

1. Public Comments

Documents:

[022626 PUBLIC COMMENTS.PDF](#)

2. Agenda

Documents:

[022626 AGENDA.PDF](#)

3. Packet

Documents:

[022626 PACKET.PDF](#)

WRITTEN PUBLIC COMMENTS RECEIVED
PRIOR TO THE
BOARD OF COMMISSIONERS' SESSION
ON
Thursday, February 26, 2026
AT
10:00 A.M.

Questions, concerns or comments about these items can be directed
to staff or the Commissioners by contacting the Commissioners' office at

(503) 434-7501

OR

BOCINFO@yamhillcounty.gov

From: [Gabe Buckley](#)
To: [BOC Info](#); [Gary Wertz](#)
Subject: On behalf of PETA, regarding performances including Viola and other wild animals
Date: Tuesday, February 24, 2026 3:43:01 PM

CAUTION: External Sender. Use caution when opening attachments, clicking links, or responding.

To Yamhill County Commissioners Johnston, Starrett, and King, as well as Fair Manager Gary Wertz:

I'm writing on behalf of People for the Ethical Treatment of Animals (PETA) regarding upcoming performances by Jordan World Circus and other traveling wild animal acts hosted at your venue. Viola, an elephant currently on tour with Jordan World, is elderly and has been used in various circuses since she was captured from the wild as a baby over five decades ago. **Viola has apparent leg stiffness and lameness that have persisted for years, conditions likely caused by decades of confinement and chaining. Jordan World continues to force Viola to perform and carry riders on her back.**

In 2025, Viola appeared in nearly 200 shows produced by Jordan World and other circuses across 16 states. For the few months of the year when she is not on the road, she is held at Carson & Barnes Circus's compound in Oklahoma, where elephants are warehoused and used in high-dollar public encounters and private tours. It's at this facility where Carson & Barnes' "animal care" director was [caught on video](#) violently attacking elephants with electric prods and sharp, steel-tipped bullhooks as he instructed trainers to sink and twist the bullhooks into the animals' flesh until they screamed in pain. The footage, captured nearly three decades ago, documented business as usual in the circus industry. Viola is seen repetitively swaying, an abnormal behavior that can indicate severe psychological distress.

More recent footage shows that Viola continues to display this swaying behavior, meaning she has likely experienced decades of psychological stress. A [2022 investigation](#) revealed that Viola and another elephant on tour with Jordan World, Isa, suffered from chronically swollen feet, toenail problems, and signs of arthritis and other conditions. **Painful foot and joint problems are among the leading reasons why captive elephants are euthanized, but Isa and Viola are still forced to perform and give rides.**

Under these conditions, it is no surprise that Viola has attempted to flee circuses at least four times, starting in the 1970s and most recently in 2024. While on tour with Jordan World in Montana, Viola escaped her handlers, causing property damage to the venue and panic as she ran through a busy downtown and residential area. In 2014, she

escaped from a Shrine circus in Missouri, and in 2010, she escaped from a circus in Virginia. In both instances, she sustained injuries before her recapture. Many people have been [injured or even killed by elephants](#), and given Viola's history of escapes and injuries, the risk of another incident is high. **By hosting elephant acts, your venue is supporting the continued exploitation of Viola and is putting the public at risk.**

It is never too late to make the compassionate choice to refuse hosting acts that exploit animals like Viola. **May I [please hear](#) that you will enact a policy against wild animal acts and protect animals like Viola from a lifetime of abusive training and forced performances?**

Sincerely,

A handwritten signature in black ink, appearing to be 'GB' with a stylized flourish underneath.

Gabe Buckley (he/him)

Captive Wildlife Advocacy Specialist

Captive Animal Law Enforcement | PETA Foundation

(702) 970-7382

YAMHILL COUNTY BOARD OF COMMISSIONERS

AGENDA

February 26, 2026 10:00 a.m. Formal Session Room 32, Courthouse
535 NE Fifth St.
<https://us06web.zoom.us/j/81867313185>
Webinar ID: 818 6731 3185

***Welcome!** Thank you for attending today's meeting. Public participation is encouraged. If you wish to address the Commissioners on any item not on the agenda, you may do so as part of the public comment period at the beginning of the meeting. If you desire to speak on any item, please raise your hand to be recognized after the Chair announces the agenda item. Please fill out a public comment card to indicate your intent to speak. NEW – Public participation also includes the ability to attend Formal Session via Zoom. For attendees that are attending the meeting via Zoom, the Chair will ask if any Zoom attendees wish to provide public comment in same manner as provided above. At that time, attendees will be asked to use the "raise hand" function in Zoom and staff will unmute the participant. Meetings will also continue to be available for view via a live stream on the Commissioners' YouTube channel. Written public comments may be submitted via email at bocinfo@yamhillcounty.gov by 5:00p.m. Wednesday.*

A. CALL TO ORDER

B. FLAG SALUTE

C. CALENDAR SESSION: This time is reserved for the review of the commissioner's joint schedule (if needed).

D. PUBLIC COMMENT: This time period is reserved for public comment on any topic other than: 1) agenda items, 2) A quasi-judicial land use matter, or 3) a topic scheduled for public hearing. The Chair may limit the length of individual comments.

E. DEPARTMENT UPDATES: None.

F. WORK SESSION: This time is reserved for topics of discussion scheduled for the Commissioners in advance. If a work session is not needed, the balance of the meeting will begin at 10:00 a.m.

1. Work Session – None.

G. CONSENT AGENDA:

Committees

1. Approval to reappoint Jeff Brown, Chip Mayes and Ryan Webb to the Road Improvement Advisory Committee each to a three-year term to expire on February 26, 2029.

2. Approval to reappoint Gregory Thorsgard to the Yamhill County Budget Committee to a two-year term to expire on June 30, 2027.

H. OLD BUSINESS: None.

I. OTHER BUSINESS (Add-ons and non-consent items):

1. Consideration of approval of Amendment #1 to Agreement #184790 between Yamhill County and the Oregon Health Authority (B.O. 25-038) reinstating Health-Related Social Needs (HRSN) housing benefits retroactive to November 14, 2025 through July 31, 2026. Oracle #HHS25004IGA.
2. Consideration of approval of Amendment A to the IGA with Yamhill Soil and Water Conservation District (B.O. 24-360) for the shared Native and Invasive Plant Specialist position increasing the not to exceed amount from \$50,000 to \$53,000 effective March 1, 2026. Oracle #PW24001IGA.
3. Consideration of approval of an Ordinance in the matter of amending the Yamhill County Transportation System Plan to remove the Yamhelas Westsider Trail Project; setting the effective date.

J. PUBLIC HEARINGS:

1. Consideration of a mass gathering permit application for the 2026 Wildwood Music Festival event on June 19-21, 2026.

THE RECORDS FOR PUBLIC HEARINGS CAN BE FOUND AT:

<https://www.yamhillcounty.gov/1190/Public-Hearing-Notices>

K. ANNOUNCEMENTS:

1. For information on county advisory committee vacancies, please refer to the county's website, <https://www.yamhillcounty.gov/765/Boards-and-Committees>, or call the Board of Commissioners' office at 503-434-7501 or 503-554-7801 (toll-free from Newberg).
2. For questions regarding accessibility or to request an accommodation contact the Board of Commissioners' office at (503)-434-7501 or (503)-554-7801 (toll-free from Newberg) or email at bocinfo@yamhillcounty.gov
3. Electronic versions of all meeting agendas and meeting information packets can be found at the county's website: <https://www.yamhillcounty.gov/AgendaCenter>

Agenda Item G1



Yamhill County
Public Works Department
2060 Lafayette Avenue, McMinnville, Oregon 97128
Phone 503.434.7515 | Fax 503.472.4068 | Email pubwork@co.yamhill.or.us

YAMHILL COUNTY BOARD OF COMMISSIONERS COVERSHEET

DATE: February 26, 2026
TO: Board of Commissioners
FROM: Mark Lago, Public Works Director
RE: Recommendation to Reappoint Jeff Brown, Chip Mayes, and Ryan Webb to the Road Improvement Advisory Committee (RIAC)

BACKGROUND:

Per the Bylaws, the Road Improvement Advisory Committee (RIAC) is to have nine voting members, as evenly distributed across, or representative of, the geography of the County as is practicable.

Jeff Brown, Chip Mayes, and Ryan Webb represent various areas of the county and have served on RIAC for many years, offering critical advice to the Public Works Department based on their skills and knowledge of county roads. Each has indicated their willingness to continue serving on the committee if reappointed by the Board of Commissioners.

STAFF RECOMMENDATION:

For the Board of Commissioners to reappoint to the Road Improvement Advisory Committee; Jeff Brown, Chip Mayes, and Ryan Webb to a three-year term.

FISCAL IMPACT:

None, this is a public volunteer position.

ATTACHMENTS:

None.

Agenda Item G2

From: [Carolina Rook](#)
To: [Ken Huffer](#); [Kit Johnston](#)
Cc: [Bailey Barnhart](#); [Cale George](#)
Subject: 2/26/26 Agenda Item Request for Committee Reappointment
Date: Thursday, February 19, 2026 11:47:25 AM
Attachments: [image001.png](#)

Hello,

Gregory Thorsgard's term on the Yamhill County Budget Committee expired on June 30, 2025. I'm requesting that his reappointment be added to the 2/26/26 BOC agenda:

"Approval to reappoint Gregory Thorsgard to the Yamhill County Budget Committee for a two-year term to expire June 30, 2027"

Thank you,

Carolina Rook, BOC Office Supervisor
Yamhill County Board of Commissioner's Office
434 NE Evans Street, McMinnville, OR 97128
Ph: 503-434-7501 x3205 / Fax 503-434-7553
rookc@yamhillcounty.gov



Agenda Item I1

From: [Lindsey Manfrin](#)
To: [Ken Huffer](#); [Mary Starrett](#)
Cc: [Layne Pendleton-Baker](#); [Brittany Zylstra-Stanhope](#); [Amanda Kreder](#); [Traci Dawson](#); [Jason Henness](#); [Kaleb Clint Raever](#); [Carolina Rook](#); [Bailey Barnhart](#); [Cale George](#)
Subject: Board Consideration: 184790 OHA Health Related Social Needs (HRSN) Amendment 1
Date: Friday, February 20, 2026 8:56:52 AM
Attachments: [OHA 1915i HRSN 184790-1 44300-00044936.pdf](#)
[image001.png](#)

Hi Mary and Ken,

Attached is amendment #1 to the agreement between Yamhill County and the Oregon Health Authority for the Health-Related Social Needs (HRSN) Housing benefit (BO 25-038). This amendment reinstates and extends the term of the agreement, retroactively effective from November 14, 2025, through July 31, 2026. There were no changes to the award amount.

I recommend the Board approve this amendment as written. Please let me know if you have any questions.

BOC staff, please place this amendment on the next Board Agenda for approval. Suggested Board Agenda language:

“Approval of amendment #1 to agreement #184790 (BO 25-038) between Yamhill County and the Oregon Health Authority reinstating Health-Related Social Needs (HRSN) housing benefits retroactive to November 14, 2025. Oracle #HHS25004IGA.”

Thank you,

Lindsey Manfrin, DNP, RN

Health and Human Services Director

Public Health Administrator

Pronouns: she/her/hers

Yamhill County Health and Human Services|638 NE Davis St McMinnville, OR 97128

Phone: 503-434-7525|Cell: 971-237-2412|Ext. 4719

Fax: [503-474-4907](tel:503-474-4907)|manfrinl@YamhillCounty.gov *please note my email change

Yamhill County Crisis Line (1-844-842-8200)



*****CONFIDENTIALITY NOTICE*****

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Grant Agreement Number 184790
OregonBuys Number PO-44300-00044936

**REINSTATEMENT AND AMENDMENT TO
STATE OF OREGON
GRANT AGREEMENT**

You can get this document in other languages, large print, braille, or a format you prefer free of charge. Contact the Agreement Administrator at the contact information found on page one of the original Agreement, as amended. We accept all relay calls.

This reinstatement is amendment number **1** to Grant Agreement Number **184790/PO-44300-00044936** between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “**OHA**,” and

Yamhill County
Acting by and through its Health & Human Services
638 NW Davis Street
McMinnville, OR 97128
Attention: Traci Dawson
Telephone: 503-434-7523

E-mail address: dawsont@yamhillcounty.gov; manfrinl@yamhillcounty.gov

hereinafter referred to as “**Recipient**.”

RECITALS

WHEREAS, OHA and Agency entered into that certain Agreement number **184790/PO-44300-00044936** effective on November 15, 2024, incorporated herein by this reference (the Agreement);

WHEREAS, OHA and Agency intended to amend the Agreement to extend its effectiveness through July 31, 2026;

WHEREAS, the proposed amendment number **1** to extend the effectiveness of the Agreement and otherwise modify it was not executed by the parties prior to the Agreement’s expiration date;

WHEREAS, the Agreement expired on November 14, 2025 in accordance with its terms; and

WHEREAS, OHA and Agency desire to reinstate the Agreement in its entirety as of November 14, 2025, and to amend the Agreement (once reinstated) to extend its effectiveness through July 31, 2026, as set forth herein.

REINSTATEMENT

1. **Reinstatement.** OHA and Agency hereby reinstate the Agreement in its entirety as of **November 14, 2025** and agree that the Agreement was and is in full force and effect from its effective date through the date of this Reinstatement and Amendment. OHA and Agency further agree that, upon the amendment of **Section 1. “Effective Date and Duration”** of the Agreement pursuant to Paragraph 2 below, the Agreement was, is and will be in full force and effect from the effective date through the expiration date set forth in **Section 1. “Effective Date and Duration”**, as amended, subject to the termination provisions otherwise set forth in the Agreement.

AMENDMENT

2. **Amendment.** OHA and Agency hereby amend the Agreement as follows:

The original Agreement number associated with this Grant Agreement, **1844790**, is hereby superseded and restated to read as follows:

Grant Agreement Number 184790
OregonBuys Number PO-44300-00044936

- a. Contact information for OHA on the cover page (page 1) of this Agreement is hereby superseded and restated entirely as set forth below:

**Medicaid Division
Safety Net Policy
500 Summer Street NE
Salem, Oregon 97301
Agreement Administrator: Mariah Andrews or delegate
Telephone: 971-348-7349
E-mail address: mariah.f.andrews@oha.oregon.gov**

- b. Amend **Section 1, “Effective Date and Duration”** as follows. Language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.
Effective Date and Duration. This Agreement shall become effective on **November 15, 2024** once it is (i) signed by all parties. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on ~~November 14, 2025~~ **July 31, 2026**. Agreement termination shall not extinguish or prejudice OHA’s right to enforce this Agreement with respect to any default by Recipient that has not been cured.
- c. For services provided on and after the effective date of this amendment, **Exhibit A, Part 2, “Disbursement and Financial Reporting”** is hereby superseded and restated in its entirety, as set forth in **Exhibit A, Part 2, “Disbursement and Financial Reporting”**, attached hereto and incorporated herein by this reference.
- d. **Exhibit C, § 6, “Professional Liability”** *only* is hereby superseded and restated entirely to read as follows:

PROFESSIONAL LIABILITY:

☐ Required ☒ Not required

Contractor shall provide Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Grant Agreement by the Recipient and Recipient's subcontractors, agents, officers or employees in an amount not less than \$_____ per claim and not less than \$_____ annual aggregate limit.

If coverage is provided on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Recipient shall provide Continuous Claims Made coverage as stated below.

3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. Recipient certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.
4. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:
 - a. Recipient is in compliance with all insurance requirements in Exhibit C of this Agreement and notwithstanding any provision to the contrary, Recipient shall deliver to the OHA Agreement Administrator (see page one of original Agreement, as amended) the required Certificate(s) of Insurance within 30 days of execution of this Agreement amendment. By certifying compliance with all insurance as required by this Agreement, Recipient acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. Recipient may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
 - b. Recipient acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the Recipient and that pertains to this Agreement or to the project for which the grant activities are being performed. Recipient certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. The Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Recipient, in addition to any remedies that may be available to OHA under the Agreement;
 - c. The information shown in Section 5.a. "Recipient Information", of the original Agreement, as amended, is Recipient's true, accurate and correct information;
 - d. To the best of the undersigned's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small

business enterprises certified under ORS 200.055 in obtaining any required subcontracts;

- e.** Recipient and Recipient's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- f.** Recipient is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/SAM>;
- g.** Recipient is not subject to backup withholding because:
 - (1) Recipient is exempt from backup withholding;
 - (2) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (3) The IRS has notified Recipient that Recipient is no longer subject to backup withholding; and
- h.** Recipient's Federal Employer Identification Number (FEIN) or Social Security Number (SSN) provided to OHA is true and accurate. If this information changes, Recipient shall provide OHA with the new FEIN or SSN within 10 days.

1. **Recipient Information.** Recipient shall provide the information set forth below.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Recipient Name (exactly as filed with the IRS): _____

Yamhill County

Street address: 535 NE 5th Street

City, state, zip code: McMinnville, OR 97128

Email address: MorenoM@yamhillcounty.gov

Telephone: (503) 474-4911 Fax: ()

Is Recipient a nonresident alien, as defined in 26 USC § 7701(b)(1), a foreign person, or a foreign entity? (Check one box): ☐ YES ☒ NO

Business Designation. (Check one box):

☐ Professional Corporation

☐ Nonprofit Corporation

☐ Limited Partnership

☐ Limited Liability Company

☐ Limited Liability Partnership

☐ Sole Proprietorship

☐ Corporation

☐ Partnership

☒ Other

Recipient Proof of Insurance. Recipient shall provide the following information upon submission of the signed Agreement amendment. All insurance listed herein and required by Exhibit C of the original Agreement, as amended, must be in effect prior to amendment execution.

