'residential and commercial building-grade' fire truck and trucks commonly owned by fire districts to transport water and firefighting crews to battle brush fires. Two additional culverts are necessary within the trail corridor. It is a feasible, and indeed simple matter, to design those culverts to support a 60,000 pound vehicle, and a condition of approval so requires. The county's engineering firm is designing those culverts. It should nevertheless be noted that there are very few buildings that would require use of a 60,000 pound Type 1 structural firefighting engine for fire suppression (notably, Eramos) and those buildings are also accessible from Highway 47.

6.2.6 An engineer's certificate has been provided into the record by the applicant/county, establishing the suitability for all legal loads of the Stag Hollow Bridge. It is, functionally, a pedestrian bridge, but is built to the "HL 93" standard, meaning that it was designed with a 2.5 safety factor—it was designed, and is being constructed, to hold 2.5 times the weight of the heaviest legal road weight. The margin of error is intended to account for variations in materials and construction conditions.

6.2.7 Access to most of the trail corridor to all of these vehicles is more than feasible—access is mostly available now, impeded only by blackberries and illegally-strung barbed wire, from Fryer Road (a county road) and from Roosevelt Street through arrangement with the City of Carlton. The county has not opened the corridor to the public and has agreed to temporarily post it with signs indicating that the trail is not open for public use, particularly at Fryer Road.

6.2.8 The bridge is useful to the county prior to approval of the trail, for maintenance and emergency access by county and emergency personnel. Once the trail is constructed, it will be fenced from surrounding lands, and emergency service vehicles will, presumably, only be using the trail to access emergencies within the corridor. The trail is not meant to serve as an access to farms or buildings along the corridor, and will be fenced to reduce the potential for damages to neighboring farm uses from trespassers.

6.2.9 The nature of the fire risk along the proposed trail is similar to a wildland fire, specifically, small brushy fuels, grasses and/or dried crops. It should also be noted that maintenance of the trail and corridor will include maintenance of brush and grass, and removal of fuels, to a much greater extent than is now occurring. The fuel loads likely to be present along the trail feed fires that are of the type commonly fought using Type 3 and Type 6 brush engines (see photos submitted by applicant/county). These types of vehicles routinely drive off road into fields. The Carlton Fire Department has both Type 3 and Type 6 engines. The Yamhill Fire Department's website (www.yamhillfpd.org/brush-4) shows that they have a Type 6 engine. The Oregon Department of Forestry, which is located off of Panther Creek Road, west of Carlton, also has these types of engines and could respond if requested to any major brush fire on either side of the trail corridor fence. Type 3 engines have 4-wheel drive to make driving over rough terrain easier and have a typical gross vehicle weight rating (GVWR) of 26,000 pounds. A Type 6 engine is built on a pickup truck frame with a medium duty chassis with a GVWR of 9,000-16,000 pounds (<https://www.fireapparatusmagazine.com/2019/07/01/type-3-and-thpe-6-wildland-fire-apparatus/#gref> and [https://en.wikipedia.org/wiki/Wildland fire engine](https://en.wikipedia.org/wiki/Wildland_fire_engine)).

6.2.10 The nature of rural wildland firefighting requires fire departments to routinely operate without a water source provided on site. Type 3 brush engines typically carry a minimum of 500 US gallons of water ([https://en.wikipedia.org/wiki/Wildland fire engine](https://en.wikipedia.org/wiki/Wildland_fire_engine)). Wildland firefighting does not require hooking up to a pressurized water supply system. Instead, reliance is on a combination of firefighters using hand tools and shuttling small amounts of water from a water source, be it a stream, pond, tank or fire hydrant. As the record already indicates, there is a fire hydrant at the Bus Barn, and another fire hydrant where the trail enters Carlton, adjacent to the Carlton Main Fire Station. Although the Lafayette Fire Chief is an expert in fire suppression, he has provided for no basis for concluding that the 2.82 mile rural transportation corridor, unlike any other rural right of way in Yamhill County, requires fire hydrants usually associated with an urban level of development that is currently not allowed in the corridor and is not anticipated to occur at any time in the future.

6.2.11 The Board specifically rejects the Carlton Fire Chief's various assertions, that fire hydrants are necessary in the corridor, that all vegetation must be removed from the corridor, and all other such assertions made by the Fire Chief. The county will at all times comply with all applicable law and with reasonable suggestions made by the Fire Chief and others to ensure that fire risks are minimized. The Fire Chief is also encouraged to participate in the Master Planning process, to ensure that best practices are promoted through trail construction and management. The Board finds that the proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use. The corridor and proposed trail have, and are likely to continue to have into the foreseeable future, adequate public facilities and services, to support use of the existing transportation corridor as a public trail. It is feasible to complete the design of the trail as envisioned, with proper grade, clearance, site vision, drainage, road base, bridges, horizontal clearance, and access to accommodate police, ambulance services, and all manner of fire engine, even Type 1 engines usually associated with fires in structures and usually not used to control brush fires of the type likely to occur within and/or adjacent to the corridor.

6.2.12 Construction of the proposed trail will improve access by emergency vehicles to farms along the trail corridor from Highway 240, Fryer Road, Merchant Road and from Roosevelt Street. Nothing about the trail renders inadequate existing services—it is proposed as a passive use recreation and transportation facility. The county also owns the ‘Bus Barn’ property, which is the northern terminus of the Yamhill to Carlton segment. Master Planning is underway. The corridor has existing roads and access to serve the proposed use. For all of these reasons, the proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use.

6.3 Adequate transportation facilities. The corridor has existing roads and access to serve the proposed use. As noted in earlier decisions, the trail segment in question is intended for local pedestrian and bicycle use. In response to LUBA’s discussion at page 81-83 of its opinion, the applicant/county has submitted a traffic study to support its conclusions made in Board Order 19-94. The study includes an analysis of transportation infrastructure in the area, and predicts the traffic likely to be associated with the trail. Based on that analysis, mitigation measures are proposed that are incorporated into the conditions of approval, requiring establishment of trailheads as proposed, with parking in excess of what is proposed in the DEA traffic study submitted by applicant/county.

6.4 Trailheads and restrooms. Although a master plan has not yet been completed, the Bus Barn property owned by the county is large enough, has water, subsurface sewage disposal and electricity, and it is feasible that the Bus Barn property can accommodate its current use and also serve as a trailhead with restroom facilities and other amenities for trail users. The site currently has electrical service. A proposed condition of approval will require that a portable toilet be maintained at the bus barn and at the southern trail terminus, for use by trail patrons. A proposed ordinance scheduled to be heard by the Planning Commission at an upcoming hearing includes changes to the HI zone applicable to the Bus Barn, to allow development of trail related uses.

6.5 Drainage. Opponents have recently claimed that stormwater drainage from the facility, once 12-feet of it is paved, will destroy their farms and create other havoc. The county’s corridor is at least 60 feet wide, which is the size of a typical county road right-of-way. The county routinely manages stormwater where paved surfaces are twice as wide as the proposed trail, in rights-of-way that are 60 feet wide or less, and has been routinely paving previously graveled roads in the county, for years, while effectively managing stormwater. Sixty feet is more than ample room to manage all stormwater runoff that could ever be “generated” by newly paved surfaces of the corridor. In its treatment of stormwater with regard to the trail, the county has sought and obtained the advice of an engineering firm, to ensure that all stormwater facilities related to the corridor are appropriately sized and correctly installed. For these reasons, it is highly likely that, in construction of the trail, the county will be able to solve existing stormwater issues raised by opponents and any potential stormwater increases owing to the addition of new impervious surfaces.

7. Regarding criterion (F), the use is or can be made compatible with existing uses and other allowable uses in the area. Like all the conditional use standards, this is a local standard, and the county is entitled to deference for its reasonable interpretation of the standard. Evidence in the

record that supports findings of compliance with the farm impact standards also support findings of compliance with this standard, but this standard is not tied to the farm standard or to county findings in support of the farm standard, and those findings are not necessary in order to establish compliance with this criterion.

7.1 The use is a public trail for pedestrians, bicyclists, and equestrians. The “existing uses” and “allowable uses” in the area are detailed in ‘farm-focused’ findings addressing all of the types of farm uses identified adjacent to the corridor. The county interprets this standard as requiring the county to identify the existing uses and allowable uses, which it has. Those uses are, generally, farm uses and some residential uses. As to the farm uses, the county specifically does not believe that the rigorous analysis imposed on the county by appellate courts related to the farm standard is useful or appropriate in complying with subsection (F). The purpose of the standard is to require consideration of such uses, and to impose conditions to ensure compatibility with existing and allowable uses.

7.2 The emphasis in subsection (F) is on identifying potential incompatibilities, and to establishing conditions to improve compatibility, not to completely foreclose all potential incompatibility, which is impossible. To that end, the county is imposing significant conditions on the development of the trail, to improve compatibility between the trail and existing and allowable uses, to meet the standard as the county interprets it. The use is or can be made compatible with existing uses and other allowable uses in the area. Based on the conditions of approval (which subsection (F) specifically contemplates as a way to ensure reasonable compatibility) and in part on other findings and evidence regarding compatibility, suitability of the parcel and the availability of services, the proposed use is or can be made compatible with farm and residential uses and other uses allowed in the area. With conditions, the proposed trail will be compatible with existing uses and other allowable uses in the area.

8. Conditional uses in the EF-80 district must also comply with the following criteria found in 402.07(A):

1. *The use will not force significant change in accepted farming or forest practices on surrounding lands devoted to farm or forest use.*
2. *The use will not significantly increase the cost of accepted farming or forest practices on surrounding lands devoted to farm or forest use.*

These criteria are the same as required by ORS 215.296. 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. * * **

8.1 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.”

8.2 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 under consideration runs from State Highway 240 south to the northern city limits of the City of Carlton.

8.3 All property owners 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 were 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.

8.4 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. That information has been supplemented by persons testifying at the hearing and by the hundreds of pages of written testimony submitted into the record on remand.

8.5 Crops grown in the area typically include hazelnut and fruit orchards; grass seed; hay; pasture; clover; Christmas trees; grains; 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; testimony was received of a “herd” of alpacas kept on a four-acre property adjacent to the corridor segment under review; and cows and other animals have been grazed on the Eramos property. A person testified to the Board that he has milking cows within 750 feet of the trail corridor (may be the same person). Other crops that might be present because they are common

in Yamhill County include sweet corn, raspberries, marion berries, beans, cherries, arborvitae and other 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.

8.6 Plowing, burning, application of herbicides, pesticides, fungicides and fertilizer, 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.) Some of those grass seed fields have now been converted to filberts. Fields may be irrigated by well or direct withdrawal from surface water sources. One farmer shoots non-potable water onto his property with a water cannon. No commercial forestry has been identified in the area, although forest and small woodlot uses accessory to agricultural uses likely take place.

8.7 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. The orchard is also in close proximity to a dwelling on a neighboring parcel and State Highway 47, both of which are located within 150 feet of the 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. As noted elsewhere in these findings, fields just south of the Bus Barn owned and managed by the Van Dykes have recently been converted to hazelnut orchards, on both sides of the trail corridor. A field on the eastern side of the corridor just north of Fryer Road that is zoned AF-10 (a county residential zone, not an EFU zone) will reportedly be converted to hazelnut orchard in the near future.

8.8 In all three public hearings on this matter, one before the Planning Commission and two before the Board of Commissioners, 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 adopted by the Oregon Occupational Safety and Health Administration, will prevent grass seed farmers and farm operators raising filbert trees from spraying an assortment of pesticides and herbicides on their grain/seed crops and/or 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. Similar, unsupported allegations were made that other (unspecified) rules or one or more certification programs will stop issuing crop certifications due to the presence of the trail.

8.8.1 These claims are rejected by the Board as being unsupported or untrue. With regard to spraying, 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)). Some labels state that they should not be used “around” certain uses where the public is likely to be, with no specific definition of “around,” and apparently leaving it to the best judgment of the applicator. Most, if not all, of the labels that once said “around” now use the word “in” instead, leading to the obvious conclusion that “around” always meant ‘do not spray IN home, home garden, school, or recreational park settings.’ None of those labels require more than a 10-foot setback from neighboring properties, and farmers have a legal obligation, whether people are present or not, not to use neighboring properties or rights of way as spray label buffer areas without the property owner’s consent. 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 or enforcing rules that might limit spraying within the boundaries of a farm, or 10 feet from the edge of a farm, and any increased cost due to a new or existing administrative rules adopted by the federal or state government is not a cost that can logically be attributed to users of the proposed trail. Overspray is not an accepted farm practice, and neither is extending label required spray buffers onto neighboring properties without the owners’ consent. Spray operators who depend on the absence of people from neighboring properties and public rights-of-way when spraying pesticides, spray at their own risk, not because they have a right to do so under established property law or any ‘right to farm’ law.

8.8.2 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. Allowing pesticides to drift onto neighboring properties, whether or not people or animals are present, is not “reasonable and prudent,” it is possibly negligence, and is clearly a nuisance and trespass. The purpose of a spray buffer is to ensure that atmospheric conditions—drift—does not deposit pesticides or herbicides on neighboring properties and uses. Using neighboring property as a spray buffer threatens those properties, and persons who are present with spray drift. Spray operators have no legal right to threaten neighboring properties or persons, including privately and publicly owned property, with a trespass or a nuisance, and doing so is not an accepted farm practice.

8.8.3 Testimony has been received from two farm operators who farm hazelnut orchards adjacent to the segment of the corridor that is the subject of this application, and from several farm operators along the segment of corridor in question who grow grass seed and grains. The farms adjacent to the segment of corridor under consideration are addressed in more detail below. In earlier proceedings, a hazelnut farmer stated that he farms 35 rows of hazelnut trees

between Highway 47 and the corridor. When discussing an EPA rule, that was 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. 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 filbert worm 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. Additional testimony has now been received from the owners of hazelnut orchards along the trail segment in question, especially with the need to spray them. The best conclusion from all of the materials submitted, is that the standard setback necessary to spray hazelnuts, in the way they are usually sprayed, for pretty much every chemical used including those containing paraquat, is 10 feet.

8.8.4 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.” Under the adopted rule, which is the only rule that applies, the responsibility of farm operators to avoid spraying people and to prevent the drift of pesticides off of their property is unchanged. That county view was upheld in the LUBA remand now before the Board.

8.8.5 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. One spray applicator indicated that, when possible, he sprays in the evening or at night, when wind conditions are more favorable, bees are not active and sunlight does not break down the chemical spray. Sign details will be established through the master planning process, which is scheduled to begin at the time of these findings. Posted signs will include clear notice that the trail is for day use only. Even during the night, spray operators are required to avoid spraying the property of others, whether or not there are people or animals located there. 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. These matters should be addressed in the master planning process, but it is feasible to post warning signs and to erect temporary barriers on the trail to accommodate spray applicators, and such measures should be allowed if doing so may reduce risks to farmers of possible complaints or lawsuits. The added inconvenience to farm operators is not part of the farm impact standard calculus, because overspray is not an accepted farm use under any circumstances, and farm operators are not allowed to use anyone’s property, public or private, as a spray buffer without permission, and do so at their own risk, not as an accepted farm practice. Such measures to assist neighboring farmers, taken whenever necessary (and as to be addressed in the master plan) along with fencing and signage, reduce the risk of increased insurance premiums and potential lawsuits arising from trail use to a level at which those risks and expected costs cannot be considered significant. Such measures help to makes coping

with trail use adjacent to farm uses no different in terms of risk management than farming adjacent to a State Highway, county road, or other public road. 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 never allowed. The county, or other trail manager, 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.

8.8.6 Testimony has also been received indicating that the smell of a 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.

8.8.7 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. The segment of trail in question will be installed with access from Highway 240 (once the HI zone text is amended) and from the City of Carlton. There will be no parking or trailhead installed under this approval, and there will be ‘no parking for trail users’ or similar signs posted where the trail crosses Fryer Road. This segment of trail is being constructed for local use by the residents of Yamhill and Carlton. Although it may one day be a link in a regional trail, its intended and expected use at present is by persons who live in the area or are visiting Yamhill or Carlton. Such residents and visitors, more likely than not, know the difference between smelling pesticides and being sprayed with them.

8.8.8. 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. Testimony was received that other jurisdictions provide such indemnification, but in states with different state laws. No rational basis has been identified in this case 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.” As stated, fencing, signage and other practices outline in the master plan will reduce perceived liability risks to a level at which they do not significantly impact accepted farm practices or costs.

8.8.9 As addressed throughout these findings, the existence of a paved 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 and signs during times of spray application will further minimize potential liability risks and other potential conflicts (addressing reports to state agencies) between applicators of pesticides and use of the corridor by hikers, bikers, and equestrians. Additional testimony received during the proceedings on remand are addressed elsewhere in these findings.