If Recipient is self-insured for any of the Insurance Requirements specified in Exhibit C of the original Agreement, as amended, Recipient may so indicate by: (i) writing "Self-Insured" on the lines below; and (ii) submitting a certificate of insurance as required by Exhibit C of the original Agreement, as amended.

Commercial General Liability Insurance Company: CityCounty Insurance Services (CIS)

Policy #: 86010992 Expiration Date: 7/1/2026

Network Security and Privacy Liability Company Tokio Marine HCC/ Houston Casualty Company

Policy #: H25NGP257212-00 Expiration Date: 7/1/2026

Workers' Compensation. Does Recipient have any subject workers, as defined in ORS 656.027? (Check one box): ☒ YES ☐ NO If YES, provide the following information:

Workers' Compensation Insurance Company: SAIF

Policy #: 871736 Expiration Date: 7/1/2026

RECIPIENT, BY EXECUTION OF THIS AMENDMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

2. Signatures.

Yamhill County Acting by and through its Health & Human Services

By:

_____	Kit Johnston
Authorized Signature	Printed Name
Chair, County Commissioner	_____
Title	Date

State of Oregon, acting by and through its Oregon Health Authority

By:

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date

Approved for Legal Sufficiency:
Exempt per OAR 137-045-0050(2)

Exhibit A
Part 2
Disbursement and Financial Reporting

1. Disbursement of Grant Funds.

- a. During the period specified in **Section 1., “Effective Date and Duration”**, of this Agreement, OHA will disburse to Recipient, a maximum not-to-exceed amount as specified in **Section 3., “Grant Disbursement Generally”** of this Agreement as one lump sum after all signatures to this Agreement have been obtained. Recipient shall use the funds in accordance with the Allowable Activities enumerated in Exhibit A, Part 1, Sections 4 and 5.
- b. Recipient shall submit all requests, and reports to OHA following at the following address:

wassa.dosreis@odhs.oregon.gov

bliss.s.croton@oha.oregon.gov

2. Reporting Requirements

Expenditure Reports for Allowable Activities are required to document how the disbursements were used. Recipient shall submit quarterly Expenditure Reports using the template provided by OHA. Recipient must submit a final report which contains all reported quarters and accounts for all expenses for funds disbursed. If all funds have not been expended, Recipient must return those unexpended funds by **July 31, 2026**. Reports must be submitted to OHA each quarter on the following schedule:

Fiscal Quarter	Due Date
Q4: November 15 – December 31, 2025	14-Feb-25
Q1: January 1 – March 31, 2025	30-Apr-25
Q2: April 1 – June 30, 2025	31-Jul-25
Q3: July 1 – September 30, 2025	31-Oct-25
Q4: October 1 – December 31, 2025	31-Jan-26
Q1: January 1 – March 31, 2026	30-Apr-26
Q2: April 1 – June 30, 2026	31-Jul-26
Final: Close Out Report: Final Comments and Grant Feedback	31-Jul-26

DOCUMENT RETURN STATEMENT

Please complete the following statement and return with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable.

If you have any questions or find errors in the above referenced Document, please contact the contract specialist.

Document number: 184790-1/PO-44300-00044936 , hereinafter referred to as "Document."

Kit Johnston

Name

Chair, Board of Commissioners

Title

received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and

Yamhill County

by email.

Contractor's name

On January 30, 2026 ,

Date

I signed the electronically transmitted Document without change. I am returning the completed signature page, Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable, with this Document Return Statement.

Authorizing signature

Date

Please attach this completed form with your signed document(s) and return to the contract specialist via email.

Agenda Item I2



Yamhill County
Public Works Department
2060 Lafayette Avenue, McMinnville, Oregon 97128
Phone 503.434.7515 | Fax 503.472.4068 | Email pubwork@co.yamhill.or.us

YAMHILL COUNTY BOARD OF COMMISSIONERS COVERSHEET

DATE: February 26, 2026
TO: Board of Commissioners
FROM: Mark Lago, Public Works Director
RE: Amendment to the Intergovernmental Agreement with Yamhill Soil and Water Conservation District for a shared full-time position

BACKGROUND:

On December 19, 2024, the Board of Commissioners approved and signed the Intergovernmental Agreement (IGA) with Yamhill Soil and Water Conservation District (YSWCD) for the shared Native and Invasive Plant Specialist position

The Native and Invasive Plant Specialist Position is a shared position between the YSWCD and the Yamhill County Department of Public Works. The primary responsibilities of this position are to lead the District Noxious Weeds Program and Public Works' Roadside Vegetation Inventory and Management Program relating to native and invasive plants and erosion.

The full-time employee is a YSWCD employee, and the County has paid half of the employee's salary and benefits, which was \$50,500 for the year.

We are approaching the first full year for this shared employee. In evaluating the actual cost for this employee there is a need to increase the yearly salary by \$2,500. Therefore, the County share will not exceed \$53,000 yearly.

STAFF RECOMMENDATION:

Approve and sign the amendment 'A' to the IGA with Yamhill Soil and Water Conservation District for the shared Native and Invasive Plant Specialist position.

FISCAL IMPACT: Not to exceed \$53,000 and funds are available in the current budget.

ATTACHMENTS: Amendment 'A' to the IGA with Yamhill Soil & Water Conservation District

Amendment A to the Intergovernmental Agreement (IGA)

Between
Yamhill Soil and Water Conservation District
and
YAMHILL COUNTY

This amendment to the Yamhill SWCD-YAMHILL COUNTY Native & Invasive Plant Specialist Intergovernmental Agreement, signed and executed on 01/02/2025, is accepted, made, and entered into by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Public Works, hereinafter referred to as the "County", and Yamhill Soil and Water Conservation District (District) a political subdivision of the State of Oregon, acting by and through its Yamhill Soil and Water Conservation District, hereinafter referred to as the "District".

Purpose and Rationale. The purpose of this amendment is to increase the amount the County shall pay the District to account for increased costs associated with work performed, and modify the payment schedule and invoice documentation requirements to simplify the invoicing process for the District.

This amendment shall be effective as of March 1, 2026.

Yamhill SWCD and YAMHILL COUNTY agree to amend agreement item 2(a)

FROM:

"2. CONSIDERATION.

a. The County shall pay the District half of the FTE salary, taxes, benefits, and insurance, but not in excess of \$50,500.00, for performing the work and delivering the deliverables required of County under this Agreement. Payment shall be made monthly, for work performed to the County's satisfaction during the prior month, within 30 days of receipt of an invoice that adequately sets forth the FTE's hours worked during the pay period, the total salary paid, and the taxes, benefits, and insurance costs paid by the District for the FTE."

TO:

"2. CONSIDERATION.

a. The County shall pay the District half of the FTE salary, taxes, benefits, and insurance, but not in excess of \$53,000.00, for performing the work and delivering the deliverables required of County under this Agreement. Payments shall be made monthly, for work performed to the County's satisfaction during the prior month, within 30 days of receipt of an invoice that adequately sets forth the FTE's hours worked during the pay period."

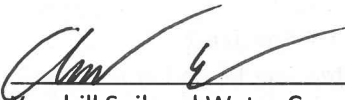
IN WITNESS WHEREOF, the respective parties signed on their behalf to make and enter into this Agreement.

YAMHILL COUNTY

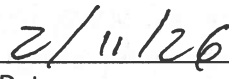
Date:

Print Name:

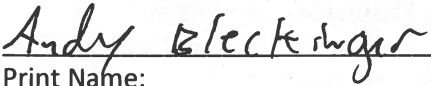
Title:



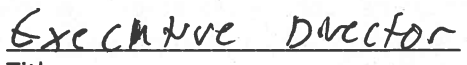
Yamhill Soil and Water Conservation District



Date:



Print Name:



Title:

Agenda Item I3

IN 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 Amending the Yamhill
County Transportation System Plan to
Remove the Yamhelas Westsider Trail
Project; Setting the Effective Date

ORDINANCE _____

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on _____, 2026, Commissioners Kit Johnston, Mary Starrett, and David “Bubba” King being present.

THE BOARD ADOPTS THE FOLLOWING FINDINGS:

WHEREAS, The County originally adopted its Transportation System Plan (TSP) in 1996 via Ordinance No. 605 to satisfy the mandate under Oregon’s Statewide Planning Goal 12 that all counties adopt a TSP as part of their comprehensive plan; and

WHEREAS, As required under OAR 660-12-0150, Ordinance No. 605 contained a list of transportation projects that the County expected to bring to fruition within 20 years; and

WHEREAS, In 2012, the Board adopted Ordinance No. 880 amending the County’s TSP to state County support for a “Rail with Trail” colloquially called the “Yamhelas Westsider Trail Project” (the “Trail”); and

WHEREAS, The County amended its TSP again in 2015 via Ordinance No. 895, and incorporated new and restructured transportation policies and goals, including an objective to support the development of the Trail; and

WHEREAS, The County amended its TSP again in 2018 via Ordinance No. 904 to further describe the County’s efforts taken to construct the Trail

WHEREAS, Ordinance No. 904 was appealed to LUBA and remanded under LUBA No. [2018-061](#); and

WHEREAS, In response to LUBA’s remand, the County repealed Ordinance No. 904 and attempted to approve the trail on remand under Board Order No. 19-94, but LUBA again remanded the County’s decision under LUBA No. [2019-047](#); and

WHEREAS, The County made further attempts to approve and develop the Trail under Board Order 20-25, which was also remanded under LUBA No. [2020-032/033](#), with LUBA

ultimately finding the County's conduct in pursuing development of the Trail was so egregious that LUBA awarded the Petitioners' \$47,533.43 in attorney fees and expenses; and

WHEREAS, The County tried to reapprove a conditional use permit for the Trail under Board Order 20-164 and reauthorize a Trail bridge development contract under Board Order 20-178, but both decisions were again remanded under LUBA No. [2020-066/67](#); and

WHEREAS, The common theme in each of the failed LUBA appeals was that the Trail did not demonstrate that it met the Farm Impacts Test under ORS 215.296; and

WHEREAS, On October 2, 2025, the Board adopted Board Order 25-325, directing the Planning Director to initiate a legislative amendment to the Transportation System Plan to remove all support for the Trail and listing the Trail as a future transportation improvement; and

WHEREAS, On December 4, 2025, the Planning Commission conducted a public hearing on the proposed legislative amendment under Docket No. G-01-25, and the Planning Commission unanimously recommended that the Trail be removed from the County's Transportation System Plan; and

WHEREAS, On January 22, 2026, the Board conducted a public hearing on the proposed legislative amendment under Docket No. G-01-25, which was continued until January 29, 2026, at which time the Board voted 2-1 to remove the Trail from the County's Transportation System Plan; and

WHEREAS, The Board finds that it no longer wishes to pursue the Trail because it does not believe that the Trail can successfully pass the Farm Impacts Test in ORS 215.296 among other legal defects, and the effort to attempt to do so has been both expensive for the County and divisive in the community; and

WHEREAS, The Board now wishes to repeal Ordinance No. 880 and remove the references to the Trail in the TSP; and now, therefore

THE BOARD ORDAINS AS FOLLOWS:

Section 1. Repeal of Ordinance 880. Ordinance No. 880 is hereby rescinded and repealed in its entirety.

Section 2. Amendment of Ordinance 895. Ordinance No. 895 is hereby amended as follows:

a. Staff Report

All references to the Yamhelas Westsider Trail, including all references to ordinances adopting it, are hereby deleted.

b. Section 1: Executive Summary; Bicycle and Pedestrian Improvements; Page 14

Deletion of the following language: "In addition to the shoulder and lane widening

improvements, the Yamhela's [sic] Westsider Trail is also recommended, which will run parallel to OR 47 between OR 99W and Gaston."

c. Section 7: Goals, Objectives, and Evaluation Criteria; Goal 4: Increase the Quality and Availability of Pedestrian and Bicycle Facilities; Page 57

Deletion of the following language under Goal 4's third bullet: "Objective 3: Support the development of the Yamhela's [sic] Westsider Trail."

d. Section 9: Public Process, Figure 13: Priority Improvement Locations; Page 72

Removal of the Yamhelas Westsider Trail, identified as green line "B", in its entirety from Figure 13.

e. Section 9: Public Process; Proposed Bicycle and Pedestrian Improvements; Page 77

- Deletion of the following bullet: "b. OR 47 between OR 99W and Washington County line."
- Deletion of the following language: "The only exception to the lane/shoulder widening improvements is for OR 47 between OR 99W and the Washington County line. Here, the planned Yamhela's [sic] Westsider Trail was proposed, which will run parallel to OR 47, with connections via OR 47 and intersecting county roads."

f. Section 10: Recommended Transportation System Improvements; Bicycle/Pedestrian Improvements; Page 89

Deletion of the following language: "In addition to the shoulder and lane widening improvements, the Yamhela's [sic] Westsider Trail is recommended (see Figure 13). The trail will run parallel to OR 47 from OR 99W to Gaston, linking up with the State Highway Bicycle trail to Forest Grove and to Hagg Lake. The cities of Gaston, Yamhill and Carlton are situated along the trail. Access will be available from intersecting county roads and nearby OR 47."

g. Section 10: Recommended Transportation System Improvements; Table 4: Recommended Bicycle and Pedestrian Improvements; Page 90

Complete deletion of Row B: OR 47 - OR 99W to Washington County.

h. Appendix D: Future Transportation Conditions; Pages 118-119

- Page 118:
 - Deletion of the following language:

"YAMHELAS WESTSIDER TRAIL

Yamhill County Parks Department has been working with the Friends of Yamhelas Westsider Trail, citizens, and local businesses on a proposal to acquire the abandoned Union Pacific Railroad right-of-way for the Yamhelas Westsider Trail. The trail will eventually run from OR 99W through the cities of Carlton, Yamhill, and Gaston, linking with the state highway bicycle trail to

Forest Grove and Hagg Lake (see Figure 8). Access will be available from intersecting county roads and nearby OR 47.

The trail will connect urban neighborhoods to regional open spaces, serving pedestrians, joggers, equestrians and bicyclists. The Friends of Yamhelas Westsider Trail has been awarded \$1.4 million in grant money by the Oregon Transportation Commission – enough to pay for almost 13.5 miles of the 17 miles of Union Pacific right-of-way needed.”

- Deletion of footnote 13: “www.yamhelaswestsidertrail.org website, accessed July 24, 2013.”
- Page 119:
 - Complete deletion of “Figure 8: Proposed Yamhelas Westsider Trail” in its entirety.
- i. Appendix F: Goals, Objectives and Evaluation Criteria, Goal 4: Increase the Quality and Availability of Pedestrian and Bicycle Facilities; Page 135
Deletion of the following language: “Objective 4c: Support the development of the Yamhelas Westsider trail.”
- j. Appendix I: Analysis of Preliminary Alternatives; Pages 265 and Page 303
 - Page 265:
 - Deletion of Row (B), referring to the Yamhelas Westsider Trail, from “Table 1: Bicycle and Pedestrian Priority Improvements”.
 - Deletion of the following asterisk language: “* The trail will run along the abandoned Union Pacific right-of-way between OR 99W and the Washington County line and through the cities of Gaston, Yamhill and Carlton. Access will be available from OR 47 and intersecting county roads.”
 - Page 303:
 - Deletion of Row (B), referring to the Yamhelas Westsider Trail, from “Table 1: Bicycle and Pedestrian Priority Improvements”.
 - Deletion of the following asterisk language: “* The trail will run along the abandoned Union Pacific right-of-way between OR 99W and the Washington County line and through the cities of Gaston, Yamhill and Carlton. Access will be available from OR 47 and intersecting county roads.”
- k. Appendix J: Selection of Recommended Alternatives; Pages 339-340
 - Deletion of the following language under *Bicycle/Pedestrian Improvements*: “Although Westside Rd. is a relatively heavily traveled bicycle and pedestrian route, the County believes that efforts should be focused on the Yamhela’s [sic] Westsider Trail project, which runs parallel to Westside Rd.”
 - Page 340:
 - Deletion of Row (B), referring to the Yamhelas Westsider Trail, from “Table 1: Bicycle and Pedestrian Priority Improvements”.
 - Deletion of the following asterisk language: “* The trail will run along the abandoned Union Pacific right-of-way between OR 99W and the Washington

County line and through the cities of Gaston, Yamhill and Carlton. Access will be available from OR 47 and intersecting county roads.”

- Page 380 (“Appendix A: Cut Sheets”)
 - Deletion of Row (B), referring to the Yamhelas Westsider Trail, from “Table 1: Bicycle and Pedestrian Priority Improvements”.
 - Deletion of the following asterisk language: “* The trail will run along the abandoned Union Pacific right-of-way between OR 99W and the Washington County line and through the cities of Gaston, Yamhill and Carlton. Access will be available from OR 47 and intersecting county roads.”

Section 3. Findings and Conclusions. In support of this Ordinance, the Board adopts the findings and conclusions set forth in Exhibit A, attached hereto and incorporated herein.

Section 4. Severability. Invalidity of a section or part of a section of this Ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 5. Effective Date. The first reading of this Ordinance occurred on February 26, 2026; the second reading on March 12, 2026. The effective date of this Ordinance shall be June 10, 2026.

DATED this _____ day of March, at McMinnville, Oregon.

YAMHILL COUNTY BOARD OF COMMISSIONERS

ATTEST

AYE NAY

KERI HINTON
County Clerk

Chair KIT JOHNSTON

By: _____
Deputy CAROLINA ROOK

Commissioner MARY STARRETT

FORM APPROVED BY:

Jodi Gollehon
Counsel to Yamhill County

Commissioner DAVID “BUBBA” KING

EXHIBIT A

YAMHILL COUNTY BOARD OF COMMISSIONERS FINAL FINDINGS OF FACT AND CONCLUSIONS OF LAW TEXT AMENDMENT, #G-01-25

AMENDMENT OF YAMHILL COUNTY TRANSPORTATION PLAN TO REMOVE THE YAMHELAS WESTSIDER TRAIL SUPPORTS, REPEAL ORDINANCE 880, AND AMEND ORDINANCE 895

1. Summary

The Yamhill County Board of Commissioners wishes to remove references and support for the Yamhelas Westsider Trail or the development of the abandoned railbed related to it, from its planning documents. The Yamhelas Westsider Trail and related policies were added as an aspirational improvement of the County, without undertaking the important work of determining its land use compliance and, in particular, its ability to comply with Oregon and the County's important land use laws which include laws requiring farm use preservation and protection. Despite the County's repeated attempts over multiple years to establish the Trail, Oregon State authorities, particularly LUBA, repeatedly and properly decided that the Trail failed to meet the requirements of the nationally renowned Oregon and County farm protection land use planning program.¹ Attorney fees were awarded against Yamhill County for taking positions that supported development of the trail under pretenses that LUBA determined "was not reasonable for the county to argue for the first time in its pleadings before LUBA." (*Van Dyke v. Yamhill County*, LUBA Nos. 2020-032/033, pp 9-10, ln 25-27 & 1-2). The Trail has been among the most, if not *the* most, divisive policy Yamhill County has ever pursued in memory. The Board of Commissioners no longer wishes to support the Trail or develop the abandoned railbed related to it, wishes to remove all County support for the Trail and development of the abandoned railbed, wishes to remove from all County Plans any suggestions that the Trail and development of the abandoned railbed is a County objective or goal, and hopes to begin to heal the County from the effects of this acrimonious plan.

2. Procedural Matters

A. Categorization of this Matter

This matter involves a legislative decision. The decision these findings support proposes to amend the text of the County's TSP that was legislatively adopted as a part of the County Comprehensive Plan. When the TSP was adopted containing language the County now seeks to have removed, it was adopted in the legislative processes which resulted in adopting Ordinance

¹ See LUBA decisions in *Van Dyke v. Yamhill County*, 78 Or LUBA 530 (2018) (Van Dyke I); *Van Dyke v. Yamhill County*, LUBA No. 2019-047, Oct 11, 2019) (Van Dyke II); *Van Dyke v. Yamhill County*, LUBA Nos. 2019-038/040, Oct 11, 2019 (Van Dyke III); *Van Dyke v. Yamhill County*, LUBA Nos 2020-032/033, June 1, 2020 (Van Dyke IV), and *Van Dyke v. Yamhill County*, LUBA No. 2020-067, Dec. 30, 2020 (Van Dyke V). Mentioned throughout these Findings as the five LUBA decisions.

880 and 885.² The removal of the specific language at issue here concerning the Yamhelas Westsider Trail and the related abandoned railbed, were established in and are subject to, the same legislative and policy forward processes as attended those policies' inclusion in the County TSP. In this regard, deleting policies from a County Comprehensive Plan/Transportation System Plan is a legislative land use decision because it changes the law/policy framework that governs future land use decisions, rather than applying existing standards to an application.³ The Board notes this policy decision concerning the contents of the County TSP, is to be contrasted with the processes and decision following the County's submittal of a specific conditional use permit application to develop the Yamhelas Westsider Trail in the abandoned railbed, which was quasi-judicial in nature, and which LUBA remanded several times as legally deficient. *VanDyke v. Yamhill County*, 78 Or LUBA 530 (2018). The Board is free to make or not make this decision and chooses to make it. This decision is legislative in nature.

B. Post-Acknowledgment Amendment

As noted, this legislative amendment is an amendment to the County's Transportation System Plan. ORS 197.610(1) and OAR 660-018-0020(1) require that the County provide notice to the Director of the Oregon Department of Land Conservation and Development ("DLCD") at least 35 days prior to the initial evidentiary hearing. The County provided the 35-day notice to DLCD through DLCD's PAPA online portal on October 9, 2025. The County has satisfied ORS 197.610(1) and OAR 660-018-0020(1) by submitting the post-acknowledgement amendment notice so that it arrived at the office of the Director of DLCD at least 35 days prior to the initial evidentiary hearing.

YCC 2.05.03.07 requires the County provide a public notice for formal sessions of the Board of Commissioners hearing in accordance with ORS 192.640 which requires providing public notice "reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings." The Board of Commissioners provided notice in accordance with YCC 2.05.03.07 and ORS 192.640 through the Yamhill County "Public Meetings" website, accessible at <https://yamhillcounty.gov/AgendaCenter>.

The Board finds that the County has satisfied the post-acknowledgement amendment notice requirements of ORS 192.640, ORS 197.610(1); OAR 660-018-0020(1) and the County's public notice requirements under in YCC 2.05.03.07 as well as YCZO 1402 and 1403.

² Both Ordinance 880 and Ordinance 885 are included in the record of this matter.

³ See Yamhill County Zoning Ordinance, 202 (Definitions), p. 4 : "A legislative amendment is an amendment to the zoning ordinance to establish or change a specific policy related to uses, criteria, procedure or other ordinance provisions of substantial general applicability. A legislative amendment may apply to the zone map or text of the zoning ordinance." See also *Strawberry Hill Four Wheelers v. Benton County*, 287 Or 591 (1979).

C. Procedure

Yamhill County Zoning Ordinance (YCZO) 1207 is entitled “Legislative Amendments to the Zoning Ordinance.” The Board acknowledges and observes that the “Zoning Ordinance” is distinct from the County Comprehensive Plan - the “Zoning Ordinance” is at Title 11, and the Yamhill County Comprehensive Plan at YCC 11.05. However, the Board also acknowledges and observes that YCZO 1207.01 reframes its applicability more broadly to “Legislative Ordinance Amendments” and describes the manner in which legislative ordinance amendments are generally processed. The Board finds that this decision is a legislative Ordinance Amendment. The Board finds that the correct interpretation and application of this provision in the County’s code is that YCZO 1207.01 governs legislative amendments of the County zoning ordinance and legislative amendments to the County Comprehensive Plan. The Board further notes that the County has long applied YCZO 1207 to govern the procedures for plan amendments. *See Yamhill County Ordinance 747 (Adopting new Plan policies for the Newberg-Dundee Bypass, among other things, using YCZO 1207 procedures).* The Board finds that YCZO 1207 describes requirements for all legislative amendments of either the County Zoning Ordinance or the County Comprehensive Plan.⁴

YCZO 1207.01(A) authorizes this amendment to be initiated by the Board of Commissioners. The Board finds that it authorized and initiated this amendment.

The Board further finds that YCZO 1207.01(C) authorizes ordinance amendments, including plan amendments such as that at issue here, to be made by the Board of Commissioners after Planning Commission review and public hearings in the processes described in YCZO 1402.02 and YCZO 1403. Here the County held two (2) hearings for this legislative amendment, one (1) before the Planning Commission on December 4, 2025, and one (1) before the Board of Commissioners on January 22, 2026 that was continued on January 29, 2026.

The Board finds that the required Notices of the legislative public hearings on this matter were duly published as required by YCZO 1402.02 and 1403.02.

The Board finds that the rules governing quasi-judicial evidentiary hearings described in YCZO 1402.04 and 1402.06, and referenced in YCZO 1403.04, did not and still do not apply because this matter was properly processed as a legislative matter, not a quasi-judicial one.

YCZO 1207.01(D) requires findings demonstrating that the legislative amendment is consistent with Comprehensive Plan goals and policies. The Board finds that these are those

⁴ Per YCC 2.65.02(c), YCC Chapter 2.65 – Yamhill County Public Hearings Procedure Code - is not applicable to this legislative proceeding.

required findings. The Board finds that the proposal is fully consistent with the County's Comprehensive Plan goals and policies, as is explained in detail below.

YCC Chapter 11.05 – Yamhill County Comprehensive Plan Code at Section 7 is entitled “Implementation, Evaluation, and Review.” This section provides, in relevant parts:

1. Yamhill County will continue to implement an ongoing citizen involvement program that provides county residents with the opportunity to be involved in all phases of the planning process. [YCC 11.05.07.01(b)(i)], and
2. Yamhill County will review any development concepts or proposals which conflict with the Plan Map, goals or policies in light of changing needs and conditions and in keeping with established procedures of Plan evaluation, amendment, and update. [YCC 11.05.07.02(b)(i)]

The Yamhelas Westsider Trail is a development concept that the Board finds changing needs and conditions warrant its removal from the TSP. Specifically, while the County initially thought the development of the abandoned railbed with a trail was good policy, it has since discovered that the trail would cut through and significantly impair, if not destroy, many working farms that adjoin it along with directly violate zoning rules on the land it would be situated on. After numerous LUBA decisions and hours of the testimony from the farmers owning working farms adjoining that railbed and others, the Board finds that developing the abandoned railbed with a public trail is poor public policy, is contrary to the County Comprehensive Plan, violates the County zoning ordinance, and is contrary to state laws protecting agricultural land uses and agricultural lands to include the farm impacts test of ORS 2'15.296, among others. The Board declines to continue to pursue the trail in the abandoned railbed in any respect and wishes to remove any suggestions to the contrary from the County's planning program.

The Board finds that this decision was adopted in a manner consistent with Yamhill County Code 2.05.06.03.

3. Approval Criteria

Per YCZO 1207.02(D), this amendment must be consistent with the County Comprehensive Plan.

Amendments to the County's TSP must comply with the State Transportation Planning Rule (“TPR”) in OAR 660-012- et seq.

Because this text amendment is a post-acknowledgment amendment, ORS 197.175(1) requires that the Plan and Map amendment satisfy applicable Statewide Planning Goals (the “Goals”).

A. Proposal is Consistent with the County Comprehensive Plan

(a). Nature of the Provisions to be Removed Supporting Development of the Yamhelas Westsider Trail in the Abandoned Railbed; General Findings

The provisions to be removed from the TSP are as follows:

The County added Policy 4 in 2012 (Ordinance 880) stating:

- “Yamhill County Supports the Hagg Lake to McMinnville Rail with Trail Improvement (Yamhelas Westsider Trail Improvement) and considers it important to both the County’s rail and trail/bikeway systems.”

The TSP also states the following to be removed:

- Executive Summary, the TSP states that “the Yamhelas Westsider Trail is also recommended,” running parallel to OR 47 between OR 99W and Gaston. TSP p 14.
- “Goal 4, Objective 3: “Support the development of the Yamhelas Westsider Trail.” TSP p 57.
- The lane/shoulder widening improvements frame the trail as a planned substitute/approach for a roadway segment that otherwise satisfied bike and pedestrian needs with roadway improvements, stating “the only exception” on OR 47 between OR 99W and the Washington County line, where the planned Yamhelas Westsider Trail was proposed to run parallel to OR 47 with connections via OR 47 and intersecting county roads. TSP p 77.
- “In addition to the shoulder and lane widening improvements, the Yamhelas Westsider Trail is recommended (see Figure 13).” P 89.

The Board finds that each of the above express discretionary policy support and are not fixed requirements that the County must pursue the Yamhelas Westsider Trail regardless of whether it conflicts with state law, the County Comprehensive Plan, or zoning provisions discovered during the attempted implementation of that trail. In this regard, the Board expressly finds that since these aspirational expressions of support were adopted, that the Board has since been presented with significant evidence that the development of the Yamhelas Westsider Trail in the abandoned railbed causes significant harm to working farms alongside it, has not been able to meet the farm impacts test despite numerous tries to do so, allows a use that is prohibited in several of the zones it

would run through, and, in all, the Board finds it to be a potential improvement that is wholly divisive, harmful and contrary to state and county land use rules. As such, the County declines to continue to pursue it. The County finds that it can lawfully change those prior policies through the amendment process in the exercise of its legislative authority to update its transportation priorities.

The TSP also includes the following “Improvement Recommendations”, to be removed:

- Figure 13, p 72 (Showing the Yamhelas Westsider Trail “Bike/Pedestrian Priority Improvement locations”. P 72.
- TSP’s Table 4: Recommended Bicycle and Pedestrian Improvements lists, as a specific “short term” “Recommended Improvement”: “Location B (OR 47 – OR 99W to Washington County): “Yamhelas Westsider Trail.” TSP p 90.

As the TSP explains, all improvements in Figure 13 and Table 4 are limited to occurring only when “funding becomes available or other opportunities arise during the budget cycle.” TSP p 16, 94. All of the listed improvements are also subject to demonstrating compliance with Oregon’s and the County’s strict land use laws.

Other parts of the TSP to be removed are TSP Appendix D at electronic page 118-119 that describes and depicts the Yamhelas Westsider Trail as a “future condition; Appendix F, electronic page 135 at Objective 4c; Appendix I, electronic page 265 reference to the Yamhelas Westsider Trail, and at p 303 reference to the Yamhelas Westsider Trail; Appendix J, electronic pages 339 and 340; Appendix A “Cut Sheets”, p 380.

As explained throughout these findings, despite several attempts, the Yamhelas Westsider Trail was never able to demonstrate compliance with state and county laws. The Board finds that when Figure 13 and Table 4 were placed into the TSP, that the Yamhelas Westsider Trail had not been fully evaluated for its feasibility under State and County land use rules, and that such feasibility was not evaluated until the time that the County attempted to process a conditional use permit for the trail. At that point scores of farmers and other citizens credibly testified that the development of the trail did not meet State and County land use laws, to include the state farm impacts test of ORS 215.296, and that it was strictly prohibited in some of the zones in which it was proposed. LUBA largely agreed with the opponents of the Trail in several different published opinions. A representative sample follows from a review of the five separate substantive LUBA opinions of important significance is the fact that LUBA determined that development of the YWT would inevitably create a significant change in accepted farm practices and/or create a significant increase in the cost of adjacent farming practices in violation of 215.296(1). While LUBA was unwilling to reverse the County outright and said

the County was free to keep trying, the County declines to do so and finds doing so is imprudent, unlikely to succeed and is simply poor policy.

1. Yamhill County was unable to carry its burden of proof with credible evidence that developing the Trail would comply with the farm impacts test of ORS 215.296(1) or mitigate the Trail's impacts to a point of insignificance.

The Board is unpersuaded that there is any reason to believe that the County will come up with credible evidence that the Trail meets the farm impacts test of ORS 215.296 and declines to spend the resources and our human capital to do so. As stated by LUBA in its fifth ruling, “[f]indings that a farmer can take measures to avoid or manage impacts from a nonfarm use do not establish compliance with [the farm impacts test] ORS 215.296(1); rather, ORS 215.296(1) asks whether the non-farm use forces significant changes to farm practices or costs.” *Van Dyke v. Yamhill County*, LUBA No. 2020-067, p 16, ll 2-5 (2020) [citing *Stop the Dump Coalition v. Yamhill County*, 364 Or. 432, 460, 435 P.3d 698 (2019)].

2. Pesticide/Herbicide Setbacks: Development of the proposed YWT bicycle/pedestrian trail, which is considered a “recreational setting,” would foreclose adjacent farmers from utilizing necessary herbicides and pesticides up to the property line, as is the current accepted farming practice, and require significant spray setbacks and/or risk possible crop loss in order to protect users, developers, and maintenance operators of the YWT. *Van Dyke v. Yamhill County*, LUBA No. 2020-067 p 18 ln 9 – p 26 ln 13.

- a. LUBA agreed with the adjacent farmland owners that if the Trail is developed, the evidence is credible that farmers would have to either switch to less effective chemicals, hire expensive manual labor, and/or create an undetermined amount of setbacks to accommodate protecting the recreational trail and its users from the pesticides, hence increasing the farmers’ costs and forcing them to change their farming practices. This is because the commonly used herbicides and pesticides (Gramoxone, Parazone, Lorsban and Yuma 4E) all have locational spray restrictions that are mandated by federal law under 7 USC §136j(a)(2)(G). *Id.* at p 19 ln 10 – p 23 ln 11.
- b. Undisputed testimony in the record from the Oregon Department of Agriculture, explains that many of the pesticides sprayed by the farmers adjoining the abandoned railway where the Yamhelas Westsider Trail would be established, have EPA required labels that prohibit spraying those pesticides “around” “Recreational Parks” and “Playgrounds” and so “could preclude [spray] application in fields adjacent to the trail or sensitive sites identified in the product labeling”, which “could preclude [spray] applications in fields adjacent to the trail ***.” If the accepted farming practice of

spraying crops with important pesticides becomes impossible as a matter of federal law as the Oregon Department of Agriculture has explained, on entire farm fields because the trail is established, it is hard to imagine how the establishment of the trail does not “significantly change” accepted farming practices or significantly increase the cost of accepted farming practices – requirements of the ORS 215.296 farm impacts test that the Trail must meet to be developed. On these findings, the Board finds that an applicant cannot carry the Burden of proof that the Trail described in the TSP meets the farm impacts test.