8.9 The county has also received testimony from numerous farmers, including some that are located within the notice area for this proceeding, and six who farm adjacent to the corridor. 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, clueless tourists and criminals will wander onto their land trampling crops, littering, doing drugs, interrupting spray operations, stealing, raping, killing, committing acts of vandalism, or setting up makeshift camps. Several farmers and other opponents claimed that, either trail users will start fires, or they will be incinerated by fast moving fires started accidentally by farmers. The attorney for the organized opposition promoted this type of testimony orally and in writing to the Board. The Board has weighed that evidence against the extensive testimony received regarding the Banks to Vernonia trail, which was almost exclusively praised by those providing oral and written testimony. The Banks to Vernonia Trail passes through forest land, but also through extensive farm areas, adjacent to and through established fields growing grass seed or used for grazing. Negative testimony about the Banks to Vernonia Trail was far outweighed by positive testimony, indicating close similarities between it and the Yamhelas Westsider Trail segment under consideration in these proceedings. That testimony supports a conclusion that the apocalyptic testimony of trail critics (especially the attorney for the organized opposition, who appears to be the driving force for hyperbolic claims in these proceedings) is not credible and that the balance of testimony and evidence supports a conclusion that the trail can function as an exceptional place for persons of all ages to exercise and as a safe transportation route for students and others traveling between the cities of Yamhill and Carlton. There is no reason to believe that trail users present any greater risk of fire or crime than is posed by users of other public rights-of-way in the county. As indicated, all police and emergency services will be available along the trail, which will have good emergency access at several locations. Two fire districts serve the trail segment in question, including one that has its main fire station abutting the trail at its southern terminus. A developed trail will provide greater access for fire response vehicles to areas adjacent to the trail than are available now.

8.9.1 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 Yamhelas 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. Volunteers and ‘Friends of the Trail’ will likely report problems and help to educate persons on the trail who appear to not know or understand basic trail rules. Maintenance of the trail will also help to minimize all potential impacts to neighboring farms from trail users, promoting respect for the trail and its neighbors. The establishment of a Master Plan will be the first step in development and maintenance of a trail in the Yamhelas corridor that draws children, young people and families, none of whom are ‘criminal elements,’ and all of whom are wary of such elements and know how to react appropriately. The Banks to Vernonia Trail and the testimony received about it is substantial evidence that the Board accepts establishing that 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 that trail and many other developed trails in Oregon and across the country. Contrary to the claims of some opponents, the close proximity of farms growing the same types of crops adjacent to the Banks to Vernonia trail is substantial evidence that farm practices of the type taking place along the Yamhelas trail corridor are not likely to be impacted in a significant way by the presence of the trail and trail users. Contrary testimony regarding the Banks to Vernonia Trail outlined impacts to farming where no fencing exists—no public trail uses are allowed in the Yamhill to Carlton segment of the county’s corridor prior to the installation of appropriate fencing.

8.9.2 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, 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 will 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.

8.10 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. In noting this fact, the county is not agreeing that neighboring farm operators have the right to use county property as a spray buffer without the county’s consent. Farm operators have no right to spray adjacent to a neighboring property in a manner that limits that neighbors right of “quiet enjoyment” on all parts of the neighbors’ property, at all times. The presence of hikers, runners and bicyclists

within the corridor in no way changes the basic right of a property owner to not be forced to limit his, hers, or its access to real property because a neighboring farm operator wants to spray pesticides or herbicides. It is not an “accepted farm practice” to exclude any neighbor from use of his or her property to accommodate the farm operator in complying with label restrictions. Farm operators must employ one or more management/spray methods to manage their own spray buffers on their own property, and most do.

8.11 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. The Board received extensive testimony supporting a conclusion that farmers do not incur significant costs or impacts from farming adjacent to other public rights-of-way as evidence that they will not incur significant impact or costs from the presence of trail users. The Board finds that evidence to be credible and compelling, and to outweigh less credible and compelling testimony that trail impacts to farming will far exceed the usually insignificant impacts of farming adjacent to any other kind of public right-of-way.

8.12 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.

8.13 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.

8.14 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.

8.15 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 all 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 need or want to spray up to the corridor. The master plan should specify trail design adjacent to grass seed and grain fields to ensure that nuisance weeds are controlled or eliminated and do not contaminate neighboring crops. Right-to-farm laws limit the liability of farmers who engage in 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.

8.16 It should also be noted that, for conditional uses within the farm zone, the Planning Department has required property owners to sign and record an affidavit stating the following:

“The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator’s responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator’s violation of State law.”

This affidavit alerts the property owner and potential users of the land that neighboring agricultural operations will not be required to modify their farming practices on behalf of the neighboring use. With conditions and the above affidavit, it appears that the use will not cause significant conflicts with neighboring farming operations.

8.17 The following findings address the consistency of the proposal with the Statewide Land Use Planning Goals. These findings are mostly carried through from Ordinance 904 and are not necessary for conditional use approval but are included in these findings in an abundance of caution.

8.17.1 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. Three full hearings were provided, two before the Board of

Commissioners. All of the hearings held regarding Docket G-01-18 as well as a ‘trail dialogue’ meeting to receive comments regarding the trail were well attended. On second remand, extensive written testimony was accepted, over an extended period of time, and the attorney for the organized opposition was allowed to testify orally, at length.

8.17.2 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 (substantial evidence in the record as a whole) 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.

8.17.3 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 1872. The county has considered potential impacts 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.

8.17.4 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.

8.17.5 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.

8.17.6 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.

8.17.7 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 minor watercourses. Due to a Letter of Map Revision received from FEMA in September, 2019, no part of the corridor segment under consideration is in a regulated floodplain or floodway.

8.17.8 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.

8.17.9 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.

8.17.10 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.

8.17.11 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, and all necessary public facilities and services are available to serve the proposed use.

8.17.12 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.

8.17.13 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.

8.17.14 Remaining Goals. None of the remaining Statewide Land Use Planning Goals are relevant to this application.

8.17.15 With regard to the Statewide Planning Goals, it should also be noted that a section of 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;"

8.18 Spray operator claims. The claim by spray operators that they have a right to use their neighbors' properties as spray buffer areas, and that they are therefore significantly impacted if they have to stop using neighboring properties (specifically the county's property) if there are people present is based on a faulty theory regarding property rights, which extend from the 'center of the earth to the heavens' under long-established property rights law. Spray operators have no right to rely on county property as a spray buffer area, whether or not people are present, because the county has the right to occupy every part of its property without restrictions imposed by a neighbor without the county's consent.

8.18.1 Gramoxone. In its decision, LUBA stated: "Petitioners cite to evidence that the label for one of the herbicides commonly applied, Gramoxone, includes warnings not to use 'around' recreational parks or playgrounds (Same for Parazone). Record 2-2066. Petitioners cite to a letter from a staff person at the Oregon Department of Agriculture (ODA) to the effect that, based on dictionary definitions, 'around' means '[i]n the vicinity of, near or close-by,' and that the label restriction could 'preclude applications in fields adjacent to the trail or sensitive sites identified in product labeling.' Record-2 1629." An updated letter appears to state that 'around' does indeed mean 'in.' In either case, the meaning of a pesticide label is a question of law and, legally, it appears that the pesticides in question are not to be sprayed "in" 'home, home garden, school and recreational park settings.'

8.18.2 LUBA also stated: "We understand petitioners to argue, however, that the labels for some pesticides and herbicides, such as Gramoxone, effectively require a setback of an undefined width from certain sensitive uses, such as recreational areas, regardless of whether drift occurs or not." at 26 The change in label makes clear that the label never required "a setback of an undefined width from certain sensitive areas, such as recreational areas," as alleged by the petitioners, who claimed "whole fields" adjacent to the trail were off limits for spraying under the label restrictions. That claim is false, unsupported, and rejected by the county.

8.18.3 What the county apparently did not argue clearly or persuasively to LUBA is that prudent farmers employ setbacks on their own properties to prevent overspray and drift. The need for setbacks does not obviate the need for a farm operator to obtain permission from a

neighbor before purporting to use the neighbors' property to satisfy label setback requirements. The farm operations adjacent to the trail should already be employing setbacks and spray techniques on their own property that are otherwise necessary to meet label requirements and to prevent their spray from landing on neighboring property (the trail corridor) by way of drift or overspray. Emphatically, the county has a right to maintain its property without the threat of contamination or damage due to neighboring spray operators who think it is appropriate to risk contaminating the county's property simply because no one is present at the time.

8.18.4 The label submitted by opponents into the previous record (and apparently into the record on second remand, is not a current label, but an expired and withdrawn label. The label cited in the record states: "DO NOT USE around home gardens, schools, recreational parks, golf courses or playgrounds." (all caps; emphasis added). Page 2 of the current label (as of January, 2020) states:

"Never use this product in residential or public recreational settings (e.g. homes, home gardens, schools, recreational parks, golf courses, and/or playgrounds)." (all caps)

8.18.5 Further down the label, the warning is repeated, again substituting "in" for "around." There is no prohibition on the use of Gramoxone in fields adjacent to the trail, other than standard setbacks that all farm operators would employ in an abundance of caution and out of respect for their neighbors as much as to reduce the risk of overspray or drift onto neighboring properties to reasonable levels.

8.18.6 Regardless, the new, "current" gramoxone label is substantial evidence that the presence of the trail on county owned property does not significantly increase any farm costs or impact any farm practices for farmers who use it in adjacent fields according to label directions.

8.18.7 There is also a "Gramoxone pamphlet" from the manufacturer's website included in the record on remand. The pamphlet has a section of "buffer zones," The pamphlet specifically states:

"Buffer zones are not required for use on fruit crops and shelterbelts, or for interrow directed chemical weeding of vegetable, field and established nursery crops as this product must be applied with low boom spray equipment fitted with drift-eliminating shrouds or shields specifically designed to prevent herbicide contact with sensitive vegetation."

8.18.8 The current gramoxone pamphlet is substantial evidence that there are no buffers associated with the application of gramoxone to neighboring fields that could reasonably be considered a significant farm cost or impact to farm practices.

8.18.9 LUBA stated in its October, 2019 opinion:

“Petitioners also cite to testimony that some farmers use pesticides, Lorsban and Yuma 4E, that require up to a 100-foot setback from sensitive sites such as ‘pedestrian sidewalks’ or ‘outdoor recreation areas.’ Record-2 2094, 2250.” at 24

“Similarly, petitioners argue that some pesticides, such as Yuma 4E, specify a minimum setback of up to 100 feet from sensitive uses such as residential and recreational areas.” at 26

“We agree with petitioners that the county’s findings regarding setbacks required by pesticide and herbicide labels are inadequate and fail to demonstrate compliance with the farm impacts test.”

LUBA’s conclusions regarding the import of these statements suggest that the county has an obligation to accommodate petitioners’ setbacks on county property because it is proposing a nonfarm use. The county has no such obligation because, even without the presence of the trail, petitioners have no right to exclude the county from the use and enjoyment of county property and the maintenance of that property in the public interest. Page 2094 of the second record shows the application rate and setback (buffer zone) required for Lorsban, which is an insecticide (the label is now in the record at several locations). The only setback listed as 100 feet on the Lorsban label is for aerial application of greater than 2 lb ai/a. A footnote to the table states that “aerial application of greater than 2 lb ai/A is only permitted for Asian Citrus Psylla control, up to 2.3 lb ai/a.”

8.18.10 The USDA website states that Asian Citrus Psyllid causes damage to “citrus plants and citrus plan relatives” It also lists the states and territories of the US that are affected by this pest as: “Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Norther Mariana Islands, Puerto Rico, South Carolina, Texas and the U.S. Virgin Islands.” (<https://www.aphis.usda.gov/aphis/resources/pests-diseases/hungry-pests/the-threat/asian-citrus-psyllid/asian-citrus-psyllid>). The record establishes that the farm operators claiming to use Lorsban apply it with boom sprayers or blast sprayers. The likely applicable setback is 10 feet from the county’s transportation corridor, which the spray operator should expect to accommodate on its own property in accordance with property rights law and accepted farming practices.

8.18.11 The label instructions for Lorsban also make clear that the setback of 10 feet is required for a wide range of uses, not just for trails or recreation areas. In a section entitled “Spray Drift Management,” the label states:

“Do not allow spray to drift from the application site and contact people, structures people occupy at any time and the associated property, parks and recreation areas, non-target crops, aquatic and wetland sites, woodlands, pastures, rangelands or animals.

Avoiding spray drift at the application site is the responsibility of the applicator. The interaction of many equipment and weather-related factors determine the

potential for spray drift. The applicator is responsible for considering all of these factors when making the decision to apply this product.”

The same section also states:

“Making applications when wind is blowing away from sensitive areas is the most effective way to reduce the potential for adverse effects.

The buffer distances specified in the below table are the distances in feet that must exist to separate sensitive sites from the targeted application site. Buffers are measured from the edge of the sensitive site to the edge of the application site.

Sensitive sites are areas frequented by non-occupational bystanders (especially children). These include residential lawns, pedestrian sidewalks, outdoor recreational areas such as school grounds, athletic fields, parks and all property associated with buildings occupied by humans for residential or commercial purposes. Sensitive sites include homes, farmworker housing, or other residential buildings, schools, daycare centers, nursing homes, and hospitals. Non-residential agricultural buildings, including barns, livestock facilities, sheds, and outhouses are not included in this prohibition.”

Following the above-referenced table, the instructions state:

“Only pesticide handlers are permitted in the setback area during application of this product. Do not apply this product if anyone other than a mixer, loader, or applicator, is in the setback area. Exception: Vehicles and persons riding bicycles that are passing through the setback area on public or private roadways are permitted.”

8.18.12 It is clear from these quotes that a farm operator is required to manage his or her own spray operation to avoid spraying people wherever they are or might be. Nothing on the label gives a spray operator the right to use neighboring properties for their spray buffer, but the key seems to be that, if a right of way is being used as a spray buffer, steps should nevertheless be taken to manage spray operations on the edge of a field to avoid spraying people, animals or other sensitive uses or resources on neighboring properties. Accepted farm practices are to follow the applicable setbacks no matter what use is being made of neighboring property. The setback is at least 10 feet from sensitive sites where children might be, unless they are on bicycles (which seems absurd). As already explained by the county in previous findings, spray operators have no right to spray neighboring properties or to allow drift of herbicides or pesticides onto neighboring properties. The setbacks required by labels should be followed by farm operators on the edges of their fields regardless of the use being made of neighboring properties and, in any case, are not even a fraction as restrictive as opponents claimed in earlier proceedings and on appeal to LUBA. Use of the county’s corridor for a trail does not (or should not) affect farm practices regarding the application of Lorsban or any other chemical, and does not (or should not) affect the cost of properly applying Lorsban or any other chemical, significantly or otherwise.

8.18.13 According to the label found in the (second) record at 2247, Yuma 4E, like Lorsban, is a chlorpyrifos (organophosphate), and is used to control “listed insects infesting certain field, fruit, nut, and vegetable crops.”

8.18.14 The label for Yuma 4E is similar to the label for Lorsban (second record, 2250). The required setback for most applications, both ground and airblast, is generally 10 feet, not 100 feet. As with Lorsban, a 100-foot setback is only required for aerial spraying (which no one claimed to do with YUMA 4E) and then only in a concentration that is only allowed to treat Asian Citrus Psylla, which is not present in Oregon.

8.18.15 In its remand decision, LUBA stated: “The county responds that petitioners err to the extent they argue that it is an ‘accepted farm practice’ to overspray or allow pesticides to drift onto adjoining property. We agree with the county on that point.” at 26

8.18.16 With regard to pesticide and herbicide setbacks: the county has demonstrated that applicable label setbacks for pesticides and herbicides that opponents claimed will increase their farm costs and impact their farm practices are likely 10 feet using appropriate spray technologies and practices, a setback that is likely reasonable under all circumstances from neighboring property, whether or not trail uses are being made of such property. Contrary to arguments made by the opponents to LUBA, farm operators should currently be following minimum setbacks from the county’s property to prevent drift and overspray. The county has not granted permission to any farm or spray operator along the corridor to use the county’s property to meet pesticide and/or herbicide labels. To the extent that farm operators are not currently providing any setbacks to county property, they take an unreasonable risk of allowing drift and overspray to contaminate the county’s property. A ten-foot setback from property lines is reasonable in all instances, and following such a setback as required from neighboring uses is not more inconvenient to farmers than following setbacks for public and private roads that surround and intersect their farm operations.

8.18.17 In conformance with LUBA’s decision, the county agrees that label setbacks are from “‘areas’, not a setback from people or animals that are present.” The county believes that the setbacks are from the county’s property line. The county continues to conclude that a ten-foot setback from the county’s property line for the pesticides discussed does not impose an unreasonable burden on farm operators adjacent to the county’s transportation corridor, and will not significantly increase farm costs or significantly impact farm practices that should generally recognize that drift and overspray are most easily avoided by following minimum label setbacks as to all neighboring property, whether or not people or animals are present, to avoid the potential for drift or overspray.

8.18.18 In its remand opinion, LUBA stated: “We agree with the county that the practice of spraying the right-of-way without permission of the property owner or other legal right to do so is not an ‘accepted farming practice.’” at 34. LUBA also stated: “[N]either the county nor LUBA is in a position to resolve the merits of petitioners’ various claims to own, control, or use the right-of-way. * * * If adjoining farmers are now forced to provide isolation strips to maintain their certifications because they can no longer spray the right-of-way, that is not a consequence of the proposed Trail.” at 35.

8.18.19 LUBA also stated: “[T]he county correctly concluded that OAR 437-004-6405 does not require adjoining farmers to take action to protect persons or structures located off-site.” at 39.