- c. LUBA agreed with the farmers that certain pesticides (Lorsban and Yuma 4E), used by the Petitioner-farmers to protect their filbert orchards, requires significant setbacks from “sensitive sites.” These setback requirements include pedestrian sidewalks and outdoor recreational areas, such as the YWT. The setback requirements would either force farmers to remove crops within the setback area, or farmers would be forced to either not spray pesticides within that area or apply other pesticides that would prohibit the farmers’ ability to rotate pesticides to reduce pest resistance. Both of these options will contribute to pest infestation and crop loss. (*Id.* at p 23 ln 12 – p 24 ln 10).

As such, the Board finds that the farmers plight described by LUBA from the construction of the Trail is credible and that construction of the Trail would cause a significant change to and significantly increase the cost of accepted farming practices. The Board declines to continue its efforts to develop the Trail finding that it is infeasible that an applicant for the Trail can carry its burden to demonstrate that the Trail meets the farm impacts test and finds that repeatedly attempting to do so has only created and will continue to create divisiveness within the County.

3. Mandatory EPA Compliance:

Along these lines, LUBA decided that the Trail would significantly impact the adjacent farmland owners’ ability to spray outdoor pesticides in compliance with the Federal Environmental Protection Agency’s (EPA) Application Exclusion Zone (AEZ) rule for outdoor pesticide application at 40 CFR at 40 CFR § 170.405(a)(1)(i). (*Id.* at p 28 ln 1 – p 31 ln 21). LUBA determined the farmers’ compliance with the EPA AEZ is an accepted farm practice, and that impairing the farmers’ EPA AEZ compliance as LUBA described does not pass the farm impacts test under ORS 215.296(1). (*Id.* at p 31, ln 15-21).

- a. More specifically, the EPA AEZ excludes all persons other than the trained and protected pesticide handlers from the area “and extends 100 feet

horizontally from the application equipment in all directions when a pesticide is applied aerially, by air blast application, as a fine-droplet spray, or as a fumigant, smoke, mist, or fog.” (*Id.* at p 28 ln 4 – p 29 ln 4).

b. EPA’s requirements for pesticide applications are not limited to farm boundaries, but apply to any area within the AEZ, which would include the adjacent Trail, so such pesticide applications must immediately cease if any person using the Trail enters the 100-ft EPA AEZ. Ceasing or delaying spray operations to accommodate Trail pedestrians would likely cause farmers to miss their “spray window” when daytime and weather conditions are right for the spray application, which, in turn, could result in pest infestations and cause an increase in labor costs, chemicals, and equipment use. (*Id.* at p 29 ln 5 – p 30 ln 11; see also 40 CFR § 170.505(b) (2016)).

4. Aerial Pesticide Applications:

Some of the adjacent farmers also apply aerial pesticides to their filbert orchards as a common farming practice. However, if the Trail is developed, aerial spray applicators have testified they will no longer spray in these areas “due to the risk of complaints and potential litigation from Trail users” hence foreclosing the aerial spray practice. (*Id.* at p 31 ln 22 – p 32 ln 3). LUBA found that Yamhill County failed to provide any credible evidence showing that the YWT nonfarm use would not force a significant change in aerial pesticide applications. (*Id.* at p 33 ln 4-15). As LUBA stated in its decision “[t]he county's decision and argument misinterpret the farm impacts standard and improperly shift the evidentiary burden. The issue is not whether any law prevents aerial application of pesticides on the farms adjacent to the Trail. The issue is whether the county's proposed nonfarm use of the county's property forces a change in the accepted farm practice of aerial application of pesticides on those farms. The burden is on county to demonstrate that its nonfarm use will not force a significant change. The county has not done so.” (*Id.* at p 33 ln 4-10). The Bard finds that the County repeatedly attempted to prove otherwise and failed. The Board declines to try again.

5. Trail Drainage Impacts:

After weighing the evidence, LUBA additionally determined that the County failed to show how the Trail would address new drainage patterns, and how the stormwater would be managed to avoid contamination to the adjacent farmlands. LUBA explained that runoff from the trail could result in field flooding and cause decreased productivity, exacerbate drainage issues from the two culverts that can cause damage to farmlands’ pasture and crops, and create runoff with contaminants such as horse and dog feces and artificial chemicals that may cause food safety and contamination issues. (*Id.* at p 34 ln 12-17). Specifically, LUBA stated in its decision “[t]he [County’s] findings do not address whether the Trail will result in new drainage patterns and

how the stormwater will be managed to avoid contamination of adjacent farmland. The [County's] findings simply dismiss the farmers' concerns. We agree with petitioners that the county's findings regarding farm impacts from Trail-related drainage are inadequate" and "fail[ed] to address farm impacts from modified drainage." (*Id.* at p 35 ln 6-14).

The Board finds it wholly inappropriate to dismiss the farmers concerns and would not and does not do so.

6. Trespass and trail contamination impacts:

LUBA further ruled that the County could not demonstrate how it would prevent trespass and contamination from weed seed, trash, and feces from nonfarm Trail users, impacting the farmers' seed and food safety certifications. (*Id.* at p 35 ln 15 – p 37 ln 2). In addressing the County's proposal to implement "master planning and fencing to avoid trespass," known as the County's "Condition 2", LUBA determined that the County's proposal was "not sufficient to mitigate the impacts from trespass and contamination and is not clear and objective, as required by ORS 215.296(2)." (*Id.* p 36, ln 8-10). LUBA further contended that that Condition 2 failed to define "trespass related impacts" so it lacked a "clear and objective" definition that failed to "support a conclusion that all of the farmers' trespass-related concerns will be mitigated to a point of insignificance. Those concerns include Trail users entering farm property and coming into contact with pesticides and herbicides, as well as weed seed, trash, and feces contamination. Thus, it is not "clear and objective" what design requirements will apply to the fence. In the absence of those specifications, the county erred in relying on Condition 2 to find that trespass-related impacts will be mitigated to a point of insignificance." (*Id.* p 36, ln 15-21 - p 37 ln 1-2). The Board declines to try to come up with additional mitigation measures because it is not persuaded, after reviewing LUBA's decisions and evidence presented in this proceeding, that appropriate mitigation to relegate the significant adverse farm impacts from the Trail to "insignificance" can be achieved. The Board is aware and persuaded the County tried repeatedly to come up with mitigation and all of them failed. The Board declines to try again.

7. Fire Control Impacts:

LUBA additionally determined that the County's findings regarding fire service adequacy are grossly inadequate and not supported by reasonable evidence. Here, the County provided its own nonexpert assessment of fire risks and fire suppression resources that could not outweigh the expert testimony provided by the chief of the Yamhill Fire Protection District, who stated that providing fire service to the Trail would create a major hardship for his district's personnel who are mostly volunteers. Similarly, the Carlton Fire District's chief provided credible testimony that that he is uncertain whether there can be adequate fire service for the Trail due to a lack of funding for fire personnel. In addition, his district's main fire station's access to the

right-of-way is currently blocked by overgrown brush and the Trail would need fire hydrants installed along the corridor. (*Id.* at p 51 ln 13 – p 52 ln 19).

LUBA determined that “the county improperly rejected and failed to address expert testimony without the support of countervailing expert testimony regarding fire suppression. Instead, the county appears to have relied on its own *nonexpert* assessment of fire risks and fire suppression resources. The county’s findings regarding fire service adequacy are inadequate and not supported by substantial evidence.” (*Id.* at p 52 ln 13-18) [Emphasis added].

In light of this and other testimony in the record, and considering the significant divisiveness this trail idea has caused, the Board hereby decides that the appropriate policy of the County is not to further attempt to pursue the Trail. The Board finds that nothing requires this Board to maintain as a TSP policy that the County will continue to try to develop a highly divisive, litigation forward, recreational trail through the middle of working farms where the County has tried 5 times and LUBA has consistently ruled that the trail fails the state’s farm impacts test and is proposed on land that flatly prohibits it.

8. Specific Plan Consistency

Removing the expressions of support for the Yamhelas Westsider Trail in the abandoned railbed and amending Figure 13 and Table 4 to remove showing the Yamhelas Trail as an “Improvement” in the Yamhill County TSP is consistent with the following specific Comprehensive Plan Provisions.

The Yamhill County Comprehensive Plan (“YCP”) under Title 11 includes several policies designed to protect land zoned EFU from nonfarm uses, to protect the County’s agricultural economy, provide adequate transportation and recreational opportunities. The proposal to remove the proposed nonfarm YWT from the TSP is consistent with all of them.

YCP 11.05.01.02 “Rural Area Development” recognizes that the “expansion of urban development into rural areas is a matter of public concern because of the *** conflicts between farm and urban activities ***” and “Encroachment of urban development into rural areas threatens to remove valuable farmlands from needed agricultural uses.” The Board finds these policies are relevant and exist apart from Statewide Planning Goal 14. These policies reflect the County’s legal and policy acknowledgement that significant amounts of people, particularly from urban areas, recreating amongst working commercial farms introduces serious conflicts that can take important working farms out of production. That is a serious issue for Yamhill County whose economy is closely tied to commercial agriculture. The proposal to remove support for the YWT is consistent with these plan provisions.

YCP 11.05.02.01 “Agricultural Lands” provides in relevant part:

- “(i) *Agriculture plays an integral role in the overall economy of the county. A significant amount of land within the county has soils which are defined as having high quality agricultural capability.*
- (ii) *The need to maintain the integrity and viability of the agricultural land base has been clearly recognized by Yamhill County residents.*
- (iii) *Expansion of urban development into rural areas creates conflicts between farm and urban activities, thereby decreasing the potential for agricultural productivity.”*

Removing the YWT from the TSP is consistent with these provisions because it recognizes and respects the important role that agriculture plays in the overall economy of the County. It is consistent with the County maintaining and supporting the viability of the County’s important agricultural base by protecting it from non-farm encroachments. The Board further finds, that wholly apart from the fact that state law says that recreational trails on land zoned EFU are deemed to be consistent with Goal 14 (urbanization), the County plan recognizes that urban activities create conflicts between farm and urban activities, decreasing the potential for agricultural productivity, contrary to these County plan policies. Removing the YWT is consistent with these plan policies because it avoids conflicts between farm and urban activities associated with people from urban areas using the trail to recreate, which as LUBA has repeatedly explained is likely to cause serious agricultural use conflicts. The proposal to remove the YWT from the TSP is consistent with these plan provisions.

YCP states as its Goal Statement that it will “conserve Yamhill County farmlands for the protection of crops and livestock ***.

Removing the YWT from the County plan is consistent with this Goal statement because it conserves the EFU zoned land adjoining the YWT for the production of farm crops and livestock, which the Board finds the YWT threatens.

YCP 11.05.02.01(B)(i)(1)-(11) state the following relevant, important County agricultural lands policies:

- “1. Yamhill County *will provide for the preservation of farmlands* through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce, and various public financial incentives. (105)
- 2. Yamhill County *shall provide for the protection of farmland* in large blocks through minimum lot sizes of 20, 40 and 80 acres, as appropriate, on the

Comprehensive Plan and official zoning maps. Any proposal to reduce the minimum lot size on a farm or farm/forest parcel shall be shown to be appropriate to maintain the existing commercial agricultural enterprise in the area.

“*****

4. Yamhill County will *provide for the conservation of farmlands through various plan implementation measures and the review of any public or private land use determinations* subject to county jurisdiction, including urban development activity *and the location and construction of highways and utility transmission lines which disturb the soil cover and natural drainage pattern, and increase storm runoff, erosion and sedimentation.* (106)
5. *****
6. *****
7. *****
8. *No proposed rural area development shall substantially impair or conflict with the use of farm or forest land,* or be 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.
9. *****.
10. *****.
11. *****

The Board finds that the Yamhelas Westsider Trail whether viewed as “rural or “urban” development, impairs or conflicts with the use of the adjoining farmland and therefore its removal is consistent with the Yamhill County Comprehensive Plan per Policy 8 above.

Per Policy 4 above, the Board finds that removing the YWT from the TSP is wholly consistent with that plan policy because doing so “*provide[s] for the conservation of farmlands and avoids public or private land use determinations* subject to county jurisdiction”, that proposes “urban development activity⁵” as well as “*the location and construction of highways and utility transmission lines which disturb the soil cover and natural drainage pattern, and*

⁵ Per Policy 4, the Board finds that the development of the trail would allow urban development activity. The fact that it is deemed to comply with Goal 14 (urbanization) per OAR 660-12-0065(3), does not undermine that conclusion under the County Plan Agricultural lands policies. The Board finds that development of the trail would draw people from the Portland Metropolitan and other urban areas to use the trail.

increase storm runoff, erosion and sedimentation.” In this regard, the Board acknowledges the evidence in the record of the various efforts to establish the YWT, from the Carlton Fire Chief that in order to provide fire protection, the entire trail’s vegetation would have to be removed, but the County relied upon the vegetation for erosion control. There was significant evidence presented for the record that the development of the trail presented significant storm water and erosion control issues for adjoining properties including adjoining working farms. This is just another example of the reality that the trail proposal, when evaluated in light of the evidence including as explained by LUBA, is not appropriate for the area in which it would exist. The proposal to remove the YWT from the TSP is consistent with these plan policies.

Per policy 2, removing the YWT from the TSP ensures that large blocks of farmland remain intact as opposed to working farms being separated by the trail. The Board notes that there was significant evidence that farmers move back and forth over the trail to get to crops on either side. The establishment of the trail would cut off such large blocks of farmland from one another. Removing the YWT is consistent with Policy 2.

Per Policy 1, the proposal is consistent with the preservation of farmland through its appropriate EFU zoning. Removing the YWT from the TSP ensures that the exclusive farm uses protected under the applicable EFU zone remain protected.

The County finds that continued designation of the trail as a planned transportation facility increases the likelihood of land use conflict with agriculture (including operational conflicts, management constraints, and increased pressure for nonfarm uses), contrary to the Plan’s recognition that rural/urban-type conflicts reduce agricultural productivity.

Removing the trail improvement and its supportive policies from the County’s TSP aligns with the County’s Comprehensive Plan’s agricultural land’s goal to conserve farmlands for crop and livestock production and its policies emphasizing preservation of farmlands through appropriate zoning and protection of farmland in large blocks. Deleting policies that promote a non-agricultural, corridor-length recreational facility reduces pressure to introduce conflicting uses into the EFU landscape. The Board finds that removing the YWT from the TSP is consistent with County Agricultural plan provisions and policies.

(b) Section 11.05.03.01 – Transportation

Summary:

(v) In view of the rapidly increasing cost and decreasing supply of energy, it is imperative that all transportation decisions take into account the conservation of energy.

(vi) The provision of adequate bicycling and pedestrian paths within the county is a concern of the county residents. Such modes of transportation lend themselves particularly to the rural nature [o]f the county.

The Board finds that removing the YWT from the TSP is consistent with these policies. Removing the YWT does not prohibit the County from establishing better pedestrian and bicycle transportation facilities on existing roads, for example, which is how most of the County's bike and pedestrian needs will be met per the approved and acknowledged County TSP. The problem with the YWT is that it is illusory. Despite trying several times, over several years, the County was never able to demonstrate that the YWT met applicable farm protection laws, importantly to include ORS 215.296 (farm impacts test), and portions of it were on land that outright prohibited it, and the Board finds it is unlikely to ever be able to meet those laws. As is explained in these findings, LUBA has explained its view that the County has an uphill battle at best to demonstrate compliance with the farm impacts test, and the County declines to continue to try. Further, as noted and as LUBA observed, there is no dispute that some of the YWT would be on land that strictly prohibits it.

To the extent that there is a pathway to YWT approval, it involves more and significant divisiveness, extreme cost (the County has already spent significant sums on its own lawyers plus being ordered to pay the YWT's opposing farmers legal fees of nearly \$50,000). Nothing requires the County to keep this potential facility as an illusory and contentious possibility in the TSP. The County chooses to remove it, as is the County Board's right.

Goal Statement: "To provide and encourage an efficient, safe, convenient and economic transportation and communication system, including roads, rail, waterways, public transit and air, to serve the needs of existing and projected urban and rural development within the county, as well as to accommodate the regional movement of people and goods and the transfer of energy, recognizing the economic, social and energy impacts of the various modes of transportation." [YCC 11.05.03.01(b)]

Potentially⁶ Relevant Policies:

"All transportation-related decisions will be made in consideration of land use impacts including but not limited to adjacent land use patterns, both existing and planned, and their designated uses and densities [YCC 11.05.03.01(b)(i)(2)]

⁶ Listing a policy does not mean the Board finds it to be relevant – to the contrary. Listing a policy does not make it relevant. It simply means someone could see the policy as relevant and so the Board addresses it here.

Yamhill County will, in cooperation with the State Highway Division and the cities of the county, established a comprehensive list of recommended road improvements throughout the county, establish a suitable review mechanism for arriving at and amending priorities on a continuing basis and work towards the creation of an on-going capital improvement program closely coordinated with all agencies of government responsible, including cities for road location, construction, finance and maintenance. (145)” [YCC 11.05.03.01(b)(i)(4)]

5. Yamhill County will cooperate with and support the State Highway Division, the Mid Willamette Valley Council of Governments, and any other county or regional transportation agency in an effort to establish a viable and productive regional transportation planning process and operations system geared to identifying, prioritizing and resolving both present and future transportation needs, with special reference to our county and regional network. (145) [YCC 11.05.03.01(b)(i)(5)]

“Yamhill County will encourage bicycle and pedestrian traffic as an element of the transportation system by coordinating with the cities within the county to develop an integrated system of safe and convenient bicycle and pedestrian ways to complement other modes of transportation.” [YCC 11.05.03.01(b)(i)(9)]

“All county transportation-related decisions will be made in particular consideration of energy efficiency and conservation.[YCC 11.05.03.01(b)(i)(11)].

“Transportation needs for the disadvantaged, such as the low income, the handicapped, and the elderly, will be considered in the development of the county transportation system. [YCC 11.05.03.01(b)(i)(13)]

“Yamhill County will utilize existing facilities and right-of-ways to the fullest extent possible provided that such use is consistent with the county comprehensive plan.” [YCC 11.05.03.01(b)(i)(14)]

“All transportation-related decisions will be made in support of the efficient and economic movement of people, goods, and services throughout the region, and will be based on the location and adequacy of facilities for such goods and services. [YCC 11.05.03.01(b)(i)(15)]

Finding: The County has rationally decided that it no longer wishes to pursue this practically infeasible and divisive YWT, and to amend the TSP to remove it from the County’s TSP to stop the divisiveness it has spawned and the illusion that it can or will someday be developed. Neither the Transportation Planning Rule nor any other statewide planning requirement obligates Yamhill County to designate the abandoned railbed as a trail in its TSP.

Ordinances 880 and 895 added the YWT as *one* optional bicycle/pedestrian improvement among many others in the TSP.

As explained throughout these findings, the YWT has been proven multiple times to be incapable of meeting the farm impacts test under ORS 215.296 due to its significant adverse impacts on adjacent farms and has been documented to be on land that is zoned to prohibit it. There are also other significant problems – all as LUBA has explained. The fact that LUBA has repeatedly denied Yamhill County’s requests to develop the YWT for these and other reasons makes its removal from the TSP a reasonable policy choice because, in reality, it is simply not an improvement that the County can reasonably, nor should it reasonably, continue to aspire to as something that it will perhaps develop as an improvement per its TSP. It is an illusory improvement in the County TSP that divides the County, that the Board finds is profoundly harmful to County agriculture and, as a result, it is not a potential improvement that the County chooses to continue to pursue.

The County is not required to keep what is almost certainly an infeasible improvement in its TSP, particularly one that has been denied by LUBA five times and is on land that prohibits it. Keeping it in the TSP only serves to confuse local citizens into believing it is still a viable improvement and continue ongoing divisiveness between local farmers and YWT supporters, that has been ongoing for over eight years.

A comprehensive plan, which includes the TSP, is a living planning document. The same statutes and rules that allowed the County to add this improvement as an aspiration to try, also allows the County to remove it when later experience shows the improvement is not realistically buildable because of its significant adverse impacts on farming and being located on land that prohibits it.

The Board further notes that no LUBA opinion has ever ordered the County to build the trail or to keep it in any plan. To the contrary LUBA has repeatedly told the County that there is a very high hurdle protecting farming to ever establishing the YWT, a hurdle that the County never met despite trying multiple times with County legal counsel, as well as trying with counsel for Carlton and counsel for trail supporters.

The TSP envisions developing the existing shoulders of existing roads for bicycle and pedestrian use on County roads. There is no reason to think that is not a reasonable option along the shoulders of Hwy 47. Unlike the proposed YWT, which requires a farm impact test under ORS 215.296(1) for conditional use approval, developing the shoulders of OR 47, which is managed by ODOT, is straightforward. That is because ORS 215.283(1)(i) allows as a use permitted outright on land zoned EFU “[r]econstruction of public roads and highways, *** along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.” “[A]long

the public right of way” *at least* means within the right-of-way. *Friends of Parrett Mountain v. NW Natural Gas Co.*, 336 Or 93 (2003) which decided that utilities could be placed beyond the paved portion of the road so long as they were in the right of way (“We conclude that, for purposes of ORS 215.283(1)(L)⁷, the phrase ‘public roads and highways’ means the entire right-of-way within which those thoroughfares are constructed, not just the hard surface upon which traffic travels.”).

Re Policy 2, this transportation related decision to remove the YWT from the TSP has considered its land use impacts, as explained by LUBA, including the adjacent land use patterns, both planned and existing – which are largely farms or uses on land that prohibit the YWT. This decision has also considered how those properties are zoned and designed and the uses those designations allow and the County concludes that removing the YWT from the TSP is the proper policy choice that is consistent with this policy.

Re Policy 4, The Board finds that the YWT is not on the County’s Capital Improvement Program. The Board finds that the County established a comprehensive list of recommended road improvements throughout the County and that this process is a suitable review mechanism for arriving at and amending priorities as it relates to the YWT. The Board finds this decision has been coordinated with all agencies of government responsible for road location, construction finance and maintenance. While City of Carlton and others oppose this decision and the County respects the City’s position, the County declines to maintain the YWT in its TSP because the Board finds that its conflicts with adjoining accepted farming practices are significant and untenable and that it is prohibited on other land on which it is proposed. In that circumstance, the Board declines to retain the facility on its improvement list. The County has made significant efforts and spent considerable resources to develop the YWT. It has failed each time, and the County is allowed to shift its policy focus and remove the YWT as an aspiration and potential improvement from its TSP.

Re Policy 5, the County’s acknowledged TSP, reflects the County’s cooperation with the Mid-Willamette Valley COG and any other county or regional transportation agency in an effort to establish a viable and productive regional planning process and operations system geared to identifying, prioritizing and resolving present and future transportation needs. The Board specifically finds that the Chehalem Parks and Recreation District is not a “regional transportation agency” within the meaning of this plan policy. However, the Board finds in the alternative that even if Chehalem is viewed as a “regional transportation agency” the decision to remove the YWT from the County TSP is consistent with this plan policy. The County developed its TSP in cooperation with all agencies including COG, ODOT’s regional offices and others. This amendment does not change that level of cooperation. It simply reflects the reality

⁷ Later renumbered to (i).

of Oregon state and County land use rules that the County has tried in earnest to and failed to prove that the YWT does not have or can be mitigated not to have the extreme delirious effects LUBA described. Facing reality is not a lack of cooperation. The County is open to other opportunities that may arise and that show reasonable land use feasibility.

Re Policy 11, the decision to remove the YWT is made considering energy efficiency and conservation. Again, a pedestrian/bike improvement that does not pass the farm impacts test after five tries with LUBA while on land that strictly prohibits it is not an energy efficient or conserving improvement. It is illusory.

Re Policy 13, the County transportation system was developed considering the needs of the elderly, low income, and handicapped individuals. The Board finds that the decision to remove the YWT does not undermine that the County's transportation was developed considering their needs.

Re Policy 14. The decision to remove the YWT from the TSP is consistent with Policy 14, requiring Yamhill County to utilize existing facilities and rights of ways "to the fullest extent possible provided that such use is consistent with the County comprehensive plan." The abandoned railbed is not an existing facility because the rail infrastructure has been removed. It is bare land. The Board also finds that it is not "right of way." However, to the extent that it could be termed "right of way" under this policy, the Board finds that the development of the YWT in the abandoned railbed is not consistent with the County comprehensive plan and therefore removing it from the TSP is consistent with this Policy.

Re: Policy 15. To the extent that removing the YWT from the TSP is a "transportation-related decision" it is either consistent with this policy, or this policy simply does not apply. There is nothing about removing the YWT from the TSP that is inconsistent with supporting "the efficient and economic movement of people, goods, and services throughout the region" based upon "location and adequacy of facilities for such goods and services." The Board finds that removing a transportation improvement from the TSP that has proven repeatedly to not meet the farm impacts test while being on land that prohibits it has no impact on this policy and either it does not apply or the proposal is consistent with it.

For the above reasons, the County finds that removal of the proposed YWT from the TSP is compliant with the County's general Comprehensive Plan under Section 11.05.03.01 – Transportation and specific policies that could potentially apply and as such, this goal and policy are satisfied.

(c) Section 11.05.04.01 "Public Land, Facilities and Services". The Board expressly finds that this policy does not apply to this decision. While the Policy states in its title

that it applies to “public land” and the abandoned railbed is currently owned (under a quit claim deed) by the County to the extent of the quit claim deed rights, and so is “public land,” the Board finds that no part of this policy applies to this decision. The only substantive part of this policy that mentions “public land” is the “Goal Statement” that says: “To develop a timely, orderly and efficient arrangement of public services and facilities to serve as a framework for urban and rural development, including *public lands* and buildings, parks and recreation areas and facilities, schools, police and fire protection, domestic water supply, sanitary and storm sewerage and other drainage facilities, and power, gas and telephone services. (166).” The Board finds that the reference to “public lands” in this policy refers to the development of an urban and rural development framework for public lands to include for parks and recreation.” But no other part of this provision addresses parks and recreation. Rather there is a separate plan policy (addressed next) that specifically addresses parks and recreation. The policies under this segment of the County plan concern development of infrastructure like water and sewer.

Moreover, to the extent it arguably applies, removing the YWT from the TSP is consistent with it as the policy expressly says that “public facilities and services for rural areas will be provided and maintained at levels appropriate for rural use only.” The Board finds that the use of the YWT was contemplated to be for far more than “rural use” but rather was designed to attract urban populations for recreation, as a tourism tool, among other things. Further, the Board finds that this policy does not proscribe that anything particular happens with on any particular public land. Rather the use of public land, if at all, is governed by law and the policy decisions of this Board. Therefore, if this policy applies, the Board finds that the proposal is consistent with it.

(d) Section 11.05.4.02 – Parks and Recreation

Goal Statement: “To provide adequate recreational opportunities in both the rural and urban environments to meet existing and projected needs.” [YCC 11.05.04.02(b)]

Potentially Relevant Policies:

“Yamhill County will cooperate with all governments and recreation agencies within the region to identify recreation, open space, and scenic resources; determine resident and nonresident needs and formulate and implement measures for providing recreation services. [YCC 11.05.04.02(b)(i)(1)].

“Yamhill County will seek the cooperation of the cities, school districts and Chehalem Park and Recreation district in the joint acquisition, development, operation and maintenance of combined school and neighborhood park and playground sites in harmony with projected neighborhood needs and surrounding uses. (175)” [YCC 11.05.04.02(b)(i)(2)].

“Yamhill County will encourage the development of rural parks with appropriate spacing to serve the needs of county residents on sites which have unique aesthetic value, appropriate access by road or path, and are otherwise suitable for picnicking and water-related activities (176)” [YCC 11.05.04.02(b)(i)(5)].

“Yamhill County will encourage an appropriate amount of park and recreation development designed to meet the needs of the transient and regional population. (177) R” [YCC 11.05.04.02(b)(i)(6)].

“Yamhill County will promote the development of an integrated bicycle and pedestrian trail system to provide recreational opportunities and to link open space, Yamhill County communities and park areas.” [YCC 11.05.04.02(b)(i)(7)].

“Yamhill County will encourage cooperation among government agencies to increase recreation opportunities, programs and facilities for county residents, and will explore the possibilities of providing recreation programs for the small towns and rural areas of the county. (179)” [YCC 11.05.04.02(b)(i)(9)].

Finding: The YWT would have been at the least a recreational trail and so from that standpoint it would have been a facility for “recreation” within the meaning of this policy. In the interest of efficiency, the Findings for Section 11.05.03.01 – Transportation above are incorporated herein and made a part of this finding. Those findings demonstrate that for bicycle and pedestrian facilities, including recreational ones, that the County’s TSP plans to improve existing road shoulders, when funding allows. Moreover, all other findings herein are also incorporated by reference, including LUBA’s determinations about the YWT.

Re Policy 1. The Board finds that removing the YWT is either consistent with this policy or has no impact on it. Removing the YWT does not change that the County will cooperate with all agencies within the region including Chehalem Parks and Recreation District to identify resources and determine resident needs and implement measures for recreational services. It just removes policies supporting an aspirational trail that was not vetted for its land use compliance when it was placed into the County TSP. Having been vetted, it was repeatedly demonstrated that the Trail did and the Board finds that the trail does not, meet the farm impacts test of ORS 215.296, is inconsistent with the County plan and would be situated in part on land that prohibits it. The Board finds that, as such, it should be removed from the TSP and doing so is consistent with this Policy.

Re Policy 2. The Board expressly finds that this policy does not apply. The Board finds that the trail would not have been a “combined school and neighborhood park and playground site” to which this policy applies.

Re Policy 5. The Board finds this policy does not apply. The Board finds and interprets this policy to be limited to applying to the “development of rural parks with appropriate spacing to serve needs of county residents and that are “otherwise suitable for picnicking.” The Board finds that the YWT and the old, abandoned railway are not suitable for picnicking, being situated largely in the middle of working commercial farms where there is pesticide spraying as well as large livestock. The Board finds that such areas are not suitable for picnicking. Regardless, the Board also finds that the YWT was never designed to simply serve the needs of county residents, but rather, was designed to encourage tourism and serve the needs of others, from outside of the County.

RE Policy 6. The Board finds that the decision to remove the YWT from the County plan does not impact this policy at all. The County interprets its obligation under this policy to “encourage an appropriate amount of park and recreation development on sites” that allow it as a matter of state and local land use law. The Board finds that if the Board determines based on numerous LUBA decisions and on its own that a proposed park or recreation site is inconsistent with applicable comprehensive plan policies, or is prohibited in its zone, or fails to meet the farm impacts test of ORS 215.296 when it must do so, that the County has no obligation under this policy to continue to pursue it. The Board finds that the YWT is inconsistent with County comprehensive plan policies, must meet but fails to meet the state farm impacts test, and is prohibited in its zone in some areas, among other serious land use law problems. The Board finds as a result the proposal to remove the YWT from the TSP is consistent with this policy.

Re Policy 7. amending the TSP to remove the YWT does not affect Yamhill County’s compliance with its Comprehensive Plan regarding Parks and Recreation since the County has ample existing parks and potential park improvements that would satisfy the public’s needs for outdoor spaces. The YWT is not mentioned anywhere in the County’s Comprehensive Plan, only in its TSP. As explained elsewhere in these findings, only park and recreation facility proposals that meet land use laws need to be promoted. The Board finds that the YWT does not meet state and county land use laws and so nothing in this policy requires that it be promoted.

Re Policy 9. The Board finds the proposal is consistent with this policy. As the County’s willingness to add the YWT to its TSP and fight for its approval over several years attests, the County is certainly willing to and does encourage cooperation among government agencies to increase recreation opportunities, programs and facilities for county residents” and has explored “the possibilities of providing recreation programs for the small towns and rural areas of the county.” However, cooperating to increase opportunities and exploring possibilities does not require that ones that fail land use law tests cannot be removed. The Board finds that this policy has been fully met by the County’s efforts to include its painful discovery that the YWT fails to meet important County and state laws.

The Board finds that removing the Trail from the TSP is consistent with this policy and Goal.

(e) Section 11.05.07.01 – Citizen Involvement

“Summary:

(i) Extensive efforts were made to involve Yamhill County citizens during the development of the 1974 County Comprehensive Plan.

(ii) The county has a citizen involvement program composed of eight planning advisory committees which meet regularly to review land use proposals in their respective areas.

(iii) The county’s citizen involvement program has been approved by the Land Conservation and Development Commission.”

Policy: (i) Yamhill County will continue to implement an ongoing citizen involvement program that provides county residents opportunity to be involved in all phases of the planning process.” [YCC 11.05.07.01(a)&(b)]

Finding: The Yamhill County Comprehensive Plan Code outlines the County’s citizen involvement program that includes the County implementation of its ongoing citizen involvement program that provides County residents with the opportunity to be involved in all phases of the planning process. Specific notice provisions for Board of Commission hearings are governed by YCC 2.05.03.07 in accordance with ORS 192.640 and requires all sessions to be open to the public, except for Board declared “executive sessions” per YCC 2.05.03.08 and consistent with ORS 192.660. The County held two (2) hearings for this legislative amendment, one (1) before the Planning Commission on December 4, 2025, and one (1) before the Board of Commissioners on January 22, 2026, which was continued to January 29, 2026. Local citizens were properly notified of both hearings, with scores attending in person to voice their opinion and hundreds more expressing viewpoints of the TSP amendment by letter or email. The Board of Commission continued its January 22, 2026 public meeting in large part for the purpose of being able to review and consider all of the citizens’ testimonies before making a final decision.

The County finds that this policy has been satisfied.

(f) Section 11.05.01.06 Economic Development

YCC 11.05.01.06(a)(i) “The economy of Yamhill County is largely based upon agricultural and forestry related industries.”

YCC 11.05.01.06(2) “Yamhill County will encourage economic development improvements which do not conflict with the predominant timber and agricultural character of the county.”

The Board interprets this plan policy to favor the predominant agricultural and timber character of the County and to encourage economic development improvements which do not conflict with that predominant character. The Board finds that the area within which the Trail would traverse following the abandoned rail bed has a predominate agricultural character. The Board finds that the Trail conflicts with that predominant agricultural character. The Board finds based upon LUBAs decisions and the evidence in the record for this proceeding, that the YWT conflicts with the “predominate *** agricultural character of the area” in which large segments of the Trail are proposed and its removal is consistent with the policy reflecting that the County’s economy is largely based on agricultural industries. The Board finds that removal of the YWT from the TSP is consistent with these economic policies.

(g) Section 11.05.07.02 – Review and Update

“Summary:

(i) Changing needs and conditions will necessitate future review, evaluation, and updating of the Comprehensive Plan and its supporting documents. Intergovernmental coordination of all planning activities affecting land uses within the county are necessary to assure an integrated comprehensive plan for the entire area of Yamhill County.”

Policies:

(i) Yamhill County will review any development concepts ***which conflict with the Plan Map, goals or policies in light of changing needs and conditions and in keeping with established procedures of Plan evaluation, amendment, and update.