8.19 Objections to conditions 1(d), 2, 6 and 8. LUBA specifically upheld the following conditions of approval imposed under Board Order 19-94:

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

(d) The county will seek to enter into good faith negotiations with the Van Dykes, the Eramos, Dromgoole and the McCarthys and/or their successors in interest to establish for each of these owners a license to cross the corridor at an appropriate location or locations, to access fields owned or controlled by them that are currently separated by the trail corridor or to otherwise provide access across the corridor necessary for farming purposes.

* * *

2. 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 will help to ensure long-term minimization of conflicts between trail users and neighboring landowners.

* * *

6. During the master planning process, the county shall negotiate, in good faith, with farm operators seeking or maintaining crop certifications, corridor vegetation and management protocols necessary to prevent contamination of such crops through cross-pollination or crop contamination. Maintenance of appropriate trail corridor vegetation and management protocols established by the parties will be continued as long as necessary to maintain the certifications sought or obtained by neighboring property owners, or subsequent replacement certifications.

* * *

8. The county shall notify each property owner adjacent to the trail corridor of the option to provide 72-hour notice to the county prior to aerial spraying of herbicides, pesticides, fungicides or other dangerous chemicals. Upon receiving 72-hour advance notice of such spraying, trail managers shall post ‘Danger-Pesticide Spraying in Progress--Trail Closed’ signs in appropriate locations to prevent access to the identified trail segment until spraying is completed or until notified by the spray operator that the area is safe to enter.”

Generally, LUBA held that these conditions are not required to meet the farm impact standard, but are accommodations offered by the county in an effort to promote a ‘working relationship’ with

corridor neighbors that has not yet materialized. Instead, under the apparent direction of their legal counsel, some neighbors and other opponents have generated a factory volume of spaghetti to throw at the wall in an effort to confuse both the Board and LUBA. The county nevertheless retains these conditions, as a continued gesture of goodwill to the corridor’s neighbors, even the ones funding the attorney for the organized opposition.

8.20 With special regard to Condition #2, the county has modified it to establish that the draft Master Plan will be presented to the Board for consideration in a quasi-judicial land use proceeding, to ensure that proposed trail facilities and management necessary to meet the farm impacts test under LUBA No. 2019-047 serve that function. The proposed condition has been modified accordingly.

8.21 Fencing. Condition 1(a) of Board Order 19-94 stated:

“1. 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;”

In striking down this condition, LUBA noted that “it leaves key determinations regarding fence design and materials to a subsequent approval process that does not provide for public input.” (at 68) Condition 2 of Board Order 19-94, provided for public input—it stated that the Master Plan must be “approved by the Board.” All Board of Commissioner meetings are conducted in accordance with the Oregon Public Meetings law, and public input is allowed at all Board of Commissioner formal sessions. It would be unusual for a Commissioner to refuse to accept public comment on an Agenda item—accepting public comment is a central part of the Board’s job. The alternative established on this remand is to provide the kind of “public input” LUBA is referring to—a quasi-judicial land use hearing, to consider whether fence design and composition recommended in the Draft Master Plan is capable of minimizing trespass and other potential impacts to farmers (litter) to the point of insignificance. Please see Condition 2 at the end of these findings.

8.22 Signage. LUBA denied petitioners’ request to overturn Condition 1(b) of Board Order 19-94, which states:

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

* * *

(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.”

This condition, of benefit to all neighbors of the trail and to all farm operations conducted along the trail, was upheld by LUBA. The county is retaining it.

9. Findings addressing testimony and evidence submitted

9.1 Planning Docket G-01-18 is before the Board on second remand from the Land Use Board of Appeals (LUBA). The original proceedings resulted in the adoption of Ordinance 904, on May 31, 2018. The ordinance was appealed to LUBA and remanded to the county with instructions to hold a new “quasi-judicial” hearing, and to adopt findings to address the conditional use standards of the county’s zoning ordinance. The result was Board Order 19-94, which is now before the Board on remand.

9.2 The record of this proceeding on remand includes the record and supplemental record of the original proceedings, containing more than 613 pages of evidence and testimony regarding the proposed Yamhelas Westsider Trail. The original decision also contained farm impact findings, addressing specific alleged impacts to surrounding farms from development and use of a pre-existing rail corridor as a hiking, biking and equestrian trail connecting the cities of Yamhill and Carlton.

9.3 LUBA remanded Ordinance 904 to the county for further proceedings, with instructions: hold a new hearing following “quasi-judicial” rules and address the conditional use standards of the county’s zoning ordinance. The new hearing was held on March 7, 2019, and opponents of the trail testified regarding farm uses taking place adjacent to, or in some cases within, the Union Pacific transportation corridor that is now owned by Yamhill County. Some of the people who testified at the hearing own and/or farmland adjacent to the corridor. Six separate farm operations have been identified as being adjacent to or transected by the existing transportation corridor and being operated by persons who have alleged potential significant impacts to their accepted farm practices. Those parties, their farm practices and costs, are discussed below. Additional findings address testimony submitted in this second remand proceeding.

9.4 The issues that LUBA decided in favor of the county are no longer before the Board. That includes questions of ownership. LUBA has now twice ruled that ownership of the corridor is not an issue on remand. The county owns the corridor.

9.5 LUBA also accepted the county’s findings establishing that the proposed trail complies with Statewide Land Use Planning Goal 3, the “Agriculture” goal. Those findings were supported by evidence in the record that the corridor has existed as a discrete parcel and ownership since its creation in 1872. The tax lots in question were most recently owned by Union Pacific, which conveyed them to Yamhill County in November, 2017. The corridor itself is not farmland, any more than roads passing through EFU zones are farmland. The corridor is zoned EFU solely

because it passes through or borders EFU land. It is a (generally) 60-foot wide corridor being “banked” by the county for use as a future rail and trail corridor, with interim use as a trail. This has been the county’s established plan and policy since 2012.

9.6 The Proposed Use Meets the Conditional Use Standards

9.6.1 The above findings address most of the issues that were raised by the opponents in the first and second remands. There should be no question that the proposed use is consistent with the comprehensive plan—the Transportation System Plan, part of the Transportation Element of the county’s Comprehensive Plan, identifies the corridor as a transportation priority. There can be no question that an existing rail corridor is suitable for use as a rail and trail corridor. To find otherwise, the county would need to deny the reality of hundreds of rail-to-trail corridors that cross through farmland in every part of the United States. The opponents have failed to establish that theirs is the only farmland in America that cannot operate adjacent to a public trail—they all live and farm on public rights-of-way, where people already have the right to stand, walk, bike and drive their cars, trucks and motorcycles.

9.6.2 A great deal of evidence was received into the record regarding the character of the area as farmland. In places, livestock are present adjacent to the corridor; fields are producing grass, grass seed and grains; and there are hazelnut orchards, among other farm uses outlined in the Ordinance 904 findings, in the Board Order 19-94 findings, and in these findings on remand. The findings adopted as part of Ordinance 904 addressed the farm impact standard, and those findings, along with additional findings proposed in the staff report, and in by the applicant/county in its submittals, established that “the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district.”

9.6.3 The opponents have asserted that “public facilities and services” are not adequate to police the trail, and that fires caused by agricultural practices could trap and kill persons using the trail. The above findings address those concerns, and reach the opposite conclusion, based on existing facilities and levels of service, and the nature of the proposal.

9.6.4 The portion of corridor under consideration supported train traffic for approximately 100 years. Much of the original ballast is still in place, and the soils that were under the rail have not, since the 1980’s been ‘uncompacted.’ Because the county also purchased the Bus Barn property, containing a source of water and a septic system, and the southern terminus of the trail is within a city, it is clearly feasible to provide adequate public facilities and services to trail users.

9.6.5 An effort is underway to construct a bridge over Stag Hollow Creek just south of the Bus Barn, in a part of the corridor that is 80 feet wide, and to design two culverts further south necessary to convey trail users across two unnamed drainages on the north end of the corridor segment under consideration. The bridge has been designed and is being constructed to hold all legal loads, including a 60,000 pound fire engine. There are also fire hydrants at either end of the trail, one at the Carlton Main Station, and the other at the Bus Barn. As indicated by the Sheriff, smaller vehicles used by the Sheriff’s Office for access to off-road or forested crime

or accident scenes are expected to be able to access the trail easily as proposed with removable bollards.

9.6.6 With regard to the submittals by the attorney for the organized opposition, generally: by infusing the arguments made with invective and identifying the county as “he,” the value, credibility and weight of the arguments made is diminished. The application is the county’s application. The county is a political subdivision of the State of Oregon, it is not a male. An attempt has been made to ignore the appeals to emotion, name calling, fearmongering and threats presented throughout this proceeding, in her March 21, 2019 letter, and in numerous documents that the attorney for the organized opposition has submitted on second remand. As the factfinder, it is the Board’s responsibility to weight the evidence and testimony it receives and the statements of witnesses and to judge the credibility of those testifying. For reasons indicated here and throughout these findings, the Board finds that, while many credible statements have been made by property owners and farmers opposing the trail, that testimony has been obscured by unsupported, hyperbolic, not-credible, sometimes deliberately false claims made and promoted by the attorney for the organized opposition that have then been repeated by her clients. There are too many of such statements made in all of her submittals, and repeated at high volume in her oral presentation to the board, to address them all separately here.

9.7 The Proposed Use Meets the Farm Impact Standards as Interpreted in the Riverbend Landfill Case

9.7.1 The county and its staff have been involved to a significant degree in all aspects of the Riverbend Landfill case leading to the Supreme Court’s recent decision interpreting, for the first time, the farm impacts test. No court or state agency has reversed the county’s decision regarding proposed expansion of the landfill. The case was first remanded to the county by LUBA and then by the Court of Appeals, for adoption of additional findings. The Supreme Court reviewed the case over the course of 15 months before remanding the case to LUBA. LUBA was instructed to reconsider whether the county was correct in deeming certain farm impacts “significant,” before remanding the case to the county for additional proceedings. The opponents in this case have argued that the Supreme Court’s decision makes it impossible for the county to meet the farm impact standards in this remand proceeding.

9.7.2 The opponents are incorrect. The Supreme Court affirmed the “farm focused” approach to farm impacts that Yamhill County and most practitioners have followed since the adoption of the standard in 1989. Even in the Riverbend case, the information provided by the applicant identified specific farms and specific potential impacts that might occur if the landfill footprint were to be extended as proposed. The county in this case has focused on individual farms in seeking to minimize potentially significant impacts to accepted farm practices or costs.

9.7.3 Yamhill County and other counties routinely address both general and localized impacts from conditional uses in farm zones and seek to minimize all credible predictions of harm to a level at which a reasonable person would not consider them to be significant. Neither the Supreme Court nor any other Court or review board has held that the proposed use must have no impact whatsoever on accepted farm practices taking place in the surrounding area. The focus

of the test—especially the second part of the test (ORS 215.296(2))—is on establishing conditions to minimize the potential for significant impacts to be realized, not to prohibit the use.

9.7.4 ORS 215.296(2) specifically provides that an applicant “may demonstrate” that the farm impacts test “will be satisfied through the imposition of conditions.” Yamhill County has always focused on establishing conditions of approval to minimize otherwise potentially significant impacts to farm uses by non-farm uses, and has never denied a proposed non-farm use in the farm zone based on failure to meet the farm impacts test.

9.7.5 For purposes of Board review, the central holding of the Riverbend case is that the farm impact standards require looking at individual farms, and that the term “significant” has its ordinary meaning. The decision also imposes one specific limit on the types of conditions that a governing body or other decisionmaker can impose. The decisionmaker cannot require a payment to a farmer to minimize a potential impact to an accepted farm practice if, following the payment, the farmer would continue to be unable to engage in the accepted farm practice. No such conditions were sought by the applicant in this case, and none of the conditions (see below) violate this rule.

9.7.6 In the Riverbend case, the Supreme Court used Webster’s Third New International Dictionary for its definition of “significance”: “3 a : having or likely to have influence or effect : deserving to be considered ; IMPORTANT, WEIGHTY, NOTABLE[.]” (and those three words are in upper caps).

9.7.7 In this case, the county listed all 40 tax lots adjacent to the corridor, and the farm uses that the county believes are taking place on each one of them (R-472). These findings on remand incorporate earlier findings and include additional findings addressing the six farm operations along the segment of corridor in question where operators have alleged significant farm impacts. No major changes have been reported, other than a change of crop—from grass seed to hazelnuts—on farm property just south of the Bus Barn. The county also submitted into the record literature published by OSU and the OSU extension center outlining accepted agricultural practices common to the farm uses identified (R-490-532). The county has also reviewed lists of accepted farm practices taking place on the farms in question and perceived impacts submitted by the parties and by the attorney for the organized opposition. Finally, the county has listened to what farm operators are saying, has sought to address their concerns, and will continue to do everything it can to make this trail work for them, be acceptable to them, and not significantly impact their accepted farm practices or costs.

9.8 Disputes Regarding Potential Farm Impacts

9.8.1 In the Riverbend case, the Supreme Court stated:

“when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice, the farm impacts test in ORS 215.296(1) requires an applicant to prove that the proposed nonfarm use (1) will not force a significant change in the accepted farm practice and (2) will not significantly increase the cost of that practice. A

‘significant’ change or increase in cost is one that will have an important influence or effect on the farm. For each relevant accepted farm practice, if the applicant cannot prove both of those elements without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test.” (slip op 31)

9.8.2 Of the 40 tax lots abutting the trail within the notice area, the county has identified eight parties, or sets of parties, who have objected to the trail, and have disputed the county’s proposed findings regarding potential significant impacts to accepted farm practices:

1. *Kristofer Weinbender and Melissa Braukman*

12000 Hwy 47, Carlton; EF80; 4 acres; Livestock (alpacas, geese, turkeys, chickens); pasture; misc. food crops

2. *Brian and Roxanne Coussens*

6325 NW Glencoe Rd, Hillsboro 97124; EF80; ~75 acres total; Hazelnuts

3. *Gordon Dromgoole and Billie Jean Matthews*

19643 NW Goodrich Rd, Yamhill; EF80/AF-10; ~81 acres; Clover, grass seed, hay, grains, livestock pasture, sheep (Mark Gaibler also has a role in the management of this property). The EFU portion of this property (west of the corridor and north of Fryer Road) now has approval for a 12-acre solar power array, planned to abut the corridor.

4. *Bryan Schmidt (leasing property of Salvatore and Jo Ann Eramos)*

7580 Hendricks Rd, Carlton; EF-80/AF-10; ~11 acres; Dairy and beef cows, cow/calf operation, raw milk sales; animals need to cross ROW to get between fields, pasture needs to be fertilized/pesticides sprayed, milks animals daily; has lately grazed a pig and cows in the right of way, and has strung barriers across the trail in an apparent effort to obstruct access to county property by county employees and contractors

5. *Lee & Kathryn Schrepel and Fruithill Inc.*

6501 NE Hwy 240, Yamhill; EF-80/HI/RI; ~29 acres; Fruit and Hazelnut Orchards

6. *Mark Gaibler*

PO Box 808, Carlton; EF-80; 48 acres; Grass seed, hay

7. *Gregory & Celine McCarthy*

PO Box 417, Gaston; EF-80; 50 acres; Grass seed, clover, row crops (corn, onions, green beans)

8. *James & Julie Van Dyke; John & Linda Van Dyke; Van Dyke Riverview Farms*

PO Box 400, Yamhill (James), 1255 E Main St, Yamhill (John), 8456 NW McSween Ln, Yamhill (Van Dyke Farms); EF-80; ~242 acres total along trail; Grass seed, hay, livestock pasture; property straddles the trail for long distance, need to cross over multiple times while farming; large grass seed fields recently converted to a large hazelnut orchard just south of the county's Bus Barn.

These farm operations are discussed in more detail below. Only six of these farm operations are potentially directly impacted by the trail.

9.9 Spray and Overspray-OSHA/EPA rule

9.9.1 The opponents have repeatedly stated that their farm practices and costs will be significantly impacted if a trail is allowed in the existing rail corridor, because pedestrians and bikes that were not previously within 150 feet of their operation may then be within 150 feet. This is because, according to the opponents, a rule adopted by Oregon OSHA prohibits them from spraying within 150 feet of a trail or highway. LUBA rejected the opponents' position regarding the OSHA/EPA rule, and it is not subject to reconsideration on this remand.

9.9.2 Overspray, especially overspray on neighboring property, people or animals, is illegal. It is a form a trespass, and may also constitute a nuisance. A farm operator is currently not allowed, without permission, to spray the land of his or her neighbor, whether or not there are people there. Farm operators have, since the beginning of pesticide availability, been required to control where the spray ends up, and are not, under any circumstances, allowed to spray the property of others without their permission, whether or not there are people or animals there. As explained in more detail above, farm operators must manage pesticide label-required spray buffers on their own property, and the likely buffer for chemicals referenced in these proceedings is (a generally insignificant) ten feet that applies regardless of the use being made of neighboring public and private properties.

9.9.3 Like any other property owner, the county wants, and needs, to control what takes place on its own property, even when that property is public right-of-way. The county also needs to perform maintenance, and it has the right to allow persons to be within the corridor even if it is not formally opened as a public trail. Like all property owners, the county has a right to expect that property under its ownership and control will not be sprayed by its neighbor or used as a spray label setback area without its consent. In conclusion: Neighboring property owners have no current right to spray the corridor or to use it as a spray buffer, and it is not an accepted farm practice for farm operators to spray neighboring properties or to use them as a spray buffer, whether or not that property is a public trail, whether or not other persons or animals or present, and whether or not OSHA has adopted a rule stating that farm operators must remove all persons and animals within (up to) 150 feet, on property that they own or that is part of their farm operation.

9.9.4 Even though the county is not required by the farm impact standards to address practices that are not "accepted farm practices," it adopted conditions as part of Ordinance 904 and Board Order 19-94 to minimize perceptions that trail users might have when they smell pesticides but may not be receiving a dangerous dose of it—signage. For the first segment of trail, many trail users, who may live on neighboring properties or in Yamhill or Carlton, are already

going to know the difference between a pesticide smell and being doused with it. It will be obvious to most users that they are passing through farmland, and therefore they may encounter pesticide smells, dust, and odors normally associated with farm operations.

9.10 Opening and closing gates as an “accepted farming practice”

9.10.1 In the original proceeding, the county proposed fencing the entire corridor with fencing suitable to prevent people and animals from trespassing onto neighboring private property. The reason for that condition was to minimize, or prevent, trespass onto neighboring farms by trail users. The trespass issue encompasses litter on neighboring properties, camping on neighboring properties, vandalism on neighboring properties, theft on neighboring properties, and harassment of livestock on neighboring properties. If trail users cannot easily cross onto neighboring properties, none of the above impacts will occur on a “significant” level. The 60-foot width of the corridor also provides buffering for the proposed 12-foot wide trail surface, even though the county is not required to provide buffering of neighboring spray operations on its own property without its consent.

9.10.2 LUBA denied petitioners’ claim of farm impacts relating to opening and closing gates on the basis that there was no evidence in the record to support a reasonable conclusion that any of the petitioners have a current, legal right to enter or without the owner’s (the county’s) permission, because entering or crossing the property of another without permission is not an “accepted farming practice.”

9.10.3 The county wants to accommodate farmers and farm operators, including the Van Dykes, and to make it as easy as is possible for them to farm their property, where it exists on both sides of the corridor. Gate locations, design and protocols will be addressed in the Master Plan, but that does not preclude the county from negotiating now with the Van Dykes, to make sure they have legal access to move farm equipment across the corridor. A condition of approval requires that the county provide an adequate crossing for the Van Dykes and their successors in interest to cross at the location indicated by the Van Dykes, with or without a gate, at their preference. At that location, site distance is clear for the Van Dykes and for persons who might be on the trail. The corridor is straight and runs through a relatively flat field. This action should be taken to accommodate the Van Dykes, but it is not required by the farm impact test because, as stated, the county is only required to address the impacts of the proposed trail on “accepted farm practices,” and it is not an accepted farm practice to use public property without permission as part of farming activities, or to otherwise use and expect to use the land of others, without permission, for farming. The findings provide for a similar arrangement for the Eramos farm, which a dairy farmer is apparently leasing and, similarly, contains land located on both sides of the corridor with limited access to the eastern portion, and for the Dromgoole and McCarthy properties, to the extent those properties need access to farming operations that cannot be reached efficiently by other means.

9.10.4 The original Yamhelas Westsider Trail Concept plan discussed and included drawings of gates that can be provided if necessary in a particular situation. Neighbors of the corridor knew, when UP owned the corridor, that they needed some kind of license or other permission to cross or to travel within the corridor. Once regulatory abandonment occurred, it is

clear that UP became more flexible with regard to the corridor. It did not prevent the farming of parts of it, fencing at various locations to keep livestock out or in, and other activities within the corridor. Much of the corridor has an established path, and other parts would be easily accessible with the simple trimming of blackberries. As owner of the corridor, the county has the current right to allow access to the corridor and to exclude the public and anyone else, including the Van Dykes and the Coussens, who have no current legal right to enter or cross the corridor.

9.10.5 In the first remand proceeding, the attorney for the organized opposition gave her legal opinion that the Van Dykes and others have prescriptive rights to enter the corridor, through use over a statutory period of time. Testimony indicated that, viewing the corridor from the back of the “Bus Barn” property (and as seen on satellite images) it appears that the Van Dykes are encroaching on the corridor, possibly seeking to adversely possessing it against the county’s purchased title. LUBA rejected petitioners’ claim, and it is not an issue that the county must address again on remand.

9.11 Cumulative Impacts

9.11.1 Under the Riverbend case, the farm impacts test applies: “to each particular change or cost increase in accepted farm practices and * * * to changes or cost increases considered in the aggregate.” (at 458) The question on appeal of the Riverbend case to the Supreme Court was “how the local government determines the significance of cumulative impacts caused by proposed nonfarm uses that, viewed discretely, are not significant.”

9.11.2 The Supreme Court noted that: “LUBA would limit its cumulative impacts analysis in [the landfill case] ‘to the cumulative effect of different kinds of individual impacts on each separate farm, not the cumulative effect of the same kind of impacts on multiple farms considered together.’” (at 458-459) The Court of Appeals affirmed that approach, and that approach was not overturned by the Supreme Court. The cumulative impacts test is, therefore, “farm focused,” and does not require consideration of “more than the aggregate of multiple less-than-significant impacts on each farm.” (at 459-460)

9.11.3 In making this decision, the Board has focused on applying the Supreme Courts/Webster’s definition of “significance,” as “IMPORTANT, WEIGHTY, NOTABLE.” To the extent there is more than one significant impact to “accepted farming practices” for a particular farm operation, the aggregate of those impacts, and whether they are significant in the aggregate, have been considered. The Board has also considered whether a number of otherwise insignificant perceived impacts ultimately amount to a significant impact as to any one farm. The Board has only addressed individual and/or cumulative impacts that force “significant” changes to “accepted farming practices,” or significantly increase costs of “accepted farming practices.” Impacts to practices that are not “accepted farming practices” have been dropped from the equation. As the Board has concluded, no form of trespass, or use of public property without permission, is an “accepted farming practice,” and spraying the property of others with pesticides/herbicides/fungicides or any other substance is not an “accepted farming practice.” The county has not given any farm operator the right to spray the Yamhelas Westsider corridor or to use it to meet pesticide buffer requirements.

9.11.4 The conditions of approval are designed to prevent trespass, therefore preventing all of the significant impacts that might otherwise occur due to bad behavior on the part of trail users, including trespass, littering, vandalism, camping, damage to crops and harassment of livestock. The conditions already adopted are statutorily allowed as a way to minimize otherwise potentially significant impacts to a point at which they can no longer be considered significant (ORS 215.296(2)). Those conditions eliminate the potentially significant impacts stemming from trespass as to each farm operation identified along the segment of the corridor under consideration. None of the adopted conditions are affected in any way by the Riverbend decision, because none of them seek to compensate individual farmers for the reduced profitability of their farm operations caused by the nonfarm use.

9.12 Transportation Planning Rule Findings

9.12.1 OAR 660-012-0060(1) states:

“(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan.”

9.12.2 In this case, as the Board learned on first remand, it was not necessary for the Board to amend its Transportation System Plan in order to approve trail uses in the existing corridor between the cities of Yamhill and Carlton. Instead, LUBA required that the county establish compliance with the county's conditional use standards as the correct method for approving development of the trail segment under consideration. For that reason, the Board adopted an ordinance to repeal Ordinance 904 and adopted Board Order 19-94 granting conditional use approval for Docket G-01-18. Under OAR 660-012-0060(1), the county is not required to address the Transportation Planning Rule unless it is adopting "an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation." The following findings are therefore not required by law, but are adopted by the Board in an abundance of caution.

9.12.3 The proposal is for development of a segment of the trail that is intended to connect the cities of Yamhill and Carlton, so that residents of those two cities and others can travel between the two cities on foot, bicycle or horse. Due to heavy automobile and truck traffic and narrow to non-existent shoulders on Highway 47 (the only other direct connection between the two cities) it is currently very dangerous for anyone to travel between the two cities on foot, bicycle or horse. The proposed trail will start at State Highway 240, will cross Fryer Road, (a county road) and will enter the City of Carlton at the trail's southern terminus.

9.12.4 The proposed trail segment is for use of the residents of, and visitors to, the cities of Yamhill and Carlton. The trail will start at Highway 240 at a trailhead located at the Bus Barn property, and end at a trailhead in the Carlton. To the extent necessary, the trailhead and any trail construction in the City of Carlton will be done in coordination with the City of Carlton, and only after receiving any necessary approvals from the City of Carlton. Access from the City of Yamhill is anticipated by way of an existing sidewalk and the existing southern shoulder of Highway 240, to the Bus Barn property. Grant money is potentially available from ODOT to improve pedestrian and bicycle access from the City of Yamhill to the Bus Barn trailhead. ODOT has been a partner to the county throughout the county's efforts to purchase the corridor and to establish a trail there. The county owns the Bus Barn property, which is large enough to accommodate a trailhead and to continue to be used for the parking of school busses. Septic disposal and water are both available at the Bus Barn property. A zoning ordinance text amendment will be necessary prior to use of the Bus Barn property for trail uses. The amendment has been drafted, has been presented to the Planning Commission and will hopefully be forwarded to the Board of Commissioners soon. The proposed zoning text amendment is allowed under existing state law. The Bus Barn property is zoned "Heavy Industrial," which is not an EFU zone, and is not subject to EFU zone restrictions. The Master Plan will likely address possible improvements to the Highway 240 access to the City of Yamhill and Yamhill schools, and possible trailheads for the entire 12-mile county ownership. Highway 240 appears to have an adequate right-of-way for shoulder improvements and markings for a bike lane or other accommodation on or in association with the existing shoulder. Access from Carlton is anticipated from city streets in Carlton that cross the corridor owned by the county, with Roosevelt Street being the northernmost cross-street (currently barricaded at the trail intersection).

9.12.5 In the future, the Yamhill to Carlton segment of trail may become part of a regional trail system. The segment itself is not regional in character, and its potential traffic

impacts are decidedly minor in consideration of the trail user estimates obtained by the county. There is no reasonable expectation that more than miniscule (unmeasurable) amounts of traffic will be 'generated' by the trail or occur due to public use of the Yamhill to Carlton segment. Local use is anticipated, mostly for people who already live in the area and currently travel on area roads, or who are visiting the cities of Yamhill or Carlton and have parked their motor vehicles within one of those cities to access the trail on bicycle, on foot, or on a horse.

9.12.6 For all of the above reasons, even if the county were amending its functional plan (TSP), approval of the trail segment under consideration will not significantly affect an existing or planned transportation facility. Approval of the proposed trail segment will not change the functional classification of an existing or planned transportation facility. State Highways 47 and 240 are classified under the TSP as "minor arterials" and Fryer Road is designated a local road. Comment was requested from ODOT prior to adoption of Ordinance 904 and on the first remand, and no negative comments were received. The plan horizon year for the TSP is 2035 and the adopted plan states that "all county roadway segments will operate well within the mobility standards for the 2035 horizon year." The only segments of road in the county that were not expected to meet TSP targets are State Highways 99W and 18. The entire Yamhelas corridor has been identified as a priority transportation facility since 2012, a decision that was not appealed. The provisions in question were readopted in 2015, and also not appealed.

9.12.7 The Board Order now being adopted will not change any standards implementing a functional classification system. No changes to such standards are proposed.

9.12.8 Operation of the proposed trail, which will give users a non-motorized alternative for traveling between the cities of Yamhill and Carlton, will affect existing motor vehicle transportation facilities in a positive way, or not at all. Persons, including students, who may have required motorized transport between Yamhill and Carlton, will have a non-motorized option. The approval will not result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; will not degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; and will not degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan.

9.13 Usually, a local government conforms its zoning ordinance to correspond to its comprehensive plan—but that did not occur in this case. No state law requires that use of an existing transportation corridor for a walking, biking and an equestrian trail is subject to conditional use standards in any zone, or prohibits such facilities in any zone. Even so, the county did not, in 2012 or since, follow up and amend its code to specifically allow (outright) the trail where the comprehensive plan says the county wants the trail to be. As LUBA has concluded, the county's zoning ordinance requires that the county establish compliance with the county's conditional use standards in order to approve the proposed trail in EFU zones, and does not list such a use as allowed at all in the AF-10 zone (not an EFU zone), which half of the trail is in at one point along the Yamhill to Carlton segment. Unless and until the zoning ordinance is amended to conform to state law and to the county's comprehensive plan, an additional condition is adopted through this Board Order that prohibits development of the trail in any zone that does not allow

development of the trail, until the text of the zones in question are modified to allow such uses(or, in the case of the HI zone, a “similar use” is established.

10. Rebuttal Findings adopted in 2019 and retained in these findings

10.1 The attorney for the organized opposition represents trail opponents that include the owners or operators of six farm operations that are adjacent to the Yamhelas Westsider corridor. At least six of her individual clients are part of the Van Dyke family. One subset of clients (Lee and Kathryn Schrepel and Fruithill Inc.), own a fruit processing plant on property zoned Heavy Industrial and Resource Industrial (not farm designations) that is located within the 750-foot notice area, but is located across Highway 240 from the trail segment in question. Original finding 2.2 of Ordinance 904, cited by the organized opposition, was in error in stating that the segment of trail under consideration extends 750 feet north of Highway 240—only the notice area extended north of Highway 240. The text of (now repealed) Ordinance 904 repeatedly specified that the segment being developed under the terms of the ordinance is located “between Oregon Highway 240 east of the City of Yamhill into the City of Carlton,” and “between State Highway 240 and the City of Carlton.” The error in the earlier finding was corrected in the staff report on first remand. In any case, when this Board Order is adopted, it will replace Board Order 19-94. The Schrepels do not have a farm adjacent to the segment of corridor under consideration, and use of the segment under consideration is not predicted to have any impact on any “accepted farm practices” taking place on their properties located elsewhere. It should also be noted that Mark Gaibler farms land to the west of the trail corridor, on the other side of Highway 47. No “accepted farm practices” on that property are affected by the proposed trail. The farm practices taking place on the Dromgoole property by Mr. Gaibler, are considered in the discussion of the Dromgoole property.

10.2 On rebuttal during the last remand, the organized opponents continued to claim that, under current law, they have the right to spray pesticides on property owned by others and/or use those properties as spray buffers—their neighbors and public rights-of-way—as long as no people are present. That claim is not legally supportable, and is rejected by the Board. All persons are responsible for the actions they take on their own property, and must take reasonable steps to control what they are doing so as not to harm others, not to trespass on their neighbors’ property, and not to create a nuisance for their neighbors. Allowing pesticides to drift onto neighboring properties, whether or not people or animals are present, is not an accepted farm practice, and the county has no obligation to accommodate overspray. Using a neighbor’s property as a spray application buffer is not an accepted farming practice. As owner of the corridor, the county has the same rights as any owner of property, as well as the responsibility to protect and manage the property in the public interest. Filbert orchards and grass seed farms are currently planted and maintained, in Yamhill County and elsewhere in the State of Oregon, up to the edge of county and state rights-of-way and neighboring farms. Maps submitted by the county demonstrate that farmers in the area are successfully farming within 150 feet of numerous public rights-of-way—and even within ten feet. The claim made in this proceeding that no farming can take place within 100, or 150 feet of the trail, is not credible and is rejected. Neither Oregon OSHA, the ODA nor any pesticide label, allows farm operators to spray neighboring land owned by a public entity or private party, or to restrict a neighbor’s access or quiet enjoyment of his or her land to

accommodate spray buffers that can only be legally accommodated on neighboring properties with consent of the owners of those properties.

10.3 The lawyer for the organized opposition stated in the second remand proceeding that “nearly all of the farmers in the 2.82 mile segment have farm operations on either side of the old abandoned right of way, with no other access to their entire farms other than over the old rail right of way.” That statement is not correct. Running north to south:

10.3.1 The Van Dyke fields are transected by the rail corridor, but both halves appear to have access to public roads—Highway 47 (by way of what appears to be an easement at the southern end of the property), NE Yamhill Road (abuts it on the northwest corner) and NE Withycomb (by way of an undeveloped strip along the southern border of the property). Even if currently available and developed access is not available to public roads for all of the Van Dyke fields adjacent to the corridor, the county has also stated that it wants to provide legal access across the corridor to accommodate the Van Dykes in continuing their farm operation without substantial change.

10.3.2 The Eramos property is transected by the corridor, leaving a small triangle of the property (just over one acre of an approximately 12-acre property) separated from the rest of the property by the rail/trail corridor. The owners of the Eramos property have never testified in opposition to use of the corridor for a trail, but their tenant has claimed that he and his dairy operation will be affected if he is not allowed to treat the corridor as if his landlord owns it.

10.3.3 The Dromgoole/Matthews field is transected by the rail corridor, and the property on the east side, although being farmed, has an AF-10 designation, which is a rural residential zone. It appears from satellite images in the record that the owners have historically respected the rights of the owners of the corridor (it appears to have natural vegetation) but that it is being crossed regularly at a single location to reach a part of the field located to the east of the right-of-way (the AF-10 zoned area). The farm operators have not claimed that they have an easement across the right-of-way but, again, the county has stated its willingness to accommodate the legitimate access needs of the trail’s neighbors, by granting a license to cross, installing gates, and through signage warning trail users of possible use disruptions due to the crossing of farm equipment. Additionally, the southern boundary of the Dromgoole/Matthews property is NE Fryer Road, a county road that provides direct access to both sides of the corridor for farm equipment needing to travel from field to field.