“*****

(iii) Yamhill County will encourage federal, state, and regional agencies and special districts to coordinate their planning efforts with those of the county. [YCC 11.05.07.02 (a)&(b)]

Finding: Consistent with this policy, amending the proposed TSP to remove the YWT reflects the changing needs and conditions, conflicts with other goals, state statutes, and local ordinances based on evidence discovered post-implementation regarding the YWT’s negative impact on adjacent farmland that were either not known or not properly vetted prior to its implementation. Its removal has been adequately coordinated with other units of government. The Board finds that it is the County’s obligation to consider state and local land use rules, and a

review of LUBA's decisions alone makes it plain that the YWT improvement almost certainly can never meet the farm impacts test since its development and use will either increase in the cost of accepted farming practices or significantly change accepted farming practices. For this reason, the Board determines it does not wish to attempt further development of the proposed YWT.

The proposed amendment to remove the YWT is rooted in multiple LUBA decisions that repeatedly denied the County's conditional use requests for the subject trail, opining, most significantly, that the YWT improvement would create significant adverse impacts on adjacent agricultural farmland for multiple privately owned farms. The proposed YWT improvement has repeatedly failed the substantive farm impacts test at ORS 215.296, and its implementation has been held repeatedly to violate statewide Goal 3 and related laws and local ordinances protecting agriculture. There is nothing to suggest that it could ever meet that important state law test.

Moreover, significant segments of the YWT are situated on land that prohibit it. It is simply not an allowed use of the land the abandoned railbed sits on for many reasons to include it cannot meet the ORS 215.296 farm impacts test and many of the zones it runs through prohibit it and it is inconsistent with several plan policies. Removing the YWT from the County planning documents is consistent with this reality.

B. Applicable Yamhill County TSP Goals

Goal 1: Provide for Efficient and Convenient Motor Vehicle Travel.

Yamhill County's TSP Goal 1 addresses motor vehicle efficiency. The Board finds that the YWT is designed as a pedestrian and bicycle facility and not a facility for motor vehicles. The Board finds that TSP Goal 1 is not impacted by the decision to remove the YWT from the TSP.

Goal 2: Provide for the Safety of All Transportation Modes.

Yamhill County's TSP Goal 2 addresses improvements to high-collision motor vehicle locations and the improvement of roadway geometrics to reduce crash rates/severity. The Board finds that TSP Goal 2 is not impacted by this request because the Board finds that TSP Goal 2 applies to "All Transportation Modes", on roadways and as such specifies a policy favoring improvement in motor vehicle geometry to reduce crashes and their severity on roadways. The Board further finds that improving roadway geometry improves safety for bicyclists and pedestrians on roadways. However, the Board finds that this policy does not apply to off roadway trails like the YWT.

Goal 3: Provide an Equitable, Balanced and Connected Multi-modal Transportation System.

Yamhill County's TSP Goal 3 addresses adequate facilities for all transportation modes with an emphasis on transportation and safety needs for all users with connectivity support between the various county communities. Although opponents of this amendment argue that removing the YWT frustrates the purpose of multimodal development, as stated elsewhere in these findings, the YWT may be replaced through shoulder and/or lane widening of OR 47 and development of Westside Rd. between McMinnville and Moore's Valley Rd., which are already listed as potential bicycle/pedestrian corridor improvements in the County's TSP. The YWT is also only one of many multimodal proposals, and its removal does not affect the remainder of the TSP beyond Goal 4, Objective 3, which only addresses aspirational support for YWT development.

In addition, nothing requires that the County insist that its TSP's individual multimodal development improvements should be maintained even when they have been shown time and time again to violate state land use laws and local requirements. It has already been shown in five LUBA decisions that the development and use of the YWT will have significant negative impacts on adjacent agricultural land in the EFU zone, significantly increase the cost of accepted farming practices, and significantly change accepted farming practices contrary to state law in ORS 215.296, such that its removal is consistent with County TSP Goal 8, Objective 2⁸ to minimize land use impacts on EFU-zoned and developed parcels.

The Board finds that removing the YWT from the TSP is consistent with TSP Goal 3.

Goal 4: Increase the Quality and Availability of Pedestrian and Bicycle Facilities.

Yamhill County's TSP Goal 4 addresses improvements to pedestrian and bicycle facilities. The YWT is only one of eight proposed improvements currently in the County's TSP. The Board finds that the YWT itself may be replaced with shoulder and/or lane widening of OR 47 and development of Westside Rd. between McMinnville and Moore's Valley Rd., which are already listed as potential bicycle/pedestrian corridor improvements in the County's TSP. The other objectives of Goal 4 are not affected by the YWT removal from the TSP. The Board finds that removal of the YWT from the TSP is consistent with TSP Goal 4.

Goal 5: Work with Transit Service Providers to Provide Transit Services and Amenities that Encourage and Increase Ridership.

Yamhill County's TSP Goal 5 addresses improvements to transit services facilities. TSP Goal 5 is not relevant to this decision.

⁸ This Goal objective states in relevant part: "Objective 2: Minimize land use impacts. Evaluation Criteria: *Minimization of impacts to EFU-zoned and developed parcels ***.*"

Goal 6: Manage the Transportation System to Support a Prosperous and Competitive Economy.

Yamhill County's TSP Goal 6 addresses enhancing access to major employment and industrial locations and enhancing the freight system. The Board finds that TSP Goal 6 is not relevant to this decision.

Goal 7: Provide Transportation Facilities and Services that are Fiscally Responsible and Economically Feasible.

Yamhill County's TSP Goal 7 addresses plans for economically viable and cost-effective transportation systems, including accessing funds and cost/benefit analysis. The Board finds that TSP Goal 7 is not relevant to this decision. The Board also notes that attempting to add the YWT to the County's TSP has only had negative impacts on its economy given the extreme costs of litigation that has transpired concerning its attempted development.

Goal 8: Provide a Transportation System that Conserves Energy and Protects and Improves the Environment.

Yamhill County's TSP Goal 8 addresses minimizing impacts to preserve the County's natural, scenic, and cultural resources, minimize impacts of environmentally sensitive areas, and minimize land use impacts *to EFU-zoned and developed parcels* and required rights-of-way. **The TSP amendment is consistent with Goal 8, because the YWT was shown in five separate LUBA decisions that its development and use cannot pass the farm impact test under ORS 215.296(1), among other serious legal problems. Removing the YWT from the TSP will ensure minimizing land use impacts to EFU-zoned and developed parcels.** The Board finds that removal of the YWT from the TSP is consistent with TSP Goal 8.

Goal 9: Coordinate with Local and State Agencies and Transportation Plans.

Yamhill County's TSP Goal 9 addresses coordinating with the Oregon Transportation Plan, ODOT standards, and local agencies regarding regional improvement development, implementation, and impacts. The Board finds that it has coordinated this decision to remove the YWT from its TSP with ODOT and local agencies. The Board notes that the Oregon Transportation Plan and ODOT standards do not apply to the proposal.

Finding: Yamhill County has evaluated the Goals under its TSP and, for the above reasons, finds that the TSP Goals have been satisfied.

C. Applicable Statewide Planning Goals

***Goal 1 Citizen Involvement:** To develop a citizen involvement program that [e]nsures the opportunity for citizens to be involved in all phases of the planning process.*

The Yamhill County Comprehensive Plan Code at YCC 11.05.07.01 outlines citizen involvement criteria to include a policy of implementing an ongoing citizen involvement program and provides county residents with the opportunity to be involved in all phases of the planning process. Specific notice provisions are governed by YCC 2.05.03.07 in accordance with ORS 192.640 for Board meetings and requires all sessions to be open to the public, except for Board declared “executive sessions” per YCC 2.05.03.08 as consistent with ORS 192.660. General public hearings, including legislative public hearings by the County’s Planning Commission and Board of Commission, are governed by YCC 14.02. This matter has been an ongoing process since at least 2018 when opposition to the YWT first surfaced by adjacent landowners managing farms in the EFU zone. At all phases of this matter, Yamhill County made efforts to engage citizen involvement. Most recently, with specific regard to removing the YWT from the County’s TSP, the County’s Planning Commission held a public hearing on December 4, 2025 and the Board of Commission held a public hearing on January 22, 2026 that continued to January 29, 2026. Proper notice requirements were sent, and citizen involvement was encouraged, as is evident by the amount of citizens who attended the public hearings along with the hundreds of letters submitted by citizens expressing approval or opposition to the County’s proposed amendment. For these reasons, Goal 1 standards have been met.

Goal 2 Planning: *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Goal 2 establishes the underlining process that a county or a city needs to utilize when considering changes to their comprehensive plans and development codes. This text amendment is being requested under the provisions of Yamhill County Code at Title 11, Section 11.05.07.02 that applies to amendments of the County’s Comprehensive Plan and its supporting documents, meeting the intent of Goal 2. This criterion is met.

Goal 3 Agricultural Lands: *To preserve and maintain agricultural lands.*

Ironically, keeping the YWT proposal in the TSP is what would violate statewide Goal 3 since its development and use has been determined by LUBA on five occasions to have a negative impact on preserving and maintaining the adjacent agricultural lands, whereas removing it complies with Goal 3 as the removal would help to preserve and maintain agricultural lands.

Goal 3 requires counties to preserve and maintain agricultural land for farm uses. Counties must invent their agricultural land areas and protect them by adopting exclusive farm use zones consistent with Oregon Revised Statute 215.296. The proposed text amendment in the TSP, i.e., the removal of the aspirational YWT development, will protect adjacent farm lands and farm uses currently situated in the EFU zone since the County repeatedly failed to provide satisfactory evidence to LUBA that the YWT development is capable of passing the farm

impacts test under ORS 215.296(1). As such, adopting the amendment complies with Goal 3 since removing the YWT from the TSP is what will preserve and maintain agricultural lands, whereas developing the YWT would violate Goal 3 for the reasons described below.

In the five separate LUBA decisions addressing County efforts to develop the abandoned railbed with the trail, LUBA determined that Yamhill County was unable to show satisfactory evidence and findings that development of the YWT would pass the farm impacts test under ORS 215.296(1). Of important significance is the fact that LUBA determined that development of the YWT would inevitably create a significant change in accepted farm practices and/or create a significant increase in the cost of adjacent farming practices in violation of 215.296(1). Yamhill County was unable to carry its burden of proof with credible evidence that developing the Trail would comply with ORS 215.296(1) or mitigate the Trail's impacts to a point of insignificance. As stated by LUBA in its fifth ruling, "[f]indings that a farmer can take measures to avoid or manage impacts from a nonfarm use do not establish compliance with ORS 215.296(1); rather, ORS 215.296(1) asks whether the non-farm use forces significant changes to farm practices or costs." *Van Dyke v. Yamhill County*, LUBA No. 2020-067, p 16, ll 2-5 (2020) [citing *Stop the Dump Coalition v. Yamhill County*, 364 Or. 432, 460, 435 P.3d 698 (2019)].

Per LUBA, keeping the YWT in the TSP would violate statewide Goal 3 in the following ways:

1. Pesticide/Herbicide Setbacks: Development of the proposed YWT bicycle/pedestrian trail, which is considered a "recreational setting," would foreclose adjacent farmers from utilizing necessary herbicides and pesticides up to the property line, as is the current accepted farming practice, and require significant spray setbacks and/or risk possible crop loss in order to protect users, developers, and maintenance operators of the YWT. *Van Dyke v. Yamhill County*, LUBA No. 2020-067 p 18 ln 9 – p 26 ln 13.
 - a. LUBA agreed with the adjacent farmland owners that if the Trail is developed, the evidence is credible that farmers would have to either switch to less effective chemicals, hire expensive manual labor, and/or create an undetermined amount of setbacks to accommodate protecting the recreational trail and its users from the pesticides, hence increasing the farmers' costs and forcing them to change their farming practices. This is because the commonly used herbicides and pesticides (Gramoxone, Parazone, Lorsban and Yuma 4E) all have location spray restrictions that are mandated by federal law under 7 USC §136j(a)(2)(G). *Id.* at p 19 ln 10 – p 23 ln 11.
 - b. LUBA also agreed with the farmers that certain pesticides (Lorsban and Yuma 4E), used by the Petitioner-farmers to protect their filbert orchards, requires significant setbacks from "sensitive sites." These setback requirements include

pedestrian sidewalks and outdoor recreational areas, such as the YWT. The setback requirements would either force farmers to remove crops within the setback area, or farmers would be forced to not spray pesticides within that area or apply other pesticides that would prohibit the farmers' ability to rotate pesticides to reduce pest resistance. Both of these options will contribute to pest infestation and crop loss. (*Id.* at p 23 ln 12 – p 24 ln 10).

2. Mandatory EPA Compliance: Similarly, the Trail would negatively impact the adjacent farmland owners' ability to spray outdoor pesticides spray in compliance with the Federal Environmental Protection Agency's (EPA) Application Exclusion Zone (AEZ) rule for outdoor pesticide application at 40 CFR at 40 CFR § 170.405(a)(1)(i). (*Id.* at p 28 ln 1 – p 31 ln 21). LUBA determined the farmers' compliance with the EPA AEZ is an accepted farm practice, therefore negatively hindering it does not pass the farm impacts test under ORS 215.296(1). (*Id.* at p 31, ln 15-21).
 - a. More specifically, the EPA AEZ excludes all persons other than the trained and protected pesticide handlers from the area "and extends 100 feet horizontally from the application equipment in all directions when a pesticide is applied aerially, by air blast application, as a fine-droplet spray, or as a fumigant, smoke, mist, or fog." (*Id.* at p 28 ln 4 – p 29 ln 4).
 - b. EPA's requirements for the pesticide applications are not limited to farm boundaries, but apply to any area within the AEZ, which would include the adjacent Trail, so such pesticide applications must immediately cease if any person using the Trail enters the 100-ft EPA AEZ. Ceasing or delaying spray operations to accommodate Trail pedestrians would likely cause farmers to miss their "spray window" when daytime and weather conditions are right for the spray application, which, in turn, could result in pest infestations and cause an increase in labor costs, chemicals, and equipment use. (*Id.* at p 29 ln 5 – p 30 ln 11; see also 40 CFR § 170.505(b)(2016)).
3. Aerial Pesticide Applications: Some of the adjacent farmers also apply aerial pesticides to their filbert orchards as a common farming practice. However, if the Trail is developed, aerial spray applicators have testified they will no longer spray in these areas "due to the risk of complaints and potential litigation from Trail users" hence foreclosing the aerial spray practice. (*Id.* at p 31 ln 22 – p 32 ln 3). LUBA found that Yamhill County failed to provide any credible evidence showing that the YWT's nonfarm use would not force a significant change in aerial pesticide applications. (*Id.* at p 33 ln 4-15). As LUBA stated in its decision "[t]he county's

decision and argument misinterpret the farm impacts standard and improperly shift the evidentiary burden. The issue is not whether any law prevents aerial application of pesticides on the farms adjacent to the Trail. The issue is whether the county's proposed nonfarm use of the county's property forces a change in the accepted farm practice of aerial application of pesticides on those farms. The burden is on county to demonstrate that its nonfarm use will not force a significant change. The county has not done so.” (Id. at p 33 ln 4-10).

4. Trail Drainage Impacts: After weighing the evidence, LUBA additionally determined that the County failed to show how the Trail would address new drainage patterns, and how the stormwater would be managed to avoid contamination to the adjacent farmlands. As the evidence stands, runoff from the trail could result in field flooding and cause decreased productivity, exacerbate drainage issues from the two culverts that can cause damage to farmlands’ pasture and crops, and create runoff with contaminants such as horse and dog feces and artificial chemicals that may cause food safety and contamination issues. (Id. at p 34 ln 12-17). Specifically, LUBA stated in its decision “[t]he [County’s] findings do not address whether the Trail will result in new drainage patterns and how the stormwater will be managed to avoid contamination of adjacent farmland. The [County’s] findings simply dismiss the farmers' concerns. We agree with petitioners that the county's findings regarding farm impacts from Trail-related drainage are inadequate” and “fail[ed] to address farm impacts from modified drainage.” (Id. at p 35 ln 6-14).

Trespass and trail contamination impacts: LUBA further ruled that the County could not demonstrate how it would prevent trespass and contamination from weed seed, trash, and feces from nonfarm Trail users, impacting the farmers’ seed and food safety certifications. (Id. at p 35 ln 15 – p 37 ln 2). In addressing the County’s proposal to implement “master planning and fencing to avoid trespass,” known as the County’s “Condition 2”, LUBA determined that the County’s proposal was “not sufficient to mitigate the impacts from trespass and contamination and is not clear and objective, as required by ORS 215.296(2).” (Id. p 36, ln 8-10). LUBA further contended that that Condition 2 failed to define “trespass related impacts” so it lacked a “clear and objective” definition that failed to “support a conclusion that all of the farmers’ trespass-related concerns will be mitigated to a point of insignificance. Those concerns include Trail users entering farm property and coming into contact with pesticides and herbicides, as well as weed seed, trash, and feces contamination. Thus, it is not "clear and objective" what design requirements will apply to the fence. In the absence of those specifications, the county erred in relying on Condition 2 to find that trespass-related impacts will be mitigated to a point of insignificance.” (Id. p 36, ln 15-21 to p 37 ln 1-2).