10.3.4 The sole access to the Coussens’ filbert orchard appears to be by crossing the trail corridor. The Coussens’ report previously having a license and paying the railroad yearly for the privilege of crossing the corridor. No such arrangement with the county currently exists. The trail does not transect the Coussen’s property.

10.3.5 The McCarthys have stated that their sole access to their property is across the county’s property on the western boundary of their property, but satellite images appear to show farm buildings and an accessway on the southwest corner of the property. Their property is not transected by the corridor.

10.3.6 No other farm operation has been identified in these proceedings as being transected by the segment of trail corridor under consideration. Owners of thirteen other farm operations that appear to be located adjacent to the corridor or within 750-feet of the corridor have not filed any objections to use of the corridor as a trail. Three farm operations is not “nearly all” of the farmers along the 2.82-mile segment. As indicated, two of the three have alternative “legal” access to their fields. Only one of the transected properties—the Eramos farm, has a small sliver of land on the east side of the track, separated from the remainder of the property without alternative legal access. It is not known at this time whether the Eramos have legal access across the corridor, but it is known that the Eramoses do not own the corridor, and have never paid property tax or had such taxes deferred on the corridor, which is not part of their designated tax lot.

10.3.7 While it is an accepted farm practice to move farm machinery from field to field by way of county roads, other public roads, and private easements, it is not an accepted farming practice to use the property of others without permission as part of an otherwise legal farm operation. The Yamhelas Trail corridor has not yet been opened for public use, except by express permission of the county. Farm operators wishing to use the corridor or to cross it, need to seek permission and make appropriate arrangements. The county’s offer to accommodate farmers does not make use of the corridor without permission an accepted farm practice.

10.4 Food Safety. There are many accepted farm practices that are for the purpose of ensuring food safety. Regulations continue to evolve, and farmers must adjust to those regulations in their efforts to remain compliant.

10.4.1 Please see the conditions at the end of this document for newly adopted fencing conditions. The county is now requiring that at least one portable toilet and one dog waste bag dispenser and disposal station be established at each trailhead, to further limit the potential for food contamination in fields and orchards adjacent to the corridor.

10.4.2 As one farmer testified, “it is the responsibility of individual farm owners to take reasonable steps to protect their farm operation from trespassing dogs and people.” The same type of farm crops and practices that are present in this case are present adjacent to private easements and public rights-of-way, including State Highways and county roads, where dogs, people and bicycles are already allowed to be. Claims by opponents, that the trail corridor is somehow different from a host of rights-of-way currently existing and operating adjacent to and through farming operations throughout the county and state, are not credible. In all of those other circumstances, either farmers or governmental entities install fences to prevent trespass from and to the public right-of-way. There is more than one type of fence that will effectively diminish the threat of trespass, and the county is not required, at this time, to identify the exact type of fence or gates that will be installed in this case, so long as the fencing and gates are “capable of preventing dogs and people from entering adjacent farm fields.” Trespass is potentially a “significant,” “important, weighty, notable” impact to farm practices and costs. Fencing is an accepted method for minimizing the threat of all of the potential impacts of trespass that have been identified by the opponents, and it has been for hundreds of years.

10.4.3 Fences prevent persons and domestic animals from entering hazelnut orchards and defecating in them. They are an effective way to prevent direct contamination by humans, horses, and domestic animals using the trail. Hazelnut orchards will continue to have animal waste in them, unless farm operators manage to kill every wild animal that might enter the orchard from an unfenced boundary and every bird that flies over. The idea that pathogens will float off of human or animal feces in the trail corridor, will travel onto the shell of a hazelnut, will remain on the shell through processing (which includes washing and baking) and then cause violation of food safety laws is not supported by any evidence in the record. Many hazelnut orchards are planted up to county and state rights-of-way, without fencing, and there is no reason to believe that the trail poses a different or greater threat to food safety than a county road or state highway.

10.5 Liability. LUBA rejected petitioners' claims of increased liability risks as speculative, and dismissed them. Potential increased liability is not an issue the county is required to address in this remand. Proper management of the trail, including proper vegetation and weed management to minimize the risk of cross-pollination or other contamination of seed and grain crops, is feasible. A condition of approval requires such management. Just as risk of overspray can be minimized through commonly accepted practices associated with the operation of spray equipment, risks to trail users and from trail users can be minimized through proper signage and appropriate fencing. The liability risks of the trail are not significantly different from the liability risks of farming adjacent to any public right-of-way.

10.6 A trailhead is now proposed at the Bus Barn and in the City of Carlton. The condition of approval addressing this issue in Board Order 19-94 has been modified to reflect this change.

10.7 Once it is clear that the county has land use authority to develop the trail through the EFU district, the cities, which both support and are planning for development of the trail, are more likely to move forward with their own plans, which could include additional trailheads and/or trail parking within either or both cities. These matters will be addressed in the master planning process that is scheduled to begin soon. As demonstrated by the county's Trail Demand study, the kind of facility being proposed does not generate any direct traffic that will have any impact on Fruithill or on individual farmers located along the corridor. Traffic on Highway 240 will not be affected because persons approaching the trail will mostly be approaching it from the City of Yamhill by way of an existing sidewalk and highway shoulder, with a few arriving by car. If traffic on Highway 47 is impacted at all, it will be a positive impact because users of that road will have a non-motorized option for traveling between the cities of Yamhill and Carlton. The county has considered and rejected conflicting and or different analysis and conclusions offered by the opponents' expert, in favor of the more compelling analysis and conclusions of the applicant/county's expert. The proposed trail is not a 'regional' facility, and the analysis by the applicant/county's expert appears to be correct.

10.8 Contrary to the claim of the attorney for the organized opponents, there is no standard for approval that "asks whether the proposed trail will interfere with appropriate development of the large blocks of farmland that abut the old abandoned right of way." The Board rejects that "interpretation" as not based on the text or context of any applicable approval standard.

The record does not support a conclusion that ownership of the corridor was ever abandoned by Southern Pacific, Union Pacific, or the County. If the railroads had abandoned the corridor, they would not have paid taxes on the property, and the county would have foreclosed and taken title to the property through foreclosure. That obviously did not occur, and the county, after years of negotiation, purchased the property for \$1.4 million in 2017, and is currently maintaining it for future public use. The county's Tax Lot, 4403-01300, is a distinct ownership, and is not part of tax lots owned by any other person, as shown on numerous maps in the record.

10.9 Neither the corridor nor any other public right-of-way in the area is interfering with "appropriate development" of farmland. Viewed from the trail and public roads, and on every aerial/satellite photograph in the record, farming is thriving in the area, adjacent to State Highways and numerous other county and public roads. The proposed corridor will help to keep pedestrians and bicyclists off of Highway 47 when traveling between Yamhill and Carlton, making Highway 47 safer for the transport of farm equipment. The proposed use is compatible with the farming of large blocks of farmland in the area, and with other existing uses and allowable uses in the area, as documented throughout these and other findings proposed by the county.

10.10 Rebuttal to "Attachment 3" of the March 14, 2019 submittal by the attorney for the organized opposition. Attachment 3 consisted of 435 pages of articles printed from the internet, apparently using search terms like 'rape and trail.' The articles appear to span decades and to cover the entire country of 327 million people. There is no explanation of how any of the information in Attachment 3 relates to the proposed trail segment. No effort was made by the person or persons dumping the articles into the record to separate urban from rural trails, or to provide any context for any of the crimes reported, or for the odd circles around salacious details contained in some of the articles. The purpose of Attachment 3 is not to establish that the proposed trail segment cannot be maintained as a safe trail, but to foster an irrational fear of all public trails and parks, wherever they exist in the United States, including the proposed segment of the Yamhelas Westsider Trail. The Board has weighed Attachment 3 and has assigned minimal value to it. It is fearmongering, with little to no relevance to the proposal before the Board. The county Sheriff and Board of Commissioners are responsible for operation and funding of the Sheriff's Office. That office is responsible for patrolling and maintaining the safety of the entire county. As indicated elsewhere in these proposed findings, the trail segment in question is easily accessible to police vehicles. As the opponents are aware, law enforcement agencies routinely coordinate their response with city law enforcement agencies, and with the Oregon State Police, which also has jurisdiction over law enforcement in Yamhill County. There is no basis for concluding that the Sheriff's Office and other available law enforcement agencies are inadequate to patrol or to respond to calls regarding the segment of trail in question.

10.11 The remaining numerous letters and attachments submitted by the attorney for the organized opposition either address issues already resolved by LUBA against the petitioners in that case and have limited probative value, because they do not support any claim of error that was resolved in favor of petitioners. Findings addressing those letters and attachments have been deleted from these findings. One submittal in the first remand was from a railroad expert who stated that he is "in favor of preserving the integrity of the right of way by any method we can." The author described how the railroad ceased operation of the 12-miles of corridor that the county purchased, and notes that "preserving the corridor for trail-use at this time is step one toward

eventual return of rails through Yamhill County.” Contrary to the claims of opponents, the author indicates that, with the exception of a couple of small parcels (that the county is aware of and which are not between Yamhill and Carlton) the corridor “mostly belonged to UP when I did a property survey 8 to 10 years ago.” The letter supports the county’s decision to purchase the corridor from Union Pacific and its interim use as a trail as the best way to preserve the corridor for future rail use.

10.12 Other materials submitted on first remand included a claim that the recent Supreme Court decision concerning Riverbend Landfill makes the trail ‘unlawful,’ a legal conclusion that was repeated again in an oral presentation in this remand, and is incorrect. If it were true, LUBA would not have remanded Board Order 19-94, it would have reversed it. Even in the case of Riverbend, the Supreme Court did not conclude that landfill expansion was unlawful. It concluded that the matter should be remanded back to LUBA (which had already remanded it to Yamhill County in the first instance) for proceedings consistent with the decision. The standard interpreted in the Riverbend case does not make any use in the farm zone ‘illegal.’ It requires findings and evidence of compliance, and allows counties to establish conditions of approval as necessary to ensure that “accepted farm practices” and the costs of those practices are not impacted in a significant way by proposed non-farm uses. The legal advice provided repeatedly by the attorney for the organized opposition is based on an incorrect analysis of the Riverbend case.

10.13 Other videos and pictures submitted by the attorney for the organized opposition show Highway 240 to support a claim that the proposed trail and/or trailhead is unsafe, because it is along a state highway and the sidewalk from the City of Yamhill, currently, does not quite extend to the Bus Barn property. The pictures and other information support the county’s conclusion that placing the future trail entrance on the western edge of the county’s Bus Barn property effectively prevents conflicts between continued use of the property for storage of busses, and use of the western border of the property for a trail corridor that is segregated from the remainder of the Bus Barn property by a suitable fence. The purpose of the trail is to provide a transportation option for persons to travel between the cities of Yamhill and Carlton on foot, bicycle and horse. From the information submitted, it appears that there is a more than adequate shoulder on the Bus Barn property and as part of the State Highway, to support a conclusion that it is feasible to provide a safe connection between the City of Yamhill and the proposed trail. The one constricting location—a small bridge on Highway 240—is problematic, but it is a problem that can be address by signage and striping until a better solution can be obtained by working with ODOT or through grant funding available from ODOT.

11. Findings addressing farm operations adjacent to the segment of corridor under consideration. As noted, of the 40 tax lots abutting the trail within the notice area, the county has identified eight parties, or sets of parties, who have objected to the trail, claim potential impacts to farm practices and/or costs, and have disputed the county’s proposed findings regarding potential significant impacts to accepted farm practices. Of those, three own or farm property that is transected by the 60-foot wide trail corridor, and two are located partially within 750-feet of the trail, but are not located adjacent to the trail. The following findings address the six individual farm operations adjacent to the corridor that are claiming potential farm impacts, and include cumulative impacts analysis for those farm operations.

11.1 Kristofer Weinbender and Melissa Braukman, 12000 Hwy 47, Carlton; EF80; four acres; Livestock (alpacas, geese, turkeys, chickens); pasture; misc. food crops

11.1.1 Kris Weinbender and Melissa Braukman, and the attorney for the organized opposition, submitted materials regarding potential harm to accepted farm practices on the Weinbender/Braukman four-acre farm, located near the city limits of the City of Carlton. The property is located on heavily traveled Highway 47 (western boundary), and the existing trail corridor is located along the eastern boundary of their property. Maps in the record show that the existing trail, which extends south into Carlton and north beyond their property, is located in the middle of sixty feet of trees and brush.

11.1.2 As currently envisioned, there is the possibility that the developed trail will be located approximately 23 feet from the Weinbender/Braukman property line. Vegetative screening already exists within the corridor adjacent to the Weinbender/Braukman property, and it appears that additional vegetative screening within the corridor is feasible if it is called for in the Master Plan. Fencing specifications will be addressed in the Master Plan, but the ‘floor’ of the fencing requirement is that it be “capable of preventing dogs and people from entering adjacent farm fields.” That requirement alone reduces most of the hypothetical impacts to farm practices listed by the parties to an insignificant level, or more likely to non-existent. If the alpaca have grown accustomed to the heavy car and truck traffic of Highway 47 (which they apparently have), it does not seem likely that they will suffer significant harm from pedestrians, bikes and horses on a trail that is separated from them by a fence and 23 feet of vegetative screening. It is feasible to construct the trail in the corridor adjacent to their property in a manner that prevents any significant harm to their crops or animals, or to their property from litter. Their property is zoned for farm use and has farm tax deferral, and the farm impact standards apply, but neither they nor the attorney for the organized opposition have demonstrated any “significant” potential harm to their alpacas, turkeys, chickens or geese, or to the use of their pasture.

11.1.3 Contrary to repeated claims by trail opponents, fencing will prevent any potentially significant incidences of trespassing, litter and camping on property located on the other side of the fence. With proper design and maintenance, it is feasible to prevent any significant impacts to the Weinbender/Braukman property from the proposed trail. Based on the testimony of the property owners, the Master Plan should consider whether signage at the location of the Weinbender/Braukman farm will help prevent any potential harm or inconvenience to their accepted farm practices. The Plan should also consider whether, and the extent to which, existing vegetation can be maintained and augmented in the section of corridor behind their property. Buffering of the current trail and additional buffering that is feasible at the location of their farm supports a conclusion that they are unlikely to experience any impacts to their farm or forest uses from improvement of the existing trail.

11.1.4 Claims made by Mr. Weinbender and Ms. Braukman regarding water backing up from the county’s property onto their property is not a farm impact, but it is a legitimate complaint that the county should investigate and attempt to remedy if investigation shows that artificial conditions on the county’s property are contributing to or causing water to back up onto their property. That problem should be addressed as soon as possible and does not need to wait until completion of the Master Planning process that is scheduled to begin soon.

11.1.5 Cumulative Impacts. The claims made regarding this property, especially by the attorney for the organized opponents, are exaggerated and not credible. The frontage of the property is on a busy State Highway known to accommodate many large trucks of all varieties. The trail and its users will be a whisper compared to the highway, and the potential for litter generation by the trail is miniscule compared to the generation potential of the highway. In this case all of the perceived potential impacts are remedied by proper fencing, vegetative screening, and signage. The fencing will prevent dogs and people from approaching the farm's livestock, and the vegetative buffer will make it unlikely that trail users will routinely try to approach the fence. Wind disperses litter, but vegetative buffering and fencing both tend to capture litter. None of the impacts alleged are "significant" impacts to accepted farm practices, they are minor inconveniences and minor risks of harm that is unlikely to materialize. There are no separate significant or insignificant potential impacts with regard to this property that, cumulatively, constitute a significant impact to farm practices or the costs of those practices.

11.2 Brian and Roxanne Coussens, 6325 NW Glencoe Rd, Hillsboro 97124; EF80; ~75 acres total; Hazelnuts.

11.2.1 The Coussens' filbert orchard was described in the findings adopted as part of Ordinance 904, as a newly planted filbert orchard of approximately 10,000 trees. Those findings were carried over into the first remand, and are part of these findings. They note that at the location of the orchard, the corridor is heavily wooded, buffering the existing trail located in the corridor from the practices taking place in the filbert orchard. The existing vegetative buffer, between the existing trail and the Coussens' property, is almost 30 feet thick. That buffer would be somewhat reduced by construction of a 12-foot wide pedestrian and bike path, and the horse path that will likely be adjacent to the bike/pedestrian path. It is feasible to maintain most of the vegetated buffer between the improved trail and the Coussens' property, and to add additional vegetation if necessary to improve the effectiveness of the buffer strip. The earlier findings (and these findings) also note that there is additional distance between the trees in the filbert orchard and the proposed trail location, in the form of a dirt road on the Coussens' property adjacent to the trail corridor.