5. Fire Control Impacts: LUBA additionally determined that the County's findings regarding fire service adequacy are grossly inadequate and not supported by reasonable evidence. Here, the County provided its own nonexpert assessment of fire risks and fire suppression resources that could not outweigh the expert testimony provided by the chief of the Yamhill Fire Protection District, who stated that providing fire service to the Trail would create a major hardship for his district's personnel who are mostly volunteers. Similarly, the Carlton Fire District's chief provided credible testimony that that he is uncertain whether there can be adequate fire service for the Trail due to a lack of funding for fire personnel. In addition, his district's main fire station's access to the right-of-way is currently blocked by overgrown brush and the Trail would need fire hydrants installed along the corridor. (*Id.* at p 51 ln 13 – p 52 ln 19). Weighing the evidence, LUBA determined that "the county improperly rejected and failed to address expert testimony without the support of countervailing expert testimony regarding fire suppression. Instead, the county appears to have relied on its own nonexpert assessment of fire risks and fire suppression resources. The county's findings regarding fire service adequacy are inadequate and not supported by substantial evidence." (*Id.* at p 52 ln 13-18) [Emphasis added].

For the above reasons, removing the YWT from the TSP complies with statewide Goal 3 because its removal will ensure proper preservation and maintenance of farmland, as determined by the five separate LUBA decisions listed in footnote 1. In all of the subject LUBA matters, the County repeatedly failed to show how the YWT's development and usage would not force a significant change in accepted farm practices and/or significantly increase the cost of accepted farm practices on surrounding farmland.

Goal 4 Forest Lands: *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

Goal 4 addresses the protection of forest lands. The proposed text amendment would not apply to forest lands; thus it complies with Goal 4.

Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources: *To protect natural resources and conserve scenic and historic areas and open spaces.*

Goal 5 addresses natural, historical and cultural resources with a focus on protecting sites. Goal 5 is not impacted by this request.

Goal 6 Air, Water and Land Resources Quality: *To maintain and improve the quality of the air, water and land resources of the state.*

Goal 6 addresses the quality of air, water, and land resources. Goal 6 is not impacted by this request.

Goal 7 Areas Subject to Natural Hazards and Disasters: *To protect people and property from natural hazards.*

Goal 7 works to address natural hazards and disasters, and through a comprehensive plan amendment process, would seek to determine if there are known natural hazards and seek to mitigate concerns. Goal 7 is not impacted by this request.

Goal 8 Recreation Needs: *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Amending the YWT out of the TSP does not affect Yamhill County's compliance with Goal 8 since the County has ample existing parks and potential park and trail improvements that would satisfy the public's needs for outdoor spaces. Additionally, although YWT has sometimes been referenced as a "recreational trail," its main function under the County's TSP is as a mode of linear north/south non-vehicular bicycle and pedestrian transportation. As such, adopting the amendment complies with Goal 8.

Goal 9 Economy: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

Goal 9 requires local governments to adopt comprehensive plans and policies that contribute to a stable and healthy economy. The economy of Yamhill County is largely based upon agricultural and forestry related industries, as stated in the County's Comprehensive Plan. Amending the YWT proposal out of the TSP will help to ensure the health, welfare, and prosperity of adjacent farm owners and operators who would have been negatively impacted by the implementation of the YWT, as shown in five separate LUBA decisions where it was determined that the YWT is incapable of meeting the farm impact analysis test under ORS 215.296(1).⁹ Additionally, there is no substantive evidence that the proposed YWT would somehow provide greater economic benefit to the County than the adjacent farms already provide or that the Trail would generally improve the County's economy in a meaningful way. As such, Yamhill County finds the proposed amendment is compliant with Goal 9.

Goal 10 Housing: *To provide for the housing needs of citizens of the state.*

⁹ See LUBA decisions cited in footnote 1 above.

Housing is not a direct consideration as part of this application. Therefore, Goal 10 is not impacted by this request

Goal 11 Public Services: *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.*

Goal 11 requires local governments to plan and develop a timely, orderly, and efficient arrangement of public facilities and services. The goal provides that urban and rural development be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the area to be served. Goal 11 is not a direct consideration of this amendment request and, therefore, is not applicable.

Goal 12 Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

Goal 12 requires local governments to provide and encourage a safe, convenient and economic transportation system, implemented through the Transportation Planning Rule. Goal 12 is the most directly related goal to the proposed amendment since the YWT is part of the County's TSP regarding pedestrian and bicycle facilities.

Yamhill County can demonstrate that removal of the proposed YWT from the TSP (as adopted under Ordinances 880 and 895) does not significantly affect the existing TSP or County's Comprehensive Plan or degrade performance of the TSP or Comprehensive Plan below minimum acceptable standards identified in it. (OAR 660-012-0060(1)&(2); *see also*, *Department of Transp. v. City of Klamath Falls*, 177 Or.App. 1, 5, 34 P.3d 667 (2001)). The applicable standards here are whether removal of the proposed YWT significantly affects Yamhill County's Comprehensive Plan Code under YCC 11.05.03.01 – Transportation, YCC 11.05.04.02 – Parks and Recreation, Yamhill County TSP at Goal 4 [*Pedestrian and Bicycle Facilities*], and whether it violates Oregon's Goal 12 under OAR Chapter 660, Division 12. It does not. It should be stressed that removal of the YWT transportation feature, where there is significant evidence that it cannot be approved, is simply removing a feature that has been repeatedly demonstrated cannot come to fruition. The amendment does not create an even exchange equation of facility-out facility-gained in this scenario. There is simply a facility (the Trail) that can only exist on paper, not in practice, that needs to be removed from the TSP.

The YWT is only one of eight proposed bicycle and pedestrian improvements in the County's TSP, and its removal does not significantly affect the existing TSP or County's Comprehensive Plan, particularly when OR 47 can be improved for bicycle and pedestrian use through shoulder paving in areas lacking the same along with the other seven roads and

highways listed in the TSP, which are also high-speed corridors.¹⁰ Additionally, development on Westside Rd. between McMinnville and Moore's Valley Rd. near the City of Yamhill is also slated in the TSP for bicycle/pedestrian development, which is nearby and parallels the approximate bottom half of OR 47 and the YWT (within Yamhill County) from McMinnville to the Yamhill City area. For these reasons, the TSP's overall goal of "[i]ncrease[ing] the quality and availability of pedestrian bicycle facilities" is met (TSP pp 10 & 57), and amending the YWT proposal out of the TSP does not significantly affect the County's existing TSP or Comprehensive Plan or degrade performance in either document below minimum acceptable standards.

In relation to the statewide Goal 12, the County's TSP has its own Goal 4 to "Increase the Quality and Availability of Pedestrian and Bicycle Facilities" by (1) improving bicycle and pedestrian facilities, (2) consider bicycle/pedestrian improvements that complement and encourage higher levels of usage of these facilities, such as wayfinding signage, and (3) support the development of the YWT. (TSP p 57). Although the proposed YWT development will need to be removed, its removal does not significantly affect the TSP's overall goal of increasing the quality and availability of pedestrian and bicycle facilities since the YWT is only one of many proposals listed in the TSP for bicycle/pedestrian improvement locations.

Yamhill County addresses bicycle/pedestrian trail systems as part of its Comprehensive Plan under YCC Chapter 11.05. YCC 11.05.03.01(b)(i)(9) [*Transportation policy goals*] states that "Yamhill County will encourage bicycle and pedestrian traffic as an element of the transportation system by coordinating with the cities within the county to develop an integrated system of safe and convenient bicycle and pedestrian ways to complement other modes of transportation." YCC 11.05.04.02(b)(i)(7) [*Parks and Recreation policy goals*] states "Yamhill County will promote the development of an integrated bicycle and pedestrian trail system to provide recreational opportunities and to link open space, Yamhill County communities and park areas." These bicycle and pedestrian trail policy goals are further elaborated throughout the County's TPR.¹¹

The Yamhill County TSP predominantly recommends bicycle and pedestrian improvements to "consist mainly of shoulder widening and/or paving to accommodate bicycle and pedestrian use." (TSP p 14). In some cases, lane widening is also recommended. (*Id.*) In addition to the shoulder and lane improvements, the Yamhelas Westsider Trail development is currently recommend to run parallel to OR 47 between OR 99W and Gaston as a replacement for bicycle and pedestrian improvements to OR 47. (*Id.*) However, it is important to note that the TSP does not state or imply anywhere that shoulder and/or lane development of OR 47 is somehow impractical or infeasible in comparison to the other seven roadways listed for the same

¹⁰ See Yamhill County TSP at p. 77 and Figure 13 at p. 72 for the eight roadways recommended for proposed bicycle and pedestrian improvements.

¹¹ Yamhill County TPR, Adopted by Ordinance 895, Nov. 5, 2015.

development. It merely states that of the eight roadways requiring bicycle/pedestrian improvements, shoulder or lane development will not be necessary for OR 47 because of the proposed YWT. However, if the YWT is removed from the TSP, pedestrian and bicycle facilities can be developed along OR 47 through shoulder and/or lane improvements, the same as the other seven high-speed corridors. (See Yamhill County TSP at p. 77 and Figure 13 at p. 72 for the eight roadways recommended for proposed bicycle and pedestrian improvements.)

For the above stated reasons, Yamhill County finds the Goal 12 criteria met.

Goal 13 Energy: To conserve energy.

Goal 13 directs local jurisdictions to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles. Although opponents of the subject amendment may claim that Goal 13 is impacted since development of the YWT could allow for non-vehicular forms of transportation, the County's TSP addresses transportation impacts on energy conservation differently.

The County's Goal 8 in its TSP addresses providing a transportation system that conserves energy and protects and improves the environment in the following manner: (1) minimize impacts to preserve the natural, scenic, and cultural resources in the County by minimizing the impacts to environmentally sensitive areas, and (2) minimize land use impacts by *minimizing the impacts of EFU-zoned and developed parcels* and minimization of required rights-of-way. (Yamhill County TSP at p 60). Not only would removing the YWT from the TSP not affect the County's TSP's goals in this regard, but removal of the YWT would actually protect one of its explicitly stated energy conservation and environmental goals of *minimizing the impacts of EFU-zoned and developed parcels*.

For these reasons, the criterion for Goal 13 is met.

Goal 14 Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Goal 14 prohibits urban uses on rural lands. Goal 14 is not impacted by this amendment request.

Goal 15 Willamette River Greenway: To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Goal 15 provides planning requirements for the Willamette River Greenway. Goal 15 is not impacted by this amendment request.

Finding: Yamhill County has evaluated Statewide Planning Goals 1-15. The other four goals, 16-19, are not applicable to this application request. Yamhill County finds the goals that are applicable have been satisfied.

D. Applicable Oregon Administrative Rules

(a) Removing the YWT improvement from the County's TSP is subject OAR Chapter 660, Division 12.

Amendments to comprehensive plans acknowledged by LCDC must comply with statewide planning goals, and the County must demonstrate that the amendment to remove the YWT will cause the County's TSP to remain valid and consistent with the remainder of its Comprehensive Plan. (ORS 197.175(2)(a); *see also*, *1000 Friends of Oregon v. Jackson County*, 79 Or.App. 93, 97, 718 P.2d 573 (1986); *Nicita v. City of Oregon*, 317 Or.App. 709, 716, 507 P.3d 804 (2022)). Potential goal compliance issues raised by a plan amendment, should any exist, must be addressed and resolved at the time the plan amendment is adopted and showing compliance may not be deferred to a later date. *Coopman v. City of Eugene*, 327 Or.App. 6, 18, 534 P.3d 1105 (2023). The findings must also show whether the needs that the proposed YWT provided can be otherwise be satisfied in a manner that is consistent with the TSP's goals for bicycle and pedestrian facilities. (OAR 660-012-0050(5); *Setniker v. ODOT*, 66 Or LUBA 54, p. 24-25 (2012)).

It is important to note that the development of the YWT does not comply "with all applicable acknowledged comprehensive plan policies and land use regulations." *Regency Centers, L.P. v. Washington County*, 265 Or.App. 49, 57-58, 265 Or.App. 49 (2014) *quoting* *Regency Centers, L.P. v. Washington County*, 69 Or LUBA 135, p. 20 ll. 22-31 (2014)). That further demonstrates that the removal of the YWT is appropriate under the TPR. The TPR does not require the development of transportation facilities that cannot demonstrate compliance with the required farm impacts test or ORS 296.296, or statewide Goal 3 or County plan policies protecting agriculture.

Here, the County is removing a TSP feature which the County has determined cannot be practically approved and, therefore, is not worth the continuing Sisyphean and divisive effort. Under those circumstances, does removal of the YWT affect the Yamhill County Comprehensive Plan and TSP's continuing conformity with state planning goals (including the TPR) and internal consistency? An obvious answer is that removing a next to impossible improvement from the TSP affects nothing. But to be safe, precautionary findings of compliance with Oregon's Transportation Planning Rule ("TPR"), and, in particular, OAR 660-012-0050 and 0060, is wise. Under those provisions, the County will show that the remaining transportation system, without the YWT, can still meet the County's goals and plans as well as the statewide planning goals. (OAR 660-012-0050(5); *Setniker v. ODOT*, 66 Or LUBA 54, p. 24-25 (2012)).

(b) The proposal is a minor amendment to the TSP

Under OAR 660-012-0105(4) the decision to remove the YWT from the TSP is a minor update to the County TSP. It does not change the horizon year of the TSP. It does not add a facility, it is not adopted after the TSP's horizon year, and it merely removes a potential improvement that was never vetted under state or local land use laws before it was placed into the TSP as an aspirational policy the County would support or as a potential improvement.

The Board finds that there are no “core transportation system plan elements” that must be updated that are provided in OAR 660-012-0100(2) that are applicable to the scope of the minor update.

The County finds that it has complied with the “engagement requirements” of OAR 660-012-0120. Under the proposal, the Board finds that removing this potential improvement from the TSP that never served nor could serve an underserved population because it never demonstrated compliance with Oregon or local land use laws, does not require an equity analysis. A potential improvement that could not be constructed because of its failure to comply with land use laws is not a improvement that ever did or could have served anyone, including underserved populations. The County further finds that none of the triggers for an equity analysis are present here and therefore no equity analysis was or is required.

(c) The amendment complies with OAR 660-012-0050(5) and OAR 660-012-0060(1) concerning removing the YWT from the TSP.

OAR 660-012-0050(5) states “[i]f a local government decides not to build a project authorized by the TSP, it must evaluate whether the needs that the improvement would serve could otherwise be satisfied in a manner consistent with the TSP. If identified needs cannot be met consistent with the TSP, the local government shall initiate a plan amendment to change the TSP or the comprehensive plan to assure that there is an adequate transportation system to meet transportation needs.”

This provision has not been interpreted before in this context. The first question is whether an improvement like the YWT that cannot meet important state and local land use standards, is a “project” authorized by the TSP. At the outset, the Board finds that the YWT cannot be a “project authorized by the TSP” because it never had land use permission and required significant land use decision-making to ever be a fundable improvement. The TSP could never authorize it as a result. The Board finds that the YWT was placed as a “short term” improvement in the YWT without any vetting or understanding of its land use approvability. As such, it never got to the level of a “project” because a “short term” “improvement” requires something that there is some reasonable chance to think it can be constructed in the short term. The Board finds that does not describe the YWT.

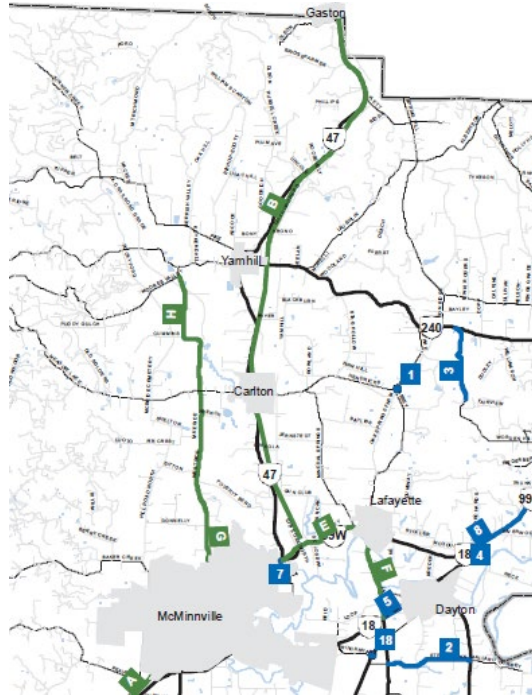
Regardless, it is noted that the only LUBA decision or case law that directly addresses OAR 660-012-0050(5) is *Setniker v. ODOT*, 66 Or LUBA 54 (2012) [*aff'd without opinion* at *Setniker v. Oregon Dept. of Transp.* 253 Or.App. 607, 293 P.3d 1091 (2012)].

In *Setniker*, Petitioner challenged proposed ODOT amendments to the Oregon Highway Plan or “OHP” (the state’s TSP), in response to Senate Bill 2011 SB 795. Petitioner argued that the proposed OHP amendments violated statewide planning goals, including Goal 12 (Transportation) and the Transportation Planning Rule (TPR). LUBA ruled in part, and the Court of Appeals affirmed, that when a government decides to not build a transportation improvement that is in an acknowledged plan, it must satisfy OAR 660-012-0050(5) and determine if the needs that were being served by the improvement can otherwise be satisfied under the relevant transportation plan. (*Setniker* at p. 24, ll 1-26). As noted, a key distinction here is that there are no needs are being served by the YWT improvement at all, because it has been demonstrated to be legally infeasible – five separate LUBA remands should be plenty to prove this.

Regardless, in the alternative the Board finds that even if the YWT is an improvement subject to the *Setniker* test, its removal meets that test.