11.2.2 The main potential farm impact cited by Brian Coussens in his letter dated February 2, 2019, is the spray issue. Although these findings establish that there is no 100- or 150-foot exclusion area that extends off of the Coussens' property, it would not be good practice for his operator to spray in a manner that may end up spraying people or animals on the trail, or drifting onto them. As pointed out elsewhere in these findings, neither the Coussens nor their spray operator ever had the right to spray the Union Pacific property without permission, and neither of them have the right to spray the property now that it is owned by the county or to use it as a spray label buffer. It nevertheless appears that there is sufficient distance between the orchard and the corridor to allow spraying to continue in the manner it is already being conducted. It should be noted that the trail corridor is immediately adjacent to Highway 47 at this location, and there is a dwelling adjacent to the eastern boundary of the corridor. Even if there were a 150-foot off-site exclusion zone (which there is not) parts of the existing orchard would already be affected by the mere existence of the Highway, since there is no way for the spray operator to predict when people may be driving by, and the dwelling, where people are likely to be at any time of day or night. It is apparent from testimony in the record that "air-blast" spraying currently, and regularly, takes place in filbert orchards all over the county immediately adjacent to public rights-of-way. Claims

that farm operators cannot responsibly spray the edges of their orchards and need room on the property of others or on public rights-of-way to use as a buffer are not credible. This perceived impact is not significant, but can be rendered practically non-existent by cooperation with trail managers and the posting of warning signs and/or portable barriers to stop traffic on the trail prior to spraying. Since farm operators have no right to spray off of their property, the insignificant expense of posting signs, placing temporary barriers, or even of posting someone on the trail to check for overspray and warn trail users, is not a cost associated with an accepted farm practice.

11.2.3 Another issue raised in Brian Coussens' February 2, 2019 letter is access across the rail/trail corridor. According to the letter: "Our crossing has been in place as long as anyone can remember. My father in law back in the day, had to pay the railroad annually to cross even after the tracks had been removed." The attorney for the organized opposition now states: "County wants to install a gate on Coussens only farm access," and then proceeds through a chain of 'farm impact' consequences that would follow. These claims were repeated on second remand.

11.2.3.1 In the first place, it is the Coussens who apparently need, but do not have, a legal right to cross the corridor at the place the county has offered to provide a crossing and to install a gate. The county offered to build a fence and install a gate, to protect neighboring property owners from potential consequences of trespass by trail users. As Mr. Coussens points out, the railroad did not allow the corridor to be crossed for free "even after the tracks had been removed." That information corroborates what county staff has said from the beginning: UP stopped using the corridor for operation of a railroad, but it did not abandon its title to the property or any of its rights to occupy and manage access to and through the corridor. The county purchased from UP all of the rights it had to the property, including all of its license and easement agreements, and has no information establishing that Mr. Coussens or anyone else has a current license to cross the corridor at the location mentioned by Mr. Coussens in his February 2, 2019 letter.

11.2.3.2 Mr. Coussens' predecessor in interest was apparently aware that the corridor was not part of his holdings, and could not be considered a part of his "accepted farm practices" unless he paid the owner for the right to use it. Likewise, the county, as current owner of the corridor, has the right to control access to it even if there is no trail. Access across the corridor property without permission is not an accepted farm practice, and the county is under no obligation to treat access through the corridor as an accepted farming practice requiring analysis and possible mitigation. LUBA has so agreed.

11.2.3.3 The county has repeatedly stated that it has no intention of cutting off access across the corridor to farm operators who need access. The farm impact standard does not require that the county provide access to the Coussens' filbert orchard, but it is the county's intent to provide that access. The terms of that access—whether it is unrestricted, restricted, or through a gate, is a normal part of doing business, not the mitigation of an impact to an accepted farm practice. It appears that a fence and a gate will be useful in preventing trespass into the orchard and will benefit the operation of the orchard. If so, the specifications of the fence and gate should be part of the Master Plan, and the Coussens should enter into a license agreement with the county under terms satisfactory to both parties. Even without the proposed use, the

county has the right to control access across the corridor, as it could if the corridor were used for street or rail uses.

11.2.3.4 The concern about the driveway being blocked, backing up traffic on Highway 47, is a problem with logistics that exists because the Coussens do not own the corridor that they need to cross to access their filbert orchard. With cell phones, it is also feasible to coordinate gate access between farm employees to ensure that the gate is open and unblocked when large machinery needs access. These, again, are minimal costs of doing business, and not an expense attributable to the proposed use. The attorney for the organized opposition's claim that the logistical problems can only be solved through complex and expensive flagging operations do not seem to be true, but they are, again, a cost of doing business when a farm operator seeks to use the property of another to conduct his or her farm operation. Crossing the property of another—even publicly owned property—without permission is not an accepted farm practice that the county is required to address under the farm impact standard.

11.2.4 Loss of ability to use slug bait. As stated, the county has offered to fence the entire corridor. There should therefore be no significant impact from trespassing dogs. Farm owners and operators do not have a heightened duty to protect trespassing dogs—dog owners have a legal responsibility to prevent their dogs from trespassing. Farm operators are capable of baiting the edges of their property without baiting neighboring land, and do not need to use neighboring public property or other property they do not own as a buffer. Signage will specify that dogs must be on a leash, and appropriate 'no trespassing-private property' signs will be posted along the entire corridor. Under the Master Plan, it may also be possible to establish additional signage in areas where slug bait is used, including the Coussens' orchard. Claims by the lawyer for the organized opposition regarding the inability to use slug bait are not credible.

11.2.5 As noted elsewhere in these findings, there is no rational basis for assuming that a trail that is fenced and located 40 or more feet from filbert trees will be contaminated or have an increased chance of being contaminated by trail users. Likewise, there is no rational basis for concluding that insurance premiums will automatically rise due to the presence of the trail, and there is evidence that is not the case.

11.2.6 Cumulative impacts. Most of the perceived impacts raised by the Coussens and by the attorney for the organized opposition either don't exist, are not impacts to accepted farm practices, or are effectively minimized to the point where they can no longer be considered significant by the conditions of approval. With regard to the Coussens' filbert orchard, there are no significant impacts to accepted farm practices or costs, and none of the insignificant impacts identified add up to a significant impact. The Coussens' farm operator may increase litter patrols, but there is no reason to believe that significant additional litter will be found on the other side of a forested buffer strip and a fence. They will have no increased contamination from trail users who will be on the other side of the same buffer strip, and the same fence. They will still be able to use slug bait because there will be a fence capable of keeping dogs out of the orchard, and because they owe no special duty to a trespassing dog. They do not, under any regulation cited by the opponents, lose the ability to spray any of their property due to the presence of the trail. They do not have the right to cross the corridor without permission, and negotiating and maintaining access to their orchard is part of the cost of doing business, not an accepted farming

practice that the county is required to protect. There are no separate significant or insignificant potential impacts with regard to this property that, cumulatively, constitute a significant impact to farm practices or the costs of those practices.

11.3 Gordon Dromgoole and Billie Jean Matthews. 19643 NW Goodrich Rd, Yamhill; EF80/AF-10; ~81 acres; Clover, grass seed, hay, wheat and other grains, livestock pasture, sheep (Managed by Mark Gaibler)

11.3.1 According to Billie Jean Matthews and Gordon Dromgoole, they farm land owned by her and her husband adjacent to the corridor segment in question that is currently grains. They have stated that they also raise hay, alfalfa, grass seed, oats, meadowfoam and clover, and are planning to plant hazelnuts.

11.3.2 Ms. Matthews states that there is an increased risk to structures adjacent to the trail, but does not specify what she means by “adjacent,” does not identify the location of any such structures on her property adjacent to the trail segment in question, none appear on aerial photographs, and none are believed to exist on the property transected by the rail/trail corridor.

11.3.3 The record of this proceeding supports a conclusion that most field fires are inadvertently started by farm operators. As noted elsewhere in these findings, the trail will provide improved access for firefighting equipment and personnel to the area immediately adjacent to the trail and to the trail corridor itself. Development of the trail will not increase the risk of a catastrophic (out of control) fire in the area in a manner that significantly impacts farm practices or significantly increases farm costs.

11.3.4 Impact of spray drift regulations. As with others, Ms. Matthews lists impacts related to overspray, which is not an accepted farm practice. Please see the discussion of this issue elsewhere, which also applies to the Dromgoole/Matthews property. An attorney for Mr. Gaibler has indicated that he farms the Dromgoole property, and sometimes sprays fungicides aerially in the spring when the soil is too wet to drive equipment on. Some of the fields in question have recently been tiled, and others are slated for construction of a 12-acre solar power generating facility. The other fields appear to be AF-10, not an exclusive farm use zone. A condition of approval provides that the county shall notify each farm operator adjacent to the trail corridor of the option to provide 72-hour notice to the county prior to aerial spraying of herbicides, pesticides, fungicides or other dangerous chemicals. Upon receiving 72-hour advance notice of such spraying, trail managers shall post ‘Danger-Pesticide Spraying in Progress--Trail Closed’ signs in appropriate locations to prevent access to the identified trail segment until spraying is completed or until notified by the spray operator that the area is safe to enter. This type of warning is feasible and inexpensive and promotes coordination and cooperation farm operators and the communities they live and work in. It is not an accepted farm practice expense, because overspray is not legal as to public lands, public rights-of-way or private property not under the control of the operator, even if it occurs through an aerial application. These conditions are not intended to eliminate all potential impacts, only “significant” impacts.

11.3.5 Increased traffic on Highway 47 and Fryer Road. There is no basis, in the record or otherwise, for concluding that a local trail connecting two cities will increase traffic on

the highway that currently connects the same cities. The crossing referenced by Ms. Matthews is north of Yamhill. As stated, the trail segment in question is accurately characterized as a local facility serving, predominately, residents of and visitors to two towns. Once the trail is extended from Hagg Lake to McMinnville, it will be a regional facility and will predictably draw additional traffic, requiring a traffic impact study and additional planning. The intent and expectation of this approval is that it will allow development of a paved path, for recreational use, but also as a transportation facility allowing people in Yamhill or Carlton, who wish to travel to the other city, to choose the non-motorized option over use of Highway 47, which is only suitable for cars and trucks, and is not safe for bicycles, pedestrians or horses.

11.3.6 Trespass impacts. A condition of approval requires that the trail corridor be fenced. The county also plans to post “no trespassing” signs facing private lands along the trail, and “no parking” signs at Fryer Road. It may also be possible for the county to provide additional fencing along Fryer Road, a matter that should be raised in development of the master plan. The county owns Fryer Road, and has the legal right to place a fence on the edge of its right-of-way for a distance necessary to discourage trail users from deliberately walking around the end of the fence to enter the Dromgoole fields. There is a reasonable basis for the Board to conclude that the fencing and signage proposed in the existing condition will be adequate to prevent significant impacts to crops from trespass as outlined in letters from Ms. Matthews and Mr. Dromgoole. 2019. Posted rules for the trail will notify users that dogs must be on leashes, and the county’s dog control ordinance already includes significant penalties for dogs that chase or kill livestock. An additional condition addresses fencing along the EFU zoned frontage of the Dromgoole property on Fryer Road. Although the eastern frontage of the property is not zoned for exclusive farm use and not subject to the farm impact standard, it is possible that arrangements could be made to fence the southeastern boundary if it improves relations between the owners, the county, and trail users. The western portion of the property was recently approved for a non-farm use, a solar energy array. It too can be fenced as part of the trail fencing, but should be done in a manner that does not require it to duplicated fencing that is required as part of the approved solar array.

11.3.7 Insurance costs. Claims of increased insurance costs were rejected by LUBA in its second remand decision, as speculative. The discussion of insurance and risk management elsewhere in these findings apply to the discussion of this property.

11.3.8 Lack of master plan coordination and consultation with neighbors. This is not a farm impact, but a complaint regarding the land use process. The county is seeking land use authority in order to move forward with master planning, which must be completed before the trail can be formally opened for public use. This process establishes whether it is feasible to meet all applicable land use standards, and the Master Planning process fills in the details and seeks to expand the discussion of how to make the trail work well for the users, the neighbors, and the community at large. The county fully intends to comply with the statements made in Ordinance 904 and with the requirement in the attached conditions that the county communicate with adjacent owners, operators and residences. They are not “just so many words.” Unlike a private corporation, the county is governed by an elected Board of Commissioners and other elected officials and is politically accountable to county residents. The county is in a unique position to take continuous reasonable steps over a long period of time to protect trail neighbors from adverse impacts and to respond appropriately to neighbor complaints. Counties seldom declare

bankruptcy, and the management of the county is determined, not by an unelected board or CEO, but by three commissioners serving four-year terms. That being said, cooperation is required in order for a planning process to be successful. If, during the master planning process, it appears that fencing the entire Dromgoole/Matthews frontage along Fryer Road will improve cooperation between the county and the farm operators with regard to trail operation, the county has jurisdiction over the Fryer Road right-of-way and can install a fence if it is recommended as part of the master plan.

11.3.9 Trail does not “eliminate huge swaths of farm land.” The county owns a 60-foot corridor of land as a single tax lot. The county is seeking to improve that property for what the county believes is the “highest and best use” of the corridor—a future rail with trail, with interim use as a trail. The trail does not ‘eliminate’ any land, or prevent anyone who owns land along the corridor from farming their own land. There is no requirement that parties respond emotionally to what is proposed and dig in their heels rather than face change proposed, not for them, but for the community at large. It just often works out that way. The county remains committed to a collaborative and coordinated master planning effort, once land use approval is obtained. Vague offers to put the trail elsewhere are no substitute for a transportation corridor established in 1872 and now owned by the county—a corridor that the county knows is suitable for trail use (parts are used as a trail now) and suitable for future rail use (trains ran there for 100 years). As opponents must realize, moving the trail to be part of a currently dangerous State Highway most likely gives rise to a different set of opponents who will claim that it unfairly blocks their driveways or destroys their ability to farm, or to opposition by the same opponents in this case to the new location.

11.3.10 Additional claims by the attorney for the organized opposition regarding potential impacts to the Dromgoole/Matthews farm property. As explained elsewhere in these findings, none of the Dromgoole/Matthews fields are “landlocked.” Construction impacts are temporary, and the workers will not be in “farm fields” unless they get permission—they will be within a 60-foot wide corridor owned by the county. Additional fencing has been discussed elsewhere and in the conditions. No other potential impacts have been raised that have not previously been addressed.

11.3.11 Cumulative impacts. Use of the corridor without permission, spraying the land of others without permission, and using the land of others to comply with spray label setbacks are not accepted farm practices and are not part of the farm impact test equation. The cumulative impact question is whether all of the perceived impacts to farming the Dromgoole/Matthews property, even those that the county deems to be insignificant, add up to a significant impact. Do the residual potential impacts related to minor trespass, the possibility that a trail user will start a fire, the risk that insurance premiums may rise if trespass leads to damage and claims—do these otherwise insignificant risks of impacts, when combined, rise to the level of being “Important, Weighty, [or] Notable”? The Board concludes that they do not. In weighing the evidence that it has received, even while taking a “farm focused view, the Board is entitled to, and does, rely on competent evidence that the fears and perceived risks in this case are similar to those facing many public trails in farm areas around the country where, as it turns out, trail and farm uses are capable of, and do, coexist without increased risk of actual harm to anyone. There are no separate significant or insignificant potential impacts with regard to this property that,

cumulatively, constitute a significant impact to farm practices or the costs of those practices.

11.4 Bryan Schmidt (leasing property of Salvatore and Jo Ann Eramos) 7580 Hendricks Rd, Carlton; EF-80/AF-10; ~12 acres; Dairy and beef cows, cow/calf operation, raw milk sales; animals need to cross ROW to get between fields, pasture needs to be fertilized/pesticides sprayed, milks animals daily.

11.4.1 The first page of Mr. Schmidt's testimony submitted the morning of March 7, 2019 for the remand hearing that day, concerns a filbert orchard that is not located along the segment of corridor under consideration in these proceedings. The document is a handwritten, recorded transcription of a predecessor-in-interest's sale of the rail corridor to Oregon Central Railroad Company in 1873, for \$150, "forever," and without possibility of reverter. There is nothing about the document submitted that even remotely supports Mr. Schmidt's claim that the document gives him ownership rights, or the right to spray the property (now owned by the county) without permission, or to cross it or use it in any other way without permission.

11.4.2 The second page of Mr. Schmidt's letter indicates that Mr. Schmidt raises grass-fed beef and produces raw milk, which he sells from the property. An e-mail submitted into the record March 19, 2019, states that Mr. Schmidt raises "beef cattle and grass-fed lamb." There is a home on the property and farm buildings adjacent to the rail corridor, owned by Salvatore and Jo Ann Eramos. The Eramoses have never submitted testimony opposed to the trail. Mr. Schmidt is a chief opponent of the trail and has testified against trail development numerous times, orally and in writing, over the course of years. The entire parcel is approximately 12 acres, with State Highway access to the western portion of the property. Contrary to Mr. Schmidt's belief, the portion of the property that is located on the eastern side of the corridor is slightly more than one acre, not three acres. Because access to the property is from the west, his claim that he will be cut off from "almost all of [his] pasture" if the trail is improved, appears to be incorrect.

11.4.3 The key problem with Mr. Schmidt's claims that the proposed trail will significantly impact his accepted farm practices is that neither he nor the Eramoses own the 60-foot corridor that cuts a small corner of the property off from the remainder of the property where the home and agricultural buildings are located. Mr. Schmidt has provided no documents remotely suggesting that Union Pacific did not own the corridor transecting the Eramos' property—exclusively—when it sold the corridor to the county in 2017. The deed he provided does not reserve any rights to the seller, and uncontested testimony in the record indicates that modern deeds of conveyance to lands along the corridor routinely "except" from the grant of title 30 feet on either side of the centerline of the Southern Pacific Railroad right-of-way. As stated repeatedly throughout these findings, using the property of others without permission from the owners is not an accepted farm practice.

11.4.4 The county has offered to accommodate all property owners along the corridor by providing fencing and gates, and by prioritizing legitimate farm practice crossings over use by pedestrians, bicyclists and equestrians. In this case, preserving farmland in large blocks would suggest that the most appropriate use of the sliver of land that the Eramoses own would be its incorporation into the holdings of the Peters' or Dromgoole/Matthews, located on the other side of the corridor. The bulk of the pasture that is owned by the Eramoses is on the western side of

the corridor. Nevertheless, the county remains committed to providing a crossing for the Eramoses and their tenant to allow continued grazing on the small wedge of the property located east of the corridor.

11.4.5 Another potential farm impact raised by Mr. Schmidt is harassment by dogs. The testimony submitted begins with the premise that dogs can harass livestock through a fence, and ends with a picture of a bloody cow carcass taken from some other location. Given the configuration of the Eramos property, it appears that a cow or lamb that is being harassed by a dog through a fence will be able to move to a location where it is not being harassed. Other claimed impacts are related to “human trespass and theft” that is unlikely to occur if the corridor is properly fenced as the county has proposed.

11.4.6 The county is required to comply with conditions that will minimize potential significant impacts to accepted farm practices to a level at which they can no longer be considered significant. It is not required to erase all fears of harm, rational or irrational, especially when the risk of harm is insignificant (as it is with most of the claims now being made, and made in the past by Mr. Schmidt). The corridor is 60-foot wide at the Eramos property, and there is adequate room to install a vegetative buffer and fences between trail uses and both sides of the Eramos property. With the conditions of approval adopted as part of Ordinance 904, Board Order 19-94 and again on this remand, all of the potential impacts to accepted farm practices taking place on the Eramos property can be minimized to a level at which they can no longer be considered significant. Additional protection for the Eramoses and their tenant, beyond what is required by the farm impact standards, will be considered through the master plan process, which was required as a condition of Ordinance 904 and Board Order 19-94, and once again on this second remand.

11.4.7 Onlookers calling dog control. Mr. Schmidt’s March 19, 2019 testimony also notes that he fears that someone might call “county animal control” who will then trespass on the Eramos’ property and make demands on him to prove that he has a bale of hay on hand. The county does not have an “animal control” department or office, but he is correct that cruelty to animals is a crime that is investigated by police agencies. He also fears that animal rights activists will attempt to release his chickens or his calves, or that thieves will steal them. The county can install fencing, gates that can be locked, signage and buffering vegetation. Those actions reduce the potential harm to the identified accepted farm practices to a level at which they can no longer be considered significant. No law requires that the county allay the speculative fears of a farm operator, especially when those fears are based on anecdotal stories of events that took place elsewhere.

11.4.8 Herbicide and fertilizer application. Mr. Schmidt claims that, if the trail is constructed, he will not be able to cross the trail to spray herbicides on the portion of the property that is located (presumably) on the east side of the corridor. As with other properties along the corridor, the county has not yet located a record of a formal crossing license or easement granted to the Eramoses or their predecessors in interest to cross the corridor for farm uses or otherwise. Use of the property of others without an easement, license, or other permission, is not an accepted farm practice. Nevertheless, the county has pledged to address the needs of each farm owner and/or operator to cross the corridor, and to make good faith efforts to establish an appropriate, gated access to connect farm operations located on both sides of the corridor.

11.4.9 Cumulative Impacts. It is hard to characterize some of the claims of potential harm identified by Mr. Schmidt, but most of them have to do with his feeling that the Eramos property will not be secure if the corridor is used as a pedestrian, bicycle and equestrian trail. Following the Supreme Court in its treatment of the landfill case, most of the potential harms to accepted farm practices identified by Mr. Schmidt are effectively addressed by fencing. In the case of the Eramos' property, there are no individual significant or insignificant perceived impacts to accepted farm practices that, in aggregate, amount to a significant impact to accepted farm practices or costs.

11.5 Lee & Kathryn Schrepel and Fruithill Inc. 6501 NE Hwy 240, Yamhill; EF-80/HI/RI; ~29 acres; Fruit and Hazelnut Orchards.

11.5.1 As indicated in the staff report and elsewhere, the Schrepel/Fruithill property that is closest to the proposed trail segment is zoned Heavy Industrial and Resource Industrial, not EFU. This property will be addressed if the trail is extended north across Highway 240 in the future. With regard to the proposed trail segment, the proposed entrance to the trail is located on the northwest corner of the Bus Barn property, away from the entrance to the Fruithill facility. The western part of the Fruithill property is a large parking lot/graveled area that was purchased from Union Pacific. It is zoned Heavy Industrial, and was once used as a train loading and unloading area. Due to distance between the Fruithill processing facility and the proposed trail, no impacts are expected. No one using the trail is likely to trespass on the Fruithill property, which is across a state highway and not adjacent to the trail. No Fruithill farm practices are taking place near the trail or are likely to be affected in any way by the trail.

11.6 Mark Gaibler PO Box 808, Carlton; EF-80; 48 acres; Grass seed, hay.

11.6.1 Presumably, the farm practices taking place on the Gaibler property are similar to practices taking place on the Van Dyke and Dromgoole properties located adjacent to the corridor. The Gaibler property is located west of State Highway 47, and is separated from the trail corridor by that highway and by several dwellings that are located between Highway 47 and the trail corridor. A small portion of the Gaibler property is located within the 750-foot notice area of the trail. Due to distance, intervening houses and the state highway, the trail is not anticipated to have any negative impact on farm practices taking place on the Gaibler property. Farm practices and potential impacts asserted by Mr. Gaibler and to the Dromgoole property which he farms, are addressed with regard to the Dromgoole property and by the conditions of approval. It appears the Dromgoole property on Fryer Road to the west of, and adjacent to the trail, is now a solar array, a non-farm use.

11.7 Gregory & Celine McCarthy PO Box 417, Gaston; EF-80; 50 acres; Grass seed, clover, row crops (corn, onions, green beans)

11.7.1 The McCarthys' property is located adjacent to the city limits of the City of Carlton. A portion of the property appears to be within the city limits and to have access from rights-of-way within the city. The trail and rail corridor is located along the western edge of the McCarthy property. They state that they use the corridor for access and "drive along it," but the

corridor at the location in question appears to be mostly natural vegetation. As with others, the McCarthy's claim, without any substantiation, that the "predecessor farmers never gave the railroad any exclusive rights; rather just a nonexclusive easement for railroad purposes." The McCarthys state that they will not be able to farm if they are not allowed to cross the corridor.

11.7.2 The county has no intention of cutting off the McCarthys' access to their property if, indeed, they have no other access. It is possible that a predecessor in interest obtained a license or easement to cross the corridor, and the county will assist the McCarthys in establishing whether that is the case. Satellite photos also show farm buildings in the southeast corner of the property that appear to have access into the City of Carlton. Even if the McCarthys have alternative access, if access across the trail assists them in a meaningful way with their farm operation, the county will make good faith efforts to ensure that access. The county has also offered to install fencing along the corridor and a gate suitable for the movement of most farm equipment, and remains committed to do so. The McCarthys use tractors, combines, swathers, bailers, trucks and other large equipment. It is feasible to minimize conflicts between trail users and farm operations along the trail. The conceptual plan addresses some methods for effective gates and signage, and those issues will be further addressed in the master planning process. Under conditions established in Ordinance 904 and Board Order 19-94 and carried through on this remand, trail users will not be allowed to enter the McCarthys' fields or otherwise threaten their "Quality Restricted" status.

11.7.3 It is also somewhat disingenuous for the McCarthys, farming directly adjacent to city limits, to testify that they can currently farm profitably but will not be able to if people will be able to walk, bike and ride horses on a 12-foot path in the middle of a sixty-foot corridor adjacent to their property. There are currently dwellings on properties located on the western boundary of the trail corridor that are only separated from the McCarthys' farm operation by the width of the vegetated trail corridor. Part of their property abuts a paved city street. People currently live in close proximity to the McCarthys' farm operation, and the presence of the trail does not move people significantly close to their farm operation than they are currently expected to be (because they live there).

11.7.4 The segment of trail under consideration is being developed for local use, by people living in and visiting the cities of Yamhill and Carlton. If the remainder of the trail is constructed in the future, it could be seen as a regional facility. Most of the users of the trail as proposed are likely to be much more like "the locals who live in close proximity to our field in Carlton," who tolerate some dust and pesticide smell because "they understand it as a necessary farming practice."

11.7.5 Irrigation with "guns" that shoot non-potable water. The discussion of use of the corridor without permission and pesticide overspray elsewhere in these findings applies to the McCarthy farm property. As with those 'impacts,' a property owner is not allowed to shoot non-potable water onto his neighbor's property without permission, and doing so is not an accepted farm practice. While the McCarthys may need to be more careful in how they spray when persons are using the trail, their conclusion that using the (likely) middle 12-15 feet of the 60-foot corridor as a bicycle/pedestrian/equestrian trail will force them to "have to stop watering large areas of [their] farm" is not credible as a significant impact. Farm operators should contain their operations

to their own property as a matter of course. The corridor is also not “in the middle of [their] farm ground,” it is along the western edge.

11.7.6 Pesticide overspray. Potential farm impacts related to pesticide spraying are addressed elsewhere in these findings, with regard to other property owners. Claims of potential increased trespassing made by the McCarthys appear to ignore the county’s offer to fence the entire corridor and provide locking gates at designated farm crossings. Fencing, as proposed, will minimize, if not prevent, all of the potential farm impacts outlined by the McCarthys.

11.7.7 Conflicts with livestock. Although it is not entirely clear, it does not appear that the McCarthys are raising livestock on the property in question. Their discussion of it in their letter appears to be hypothetical, or to relate to other farm operations, possibly not located on the segment of trail under consideration.

11.7.8 Inability to farm if must cross trail. The county acknowledges that a developed trail at the location in question has the potential for causing inconvenience for farm operators who must cross it to access their farms. The issue is whether that inconvenience amounts to a significant impact to or increased cost of accepted farm practices. The county seeks to minimize the inconvenience that might otherwise be caused by the presence of the trail by providing appropriate access across the trail for farm operators who need it to conduct farming activities on their property; providing appropriate signage on county-installed fences designed to prevent people and/or animals from wandering onto private property; and signage notifying trail users that farmers using designated crossings have priority. The goal in this process and of the master planning process is to seek cooperative solutions that allow farmers to farm and the general public an opportunity to travel between Yamhill and Carlton without a motor vehicle and without threat of annihilation by passenger car, semi-tractor/trailer or oversized farm equipment. The county concludes that it is feasible to address the reasonable concerns of farmers, including the McCarthys and to provide for the transportation needs of its citizens without significantly impacting farm practices or costs.

11.7.9 Cumulative impacts. The McCarthys’ farm operation appears to be similar to those being conducted by the Van Dykes, and Dromgoole/Matthews, and all of these parties allege similar, or the same, impacts. For the same reasons stated with regard to those farms, there are no separate significant or insignificant potential impacts with regard to this property that, cumulatively, constitute a significant impact to farm practices or the costs of those practices.

11.8 James & Julie Van Dyke; John & Linda Van Dyke; Van Dyke Riverview Farms PO Box 400, Yamhill (James), 1255 E Main St, Yamhill (John), 8456 NW McSween Ln, Yamhill (Van Dyke Farms); EF-80; ~242 acres total along trail; Grass seed, hay, livestock pasture; property straddles the trail for long distance, need to cross over multiple times while farming. Along the corridor in question, hazelnut orchards have replaced previous grass seed crops.

11.8.1 There is extensive evidence in the record regarding the Van Dyke Farms agricultural practices, including photographs of the equipment they used, especially when they were growing grass seed. It should be noted that the Van Dykes have converted their grass seed fields on both sides of the corridor just south of the county’s Bus Barn property to a large hazelnut

orchard. The discussions of hazelnut orchards and the practices associated with them are found in these findings with regard to other hazelnut orchards along the trail and are equally applicable to the newly-planted Van Dyke orchards, and that includes numerous pesticides and herbicides that the Van Dykes use. The Van Dykes had apparently been farming grass seed in a manner that encroaches on the county's property, perhaps on advice of counsel that such actions could help them obtain the property through adverse possession, or that they could perfect a prescriptive use to farm, spray and/or cross the corridor, which is not part of their collection of tax lots and owned by the county. As explained in other county submittals, state law prohibits acquisition of railroad property and county property by adverse possession (ORS 105.618 and 275.027), or county property by the operation of any statute of limitations.

11.8.2 Testimony submitted by the Van Dyke family asserts that their farmland is Class I soil, which the county has been unable to confirm. It nevertheless appears to be Class II soil, which is high value-"prime" soil. Over the years, crops grown by the Van Dykes in the area include "Tall Fescue for Seed, Red Clover, Crimson Clover, Radish, Wheat, Hazelnuts, Annual Ryegrass for Seed, and Vetch." (letter from Ben Van Dyke dated February 28, 2019) The county accepts as true that the Van Dykes have been spraying the corridor to protect their own crops, but rejects the claim that they ever had the right to spray the property, without permission, while it was owned by UP or under county ownership. The county is willing to cooperate with the Van Dykes with the goal of preventing nuisance plant species from growing in the corridor, but it is not an "accepted farm practice" to spray the property of another without permission, even if doing so increases farm profits. The Van Dykes claim massive losses in farm income based on something they know is not true—the claim first made in this land use process that they have the current right to "control" the corridor. The corridor has never been part of any tax lot that they own, as shown on every tax lot map in the record. It is not an "accepted farm practice" to exercise control over the land of others without permission.

11.8.3 The Ben Van Dyke letters and Declarations also establish that the Van Dykes are growing hazelnuts along the trail corridor. With hazelnuts, boom and air-blast techniques are commonly used. Although opponents now claim that aerial sprayers do not want to spray their properties, the bulk of information received by the county is that boom and air-blast spraying are the most common methods of applying pesticides and herbicides in Yamhill County. That is likely because aerial spraying is not available for all chemicals, it is an ultra-hazardous activity with "strict liability" for mistakes, and the farm parcels in question are in close proximity to public rights-of-way and places where people have a right to be (neighboring public and private properties). The Board rejects the claim that the existence of one additional right-of-way in the area precludes aerial spraying that was perfectly fine considering all the other public rights-of-way already present in the area. The letter by an aerial spray operator was submitted at the request of a customer, and suggests that he has no problem spraying public rights-of-way and cars traveling on public roads, but would no longer spray in the area if there is a trail. No other party has established that they regularly aerial spray as a business practice, and the farm operator who uses an aerial sprayer manages a large farm operation of which the Dromgoole east field is but a small part. There are obvious alternatives to aerial spraying, and the county, through its conditions, has taken a major step toward accommodating even aerial spraying, as seldom as it apparently occurs in relation to the trail segment in question. As indicated in testimony to the Board of Commissioners, grass and grass seed crops can be sprayed close to ground surface, and hazelnuts

can be sprayed with air blast methods with a ten foot setback from neighboring property lines. Other than spray drift, because of the way hazelnuts are harvested, it is important that fecal matter and litter not be deposited on the floor of the orchard, where they might end up in the harvested nuts. The potential for that kind of farm impact is minimized by the installation of fencing, with portable toilets at each end of the trail. Many filbert orchards in Yamhill County exist in close proximity to county roads and State Highways, and face the same types of risks, without fencing. The nuts, when processed, are immediately washed, baked and dried, in the shell, to sanitize them. No claims were made by opponents that feces was capable of getting into a hazelnut orchard except in circumstances where no fencing was present. Usually, the onus is on farm operators to decide the level of risk they can accept, and to manage their property accordingly, by installing fences and/or surveillance equipment, or not. In this case, the county is required, by a condition of approval, to fence the entire corridor. It is not that the risk of contamination does not exist—it is that it is minimized to a level at which it can no longer be considered significant. The trail is expected to occupy only 12 feet of the (generally) 60-foot wide corridor. There is therefore the possibility of either planting the remaining corridor with vegetation that provides additional buffering between trail uses and agricultural practices, or of allowing neighbors to farm portions of the corridor under county license. In either case, it is not likely that trail users will be picking up feces from the trail and throwing it into nearby filbert orchards, whether the orchards are owned by the Van Dykes, or by other parties known to grow filberts on the segment of trail under consideration. As noted by Ben Van Dyke, “hazelnuts” are currently excluded from the list of products regulated under the Food Safety Modernization Act, and voluntary compliance with “Good Agricultural Practices” is an important marketing tool. From the materials submitted and as the program is understood by the county, there is no basis for concluding that any hazelnuts grown by the Van Dykes, whether in the center of their orchard or along the county’s fence, will have any risk of being contaminated in a manner that could cause the Van Dykes to lose their certification.