Here, the Yamhill County TSP has listed portions of eight separate roadways for bicycle and pedestrian improvements, with OR 47 being one of them. The YWT is never listed in the TSP as a road requiring bicycle and pedestrian improvements and is only mentioned as a replacement to those improvements that would otherwise occur along OR 47. (TSP at p 77). The proposed YWT runs parallel to OR 47 from McMinnville to Gaston. However, a proposed bicycle/pedestrian improvement for Westside Rd. from McMinnville to Moore’s Valley Rd. near Yamhill is also in the TSP, which runs parallel to OR 47 less than two miles to the west. (*Id.* at pp. 72 and 77).¹² So the bottom half of the YWT already has a proposed bicycle/pedestrian improvement running parallel to it that can replace that portion of the YWT. Below is a snapshot of a portion of Figure 13 on page 72 of the County’s TSP showing how development of OR 47 and Westside Rd. can reasonably replace the YWT as follows: (1) Westside Rd. bike/pedestrian improvement is the green line from G to H; (2) OR 47 is the black line from McMinnville to Gaston; (3) the YWT is the green line from east of McMinnville to Gaston, closely paralleling OR 47.

¹² Mileage measurements taken from Google Earth Pro on January 15, 2026.



Based on the language already in the TSP, OR 47 can be improved under the existing TSP for bicycle and pedestrian access through paving existing shoulders or widening them, just like all the other roads and highways mentioned in the TSP. (*Id.* at p 77).

OAR 660-012-0050(5) is satisfied because removal of the YWT can be replaced through shoulder paving and/or widening improvements within the existing right of way along OR 47 **consistent with improvements that are already contemplated in the TSP**, through development of the parallel Westside Rd. for the southern portion of the YWT that is also contemplated by the TSP.

For the same reasons listed above, the standards are also met under OAR 660-012-0060 because the YWT's removal from the TSP does not significantly affect the transportation facility. (OAR 660-012-0060(1)). Its removal does not change a functional classification of an existing or planned transportation facility and does not change standards implementing a functional classification system and does not result in any of the effect listed in (1)(c).

(d) The YWT removal complies with other relevant provisions of OAR 660-012, namely, OAR 660-012-0020, OAR 660-012-0025, and OAR 660-012-0030

The above OARs are briefly addressed to address potential objections to the proposed amendment and its supportive findings. OAR 660-012-0020 addresses the requirements of the entire coordinated network transportation that must be addressed in the TSP. Relevant here is

subsection (2)(d) which requires a bicycle and pedestrian plan for a network of said routes throughout the planning area. As already explained in above sections, removal of the YWT will not significantly affect the bicycle and pedestrian network plan since the YWT was one of only eight proposed bicycle/pedestrian corridors and it can be replaced with other bicycle/pedestrian TSP proposals already in the TSP, such as shoulder widening of OR 47 and Westside Rd. between McMinnville and Moore's Valley Rd. All other aspects of the coordinated transportation network in TSP are unrelated and will not be affected. Therefore, the criterion under OAR 660-012-0020 is met.

OAR 660-012-0025 requires TSP findings to comply with statewide planning goals. As otherwise stated in these findings, not only does the removal of the YWT still allow the TSP to be compliant with all the statewide goals and county comprehensive plan policies, but allowing the YWT to remain in the TSP causes the TSP to be noncompliant with the Goals due to its adverse impacts on agriculture protected by statewide Goal 3 – Agricultural Land uses. Therefore, amending the TSP to remove the YWT meets the criterion under OAR 660-012-0025.

OAR 660-012-0030 addresses the determination of transportation needs in the County's TSP. Removing one of multiple proposed bicycle/pedestrian trails that has been determined to fail to meet relevant land use standards in five separate LUBA decisions does not impact the remainder of the County's TSP addressing roadway needs, corridor health, or general transit needs. The YWT also is contrary to the County's comprehensive plan goals regarding agricultural lands and farming practices since it cannot pass the farm impacts test under ORS 215.296(1).

(e) Yamhill County is not classified as a Metropolitan Planning Organization ("MPO") in Oregon, and, therefore, is not subject to OAR 660-012-0100 through OAR 660-012-0920.

OAR 660-012-0011(2)(a)-(c) states that OAR 660-012-0012 and OAR 660-012-0100 through OAR 660-012-0920 only apply to cities within metropolitan areas, portions of counties within urban growth boundaries of cities in metropolitan areas, and metro and cities and portions of counties within the Metro urban growth boundary. Yamhill County does not fall under any of these categories. ORS 197.629(8) defines "metropolitan planning organization" as "an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c)." The fact that Yamhill County, or any portion thereof, has not been designated by Oregon as an MPO is supported by Oregon GEOHub and Oregon.gov which does not list

Yamhill County as one of Oregon State's eight Metropolitan Planning Organization.¹³ The Board expressly finds that the Governor has not designated the County as an MPO.

For these reasons, OAR 660-012-0100 through OAR 660-012-0920 are inapplicable and need not be addressed.

Finding: The proposal to remove the YWT from the TSP is consistent with OAR 660-012.

4. CONCLUSION

For the reasons contained herein, the County finds the text amendment to the Yamhill County TSP to remove all references to the proposed development of the Yamhelas Westsider Trail meets all relevant standards and is approved. In summary the Board has several independent reasons why it finds that is appropriate to remove the YWT from the County TSP. Each stands alone as an independent reason supporting this decision, as well as the Board finds that they all cumulatively support this decision:

- The Board decides that as a matter of policy that, in its sound discretion, it chooses not to pursue the YWT in the abandoned railbed and chooses to remove references to such development of the YWT in the abandoned railbed from the TSP.
- The Board finds that the YWT was proposed in several zones that prohibit it.
- The Board finds that the YWT has been extremely divisive in the County and wishes to stop that divisiveness and heal the County by removing the YWT from the TSP.
- The Board finds that the development of the YWT is inconsistent with the County's comprehensive plan to include Agricultural policies in YCP 11.05.02.01(B)(i)(1),(2), (4) and (8) that "Yamhill County *will provide for the preservation of farmlands* through appropriate zoning"; "Yamhill County *shall provide for the protection of farmland* in large blocks *** Any proposal to reduce the minimum lot size on a farm or farm/forest parcel shall be shown to be appropriate to maintain the existing commercial agricultural enterprise in the area."; "Yamhill County *will provide for the conservation of farmlands through various plan implementation measures and the review of any public or private land use determinations* subject to county jurisdiction, including urban development activity *and the location and construction of highways and utility transmission lines which disturb the soil cover and natural drainage pattern, and increase storm runoff, erosion and sedimentation.*"; and "No proposed rural area development shall

¹³ See <https://geohub.oregon.gov/datasets/metropolitan-planning-organizations/about> and <https://www.oregon.gov/odot/planning/pages/local-planning.aspx>, see also <https://geohub.oregon.gov/datasets/metropolitan-planning-organizations>

substantially impair or conflict with the use of farm or forest land, or be 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.” Concerning Policy (8) the Board expressly finds that the evidence as described by LUBA alone as well as presented in this proceeding, demonstrates that the YWT is a “rural area development” and that it would “substantially impair or conflict with the use of farm or forest land.” The Board finds that no part of that plan provision looks to the possibility of “mitigation.”

- The Board also finds that the development of the YWT is inconsistent with the following County Comprehensive Plan provisions related to the County’s economy: “YCC 11.05.01.06(a)(i) “The economy of Yamhill County is largely based upon agricultural and forestry related industries.”; and YCC 11.05.01.06(2) “Yamhill County will encourage economic development improvements which do not conflict with the predominant timber and agricultural character of the county.”
- The Board finds that the development of the YWT never met the farm impacts test of ORS 215.296 despite several considerable tries in which the County was represented by legal counsel with significant land use experience. The Board finds that it is unwilling to continue to try to demonstrate compliance with that state law test.
- The Board finds that LUBA identified serious problems with the development of the YWT that the County was never able to overcome. The Board fully understands that in its last decision LUBA stated that it would not reverse the County decisions to develop the trail but would allow the County to continue to try to meet the farm impacts test. The Board finds that the evidence described by LUBA alone persuades it that the establishment of the Trail would significantly increase the cost of accepted farming practices and significantly change accepted farming practices. The Board finds that no legally adequate mitigation to reduce those significant impacts on accepted farming practices to insignificance, was ever identified by the County (or trail supporters) despite significant efforts to do so. The Board declines to continue to try to do so. Rather the Board is persuaded that the evidence cited in LUBA’s opinions alone as well as that presented in this proceeding, demonstrates that the County cannot meet the farm impacts test as a discretionary matter, as is the Board’s right to decide. Whether that evidence demonstrates that the farm impacts test cannot be met as a matter of law is not the test. The Board finds that the test is whether the Board finds, in its discretion the test is met, and the Board finds that it is not and importantly that it chooses not to continue to try.
- The Board finds the evidence presented by Yamhill County farmers credible and persuasive and more so that Trail supporters who argued to the contrary, that the development of the YWT would significantly change accepted farming practices and

significantly increase their cost and no reasonable mitigation was available to reduce those significant impacts to insignificance. While the Board recognizes that no quasi-judicial land use application is pending before the Board, the Board also recognizes that it has provisions in its TSP that suggest that the County will file another application to develop the Trail and that such provisions lend false hope to the Trail effort. The Board chooses not to maintain those provisions in its TSP.

- The Board finds that holding out the hope of Trail development as well as the County's application to develop Trail has been extremely expensive for the County and extremely divisive. The Board finds that Yamhill County is a small County that should as much as it reasonably can, invest its time and financial resources in planning programs and improvements that provide for the benefit of all segments of the County and that do not cause significant harm to another segment – in particular one that the County's Comprehensive Plan recognizes to be significant and important – as Agriculture recognized by the County Plan to be here. Therefore, in the exercise of its authority and responsibility to govern the County, the Board chooses to remove the YWT from the County TSP as established in this decision.

Agenda Item J1



OUTDOOR MASS GATHERING PERMIT APPLICATION

SUBMIT

Clear All

Fill out application form completely. Attach additional pages if necessary.

APPLICANT			PROPERTY OWNER (if different)		
Wildwood Music Fest			Margery E Kendall Trust		
Last Name	First Name	MI	Last Name	First Name	MI
P.O. Box 482			[REDACTED]		
Mailing Address (Street or PO Box)			Mailing Address (Street or PO Box)		
Willamina, OR 97396			[REDACTED]		
City	State	Zip	City	State	Zip
971-241-3173			[REDACTED]		
Phone Number			Phone Number		
wildwoodhotel@gmail.com			N/A		
Email Address			Email Address		

PROPERTY INFORMATION	
Tax Lot No.	R572200200
Property Zoning:	EF-80
Property Physical Address:	41100 Tindke Creek Rd. Willamina, OR
Present Use of the Property:	Forestry, cattle grazing, residential
Please list the type of buildings that are currently on the property (i.e. residence (type), pole building, agricultural barn or other outbuildings, etc.):	
house, shed, gazebo	
Is there a septic system on the property? Yes ☒ No ☐	
How will water be provided for event? Well ☐ City ☐ Other: spring verified w/ yamhill county health	

EVENT INFORMATION

Type of Event: Music Festival and Campout

Date or Dates of Event (5 max): June 19-21st, 2026

Persons Expected to Attend Event: 500 per day 500 in total

Will Sound Amplification be Used? Yes ☒ No ☐

If yes, please explain: a sound system will be used on stage while music is being performed, faces away from neighbors

Will Alcohol be Provided? Yes ☒ No ☐

If yes, please explain: Beer and wine service will be authorized w/OLCC

Will Fireworks be Used? Yes ☐ No ☒

If yes, please explain: _____

Please include a copy of the following with your application:

- ☒ Site Plan
- ☒ Fire Protection Plan
- ☒ Public Safety Plan
- ☐ Health and Medical Plan
- ☒ Parking and Traffic Control Plan
- ☐ Copy of OLCC Permit (if applicable)
- ☐ Proof of Insurance

FILING FEE: Include with your application a check or money order, made payable to Yamhill County, in the following amount:

- Single Event Fee: \$3,154.00
- Multiple Events Fee (max 5): \$3,154.00 + \$100/event

NOTE: Fees are nontransferable and nonrefundable.

CONDITIONS

The Applicant(s) understands and agrees to comply with the following conditions:

- 1) If the application is granted, the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- 2) If the application is granted, the applicant(s) will comply with all health and safety laws governing outdoor mass gatherings as provided in ORS 433, including all those rules adopted by the Oregon Department of Human Services.
- 3) If the application is granted, the applicant(s) will comply with all requirements governing mass gatherings as provided in Yamhill County Code 4.20.

DECLARATION

I hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that the above information is true and correct to the best of my knowledge. I understand that issuance of a permit based on this application will not excuse me from complying with other effective laws and regulations, including those regulating the use of the land and buildings.

I understand that Oregon law and local county code require the Yamhill County Board of Commissioners (Board) to refer the application to the Yamhill County Sheriff, the Yamhill County Health Department, the jurisdictional fire chief, and state or local road authorities for their recommended permit conditions. I further understand that the Board can impose reasonable conditions in its Order approving the Outdoor Mass Gathering Permit.

I hereby grant permission for and consent to Yamhill County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.

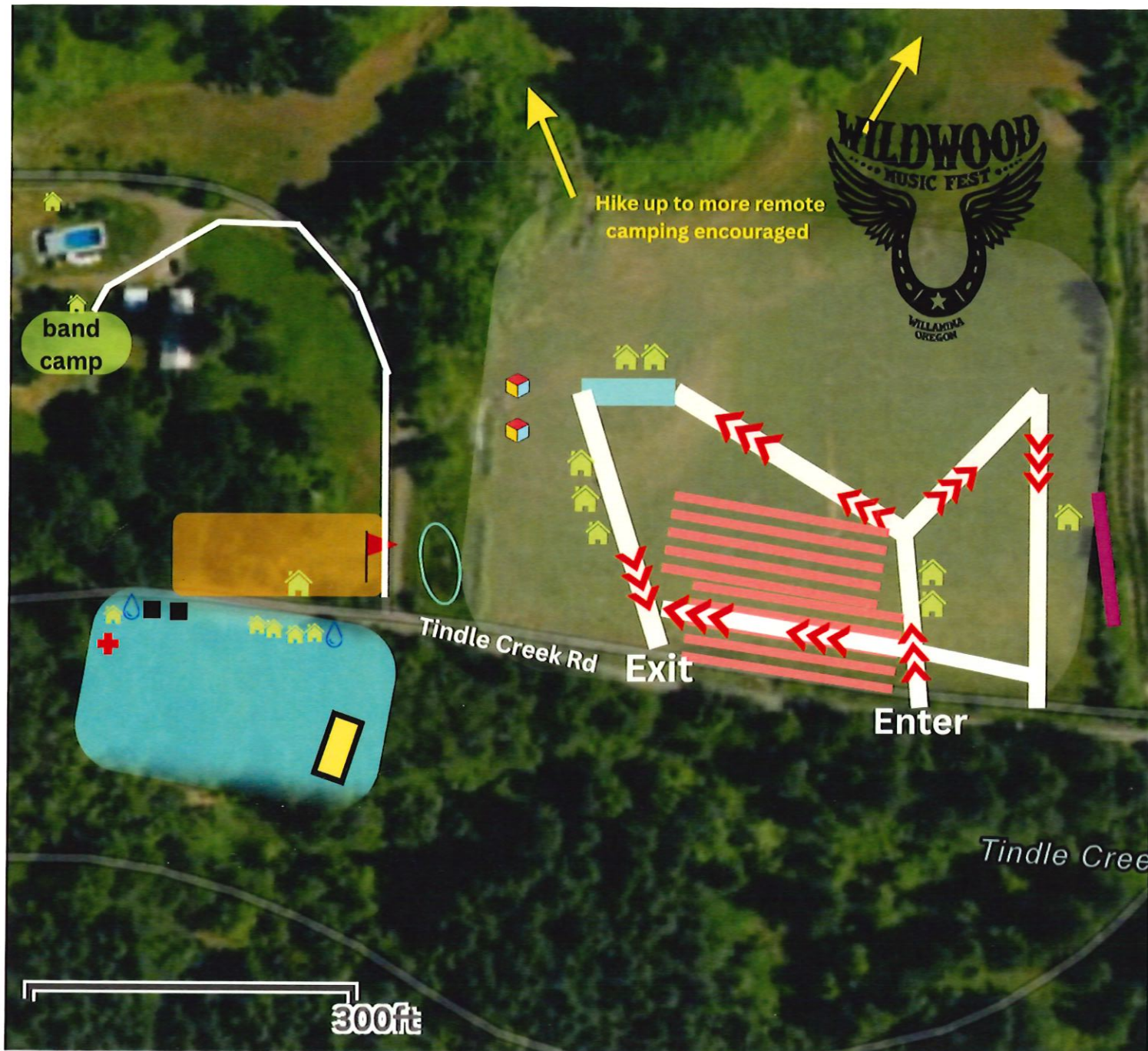
SIGNATURES:

Katie Umson Feb 4, 26
Applicant Date

Margery E Kendall 1-29-26
Property Owner Date

Submit the completed application and all required documentation to:

Yamhill County Mass Gathering Permit
c/o County Counsel's Office
535 NE 5th Street
McMinnville, OR 97128
bocinfo@yamhillcounty.gov



music, food & beverage

car camping

band & temp loading/unloading

first aid

stage

day parking

hand washing stations

food vendors

porta potties

approximately 15,000
gallon holding pond

Fire Lanes

275 gallon tanks

Exit to be used only
in case of emergency

band camping area

band /volunteer check in