11.8.4 As stated, the Van Dykes “use everything from backpack sprayers to large self-propelled boom sprayers that have a 100’ long boom. We also apply chemicals to the trees in our orchards with blast sprayers that put the chemical high up into the tree canopy.” [Note: The Van Dykes continue to spray pesticides and herbicides in the orchard that has replaced their grass seed fields. Those practices include blast spraying and relying on buffer areas on their neighbors’ properties, and are discussed elsewhere in these finding.] As for the boom sprayers, as noted, smaller nozzle size, and close proximity of the spray equipment to the ground, minimizes the potential of pesticide drift. The February 28, 2019 Van Dyke letter is incorrect in stating “the railroad’s position.” There is no basis in the record for concluding that the Van Dyke’s predecessors in interest “gave” the railroad anything, or that farmers along the corridor reserved the right to farm in or to spray the corridor. While the county is not required in this proceeding to prove that it purchased fee title to the corridor, significant work has been done reviewing that title, and one thing is clear: the Van Dykes do not own the tax lot that comprises the trail. The county, if asked, may or may not give the Van Dykes a limited right (license) to farm within the corridor, but any claim of ownership or right that the Van Dykes believe is independent of county permission is the subject of a Circuit Court action that has yet to be filed.

11.8.5 With regard to a warning on the Gramoxone label: the phrase “Do not use around home gardens, schools, recreational parks, golf courses or playgrounds” was unclear in

the use of the term “around,” and appeared to suggest that it should not be used in close proximity to such a use or facility. Gramoxone is an herbicide that contains paraquat. The word “around” has since been replaced by “in,” so that the label now reads: “NEVER USE THIS PRODUCT **IN** RESIDENTIAL OR PUBLIC RECREATIONAL SETTING (E.G. HOMES, HOME GARDENS, SCHOOLS, RECREATIONAL PARKS, GOLF COURSES, AND/OR PLAYGROUNDS)”. (Caps in original, emphasis added). Other than the warning not to use it “in” the specified areas, there is no basis, on the label or elsewhere, to conclude that the Van Dykes cannot continue to use the herbicide on their own property. There is also no reasonable basis for concluding that the Van Dykes cannot manage spray applications along the edges of their fields to avoid overspray, or to avoid spraying in a manner that requires that they use the property of others and public rights-of-way as a buffer for their spray activities. By their own admission, their usual setback in managing the boundaries of their fields with other properties is ten feet. The presence of people in the corridor does not change that requirement because people are already allowed to be there—county employees, invitees, consultants and contractors. The Van Dykes do not have a legal right to impose their buffer areas on their neighbors’ properties. Even without the trail, the county has the right to enter and occupy every inch of its property without entering a pesticide label buffer area. The trail itself is anticipated to occupy a 12-foot paved surface and adjacent horse path within a 60-foot wide corridor, and may have emergency vehicle turnouts if required by law. The county is willing to provide additional buffer areas to the Van Dykes if possible, but the Van Dykes must seek and obtain the consent of the county before imposing a spray buffer on county property and restricting county access to county property. This is true regardless of the presence of a trail. As explained elsewhere in these findings, farm operators must comply with established legal spray setbacks for farmworkers and others on their own property, but are not otherwise constrained with regard to neighboring properties. In any case, the responsibility for using any pesticide product lies with the person applying the pesticide. Currently, good sight distances along the Van Dyke fields will make it possible to know whether anyone is on the trail, and to act accordingly. That is not a “significant” farm impact, it is an inconvenience of the kind that farmers operating along public rights-of-way and borders with neighboring property owners have always dealt with, mostly in a responsible manner as the bulk of testimony received by the Board confirms. The same is true regarding reasonable efforts to schedule spraying when it is less likely that anyone will be on the trail. It is also possible that the Master Plan can address additional warning signs posted during and following spray activities, and use of temporary barricades to temporarily close the trail. Those warnings, barricades and other protocols are not for the purpose of meeting the farm impact test because overspray is not an accepted farm practice, and neither is using a neighbors’ property as a spray buffer area if the neighbors are not physically on the property. They have a right to be there, and the Van Dykes do not have the right to use their property for regulatory or label compliance without their consent. Signage and potential trail closures for spraying are offered in the interest of good coordination and cooperation between the county and its neighbors and in the interest of avoiding negative impacts to farmers or the farm economy. The Van Dykes must obtain permission from the county or any other neighbor before using the county’s or another neighbor’s property to satisfy spray buffer requirements. Otherwise, they must adjust their practices, as “accepted farm practices,” to ensure that their spray buffers are accommodated on their own property.

11.8.6 The Van Dyke claims regarding Application Exclusion Zones have been addressed in prior proceedings and were rejected by LUBA. Their claims to impacts at having to

cross the corridor “every 10 to 15 minutes all year long and even more often during harvest” were also rejected by LUBA, because it is not an accepted farm practice to enter or cross the property of another without permission. LUBA reject the first claim for the reasons already stated, and the second claim because the Van Dykes have no current right to cross the corridor. There is also no credible basis for concluding that the Van Dykes must cross the corridor as often as they state. The fields are separate, and presumably are farmed separately, not as one big field. That means that there is no basis to conclude that a spray truck must cross every 10 to 15 minutes, and it is more reasonable to conclude that work conducted in one field (now orchard) will be completed before farm equipment must cross and complete work in the other field. It is an inconvenience to have to open and close two gates, and to fold up spray equipment arms, but it is not a significant farm impact. As noted elsewhere in these findings, the county has been unable to locate any Van Dyke fields that are land locked if they cannot cross the corridor, and the county has repeatedly stated its intent to provide access across the corridor, to the Van Dykes, to accommodate their farm practices.

11.8.7 With regard to fire: the concerns stated in the Van Dyke February 28, 2019 letter are matters for master planning, but do not rise to the level of being a significant farm impact. Under conditions already adopted in Ordinance 904 and to be readopted in Board Order 19-94, the concerns of the Van Dykes regarding the vegetation that is allowed to grow in the corridor (or not) will be determined in that process, in consultation with the Van Dykes (if they are willing to participate in that process). That plan will be adopted by the Board of Commissioners, and the Van Dykes will have an opportunity to address the Board regarding that plan if they do not believe it addresses fire hazards in a satisfactory manner.

11.8.8 The county recognizes the risk of fire as many have described it in their testimony. The county has concluded that fire service and access are adequate as proposed, and is in the process of constructing a bridge across Stag Hollow Creek that will accommodate all legal loads, including a 60,000 pound Type 1 fire engine, and all other manner of emergency vehicles, fire suppression vehicles and police cars. Road access points, including Highway 240, Fryer Road, Merchant Road and Roosevelt Street in the City of Carlton, will have removable bollards. Two fire districts serve the proposed trail segment, and the main fire station of one of them abuts the trail segment in question.

11.8.9 It is expected that the trail will have a paved 12-foot surface, over compacted soil and an existing 12-20-foot wide roadbed composed of gravel and railroad ballast, making it more accessible for fire crews than it is now. With the developed trail, circumstances in which an emergency vehicle will need to cross any field owned by the Van Dykes is diminished. Statements made by the Van Dykes, suggesting that the proposed trail will lead to a chain of horrors including death, serious injury and increased insurance costs, are not credible, and outweighed by evidence in the record that the trail increases access to the area by fire and other emergency vehicles and personnel.

11.8.10 Attractive Nuisances. The February 28, 2019 letter from the Van Dykes includes a discussion of “attractive nuisances,” that is not entirely incorrect, but not completely correct. Without providing a detailed legal analysis, in Oregon, landowners owe the least “duty” to an adult trespasser under any circumstances, and a landowner will only be liable

for harm to the trespassing adult in the case of “wanton or willful negligence.” There is also no heightened duty to protect trespassing children from natural conditions on the land—Oregon law provides significant immunity to landowners toward trespassing children. Ben Van Dyke is correct that “artificial conditions” on the land (which presumably includes dangerous machinery parked on the land) presents a “special duty” and potentially heightened liability. Nevertheless, all that is required to minimize that potential liability is for the landowner to exercise reasonable care to protect children from the potential harm. That might mean posting warnings on the machine, or not intentionally parking the machine directly adjacent to an open gate or adjacent to an un-fenced right-of-way or trail. Fences and signage are accepted methods of preventing trespass and nuisance activities associated with trespass. In this case, the county intends to install fences and to place signage on the fences at regular intervals warning against trespassing onto neighboring land. Landowners are not prevented from adding additional fencing or signage, including signage on the equipment itself. The cost of signage, and/or the expense of moving the machinery away from the trail, is not a significant farm impact. It is basic risk management.

11.8.11 Potential loss of seed certification due to inability to spray the corridor. To minimize this potential impact, a condition is being imposed requiring that, during the master planning process, the county shall negotiate, in good faith, with farm operators seeking or maintaining crop certifications, corridor vegetation and management protocols necessary to prevent contamination of such crops through cross-pollination or crop contamination. Maintenance of appropriate trail corridor vegetation and management protocols established by the parties will be continued as long as necessary to maintain the certifications sought or obtained by neighboring property owners, or subsequent replacement certifications. This condition is not a guarantee, but it minimizes the risk of loss of crop certification to a level at which the county considers it to not be significant. It is also now possible that the Van Dyke’s do not need seed certification, because they have converted their grass seed fields just south of the county’s Bus Barn to hazelnut orchards.

11.8.12 Potential cumulative impacts. To summarize the cumulative impacts alleged by the Van Dykes:

- Potential spray limitations for Grass and other crops grown for seed (appears they no longer grow grass crops for seed)
- Potential spray limitations for Hazelnuts (appears they now grow hazelnuts, with the same potential impacts as other farmer operators along the trail who grow hazelnuts),
- Potential impacts to third party food safety audits
- Potential impacts to seed and grain crop certifications due to cross-pollination and contamination from weed seeds (again, appears to no longer be a concern)
- Potential impacts related to crossing the county’s property, opening and closing gates
- Potential fire impacts
- Potential attractive nuisance impacts
- Increased scrutiny of spraying operations

11.8.12 As the county has already outlined in numerous proposed findings, none of these potential impacts, alone, are significant impacts to accepted farm practices or costs. The use of the corridor for transportation uses is not a new use—trains ran in the corridor for over

100 years. Nevertheless, it is the county’s responsibility to establish that the cumulative impact of the individual alleged impacts is not itself “significant.”

11.8.13 To that end, the county once again notes its conclusion that spraying the land of others, or persons on that land, is not an accepted farm practice, nor is physically using the land of others without permission nor using the land of others as a spray label buffer without permission. Those impacts are not part of the calculation in the first instance, and do not enter the calculation even if other potential impacts are deemed by the Board to be significant. The fear of losing third party food safety audits or food safety certification, along with other potential impacts not deemed to be significant, may rise to the level of significance, except that the county has proposed to fence the entire trail segment under consideration. The claim of potential fire impacts has been addressed repeatedly by the county. That potential impact is not significant in and of itself, nor is it significant when combined with potential attractive nuisance impacts and or perceptions of heightened liability for harm to trespassers. In the end, the perceived impacts do not add up to a significant impact, because they are based more on fear than on reality, and some of the remaining claims are not credible. As many persons have testified to the Board, public trails exist in every part of the United States, and they coexist with farming at many, many locations. The Van Dyke’s situation is not unique—they purchased property adjacent to a rail corridor that has been plan designated for development of a trail since 2012. The same types of practices they are following are currently being followed by farmers adjacent to the Banks to Vernonia Trail and testimony was (almost) uniform that the users of that trail are peacefully coexisting with the numerous farm operations located along the trail. Their annoyance, and the changes they will need to make (ex: stop farming the corridor or otherwise using the corridor without permission) are not significant impacts to accepted farm practices. The remaining perceived impacts, for all the reasons stated in these findings, do not, cumulatively, amount to a significant impact. There are no separate significant or insignificant potential impacts with regard to this property that, cumulatively, constitute a significant impact to farm practices or the costs of those practices.

The application should be approved on remand for the reasons stated in these proposed findings.

Conditions of Approval

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

(a) Fencing, as recommended by the draft Master Plan and approved by the Board following quasi-judicial land use proceedings, capable of preventing dogs and people from entering adjacent farm fields and minimizing the impacts of wind-blown litter on adjacent properties, shall be installed by the county along the entire trail segment;

(b) Signage shall be installed at each 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;

(c) Following zoning ordinance text amendments to accommodate trail/transportation facility uses in the county's HI zone, the entrance to the trail from Highway 240 and the Bus Barn property shall be located on the north boundary of the Bus Barn property adjacent to the west boundary. Following amendments to the county's HI zone text, a trailhead and trail parking shall be established on the Bus Barn property as specified in the "Trail User Estimate and Parking Demand Study" prepared by David Evans and Associates dated April 29, 2020, or at an equivalent, alternative location and arrangement. The county will seek from the City of Yamhill and ODOT permission to appropriately mark the shoulder of Highway 240/Main Street to make the shoulder safer for trail users accessing the trail from the City of Yamhill;

(d) The county will seek to enter into good faith negotiations with the Van Dykes, the Eramoses, Dromgoole, Coussens and the McCarthys and/or their successors in interest to establish for each of these owners a license to cross the corridor at an appropriate location or locations, to access fields owned or controlled by them that are currently separated by the trail corridor or to otherwise provide access across the corridor necessary for farming purposes; and

(e) At the location of the intersection of the trail corridor with the right-of-way of Fryer Road, the county shall continue the trail corridor fencing west to the western boundary of the Dromgoole property (the part of the property that is zoned EF-80), to the point where fencing has been established, unless a fence is installed at this location prior to trail fence installation as part of the approved 12-acre solar installation planned to abut the trail at its intersection with the Dromgoole property adjacent to Fryer Road. Fencing shall (at the request of the property owner) also be installed to the east along the county's right-of-way of Fryer Road for a reasonable distance to discourage trespass to those fields, and signage shall be installed to prohibit trail parking and to discourage trespass to neighboring properties.

2. (a) Prior to trail construction (other than non-general public property access improvements including the initial bridge construction) a Master Plan, which shall be a collaborative and coordinated effort, will be approved by the Board in a quasi-judicial land use proceeding, with notice to all property owners within 750-feet of Tax Lot 4403-01300 (the county-owned corridor), outlining additional trail design, management and mitigation measures, measures that will help to ensure long-term minimization of conflicts between trail users and neighboring landowners.

(b) The purpose of land use review of the draft Master Plan is to receive testimony and evidence regarding the proposed fence design, materials, construction and maintenance as the basis for findings that the fence proposed by the draft plan prevents or minimizes potential impacts to farm costs or practices from trespass, trespass related impacts, or blowing litter to a level at which they can no longer be considered significant. The entire plan will be subject to review by the Board, but the findings required for approval will be limited to review necessary to address ORS 215.296 and YCZO 402.07(A) with regard to the fence as required by LUBA in its remand of Board Order 19-94.

3. No trail development is allowed under this approval in any zone where the proposed use is not an allowed use, prior to zone text amendments to add such a use to the list of uses allowed

outright or conditionally in the zone. In developing and managing the trail, the county shall comply with all applicable law. The county will seek input from fire officials and comply with all reasonable requirements of those officials legally required to develop the trail.

4. Trailheads shall be established at the Bus Barn and within the City of Carlton, as specified in the “Trail User Estimate and Parking Demand Study prepared by David Evans and Associates dated April 29, 2020, or at an equivalent, alternative location and arrangement. Signage, as specified in these conditions and as otherwise recommended in the draft Master plan shall be posted at the trailheads. At least one portable toilet shall be maintained at each trailhead for use by trail patrons, along with a station providing bags for pet waste and pet waste bag disposal. Trail intersections with NE Fryer Road and Merchant Road (north and south sides of each) shall be posted with appropriate signage, to include ‘No Trail Parking’ signs and directing potential trail users to the Carlton trailhead. Additional ‘Caution, Trail Crossing,’ and ‘Caution, Trail Crossing Road’ or similar signs, of a type common to existing public trails, shall be posted on both the north and south shoulders of Fryer Road and Merchant road at its intersection with the trail.

5. Details of trail and gate construction shall be established through the master planning process and as specified in a Master Plan approved by the Board. Construction shall include a 12-foot wide paved surface, with emergency vehicle turnouts if required by law. Removable bollards, of a type common to public trail construction or as recommended in the Master Plan, shall be installed at or near the intersection of the trail corridor with State Highway 240; at the north and south intersections of the trail with Fryer Road and Merchant Road; and at or near the intersection of the trail with Roosevelt Street. Culverts to be installed shall be capable of carrying all legal loads, as with the bridge over Stag Hollow Creek, and to convey stormwater as recommended by the county’s engineering consultants.

6. During the master planning process, the county shall negotiate, in good faith, with farm operators seeking or maintaining crop certifications, corridor vegetation and management protocols necessary to prevent contamination of such crops through cross-pollination or crop contamination. Maintenance of appropriate trail corridor vegetation and management protocols established by the parties will be continued as long as necessary to maintain the certifications sought or obtained by neighboring property owners, or subsequent replacement certifications.

7. As part of this approval, the county shall sign and record an affidavit stating the following, with regard to the segment of corridor located between State Highway 240 and the city limits of the City of Carlton:

“The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator’s responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator’s violation of State law.”

8. The county shall notify each property owner adjacent to the trail corridor of the option to provide 72-hour notice to the county prior to aerial spraying of herbicides, pesticides, fungicides

or other dangerous chemicals. Upon receiving 72-hour advance notice of such spraying, trail managers shall post ‘Danger-Pesticide Spraying in Progress—Trail Closed’ signs in appropriate locations to prevent access to the identified trail segment until spraying is completed or until notified by the spray operator that the area is safe to enter. The county will negotiate in good faith any agreement with a farm operator to temporarily close portions of the trail for boom, blast, or other spraying conducted on neighboring properties.

*END