

ORDINANCE NUMBER 747
Exhibit "D"
Findings of Fact and Conclusions of Law

Following public notice, this matter came before the Yamhill County Planning Commission ("Planning Commission") and the Yamhill County Board of Commissioners ("Board") for a work session on June 17, 2004, and for public hearings on June 24, 2004 and July 22, 2004. Following July 22, 2004, the record was held open until August 6, 2004 for the submittal of new evidence and testimony, and thereafter held open for submittal of rebuttal testimony. On September 9, 2004, the Planning Commission deliberated on the matter and voted to recommend that the Board amend the Yamhill County Comprehensive Plan, the Yamhill County Zoning Ordinance and the Official Zoning Map to establish new plan policies and establish and apply a new Interchange Overlay District to protect the function of the Newberg-Dundee Bypass ("Bypass") and associated Interchanges. As part of a consolidated proceeding, the Planning Commission also voted to recommend that the Board approve exceptions to Statewide Planning Goals 3, 11 and 14 to authorize the Bypass and the East Dundee Interchange. This matter then came before the Board on September 23 and September 30, 2004 for final deliberation and decision-making.

Having carefully considered the testimony and evidence that was offered into the hearing record and accepted by the Planning Commission and the Board, and having carefully considered the recommendation of the Planning Commission to approve the consolidated application, the Board makes and adopts the following findings of fact and conclusions of law in support of its decision on the amendments to the Yamhill County Comprehensive Plan, the Yamhill County Zoning Ordinance and the Official Zoning Map to establish and apply new plan policies and a new Interchange Overlay District to protect the function of the Bypass and associated interchanges.

A. General Findings

1. This legislative matter is before Yamhill County upon application initiated by the Yamhill County Department of Planning and Development at the request of the Oregon Department of Transportation ("ODOT"). ODOT is requesting Yamhill County adoption of amendments to the Yamhill County Comprehensive Plan and to the Yamhill County Transportation System Plan ("TSP") that would allow ODOT to design and construct (1) the Newberg-Dundee Bypass ("Bypass"), including its terminal interchanges connecting the bypass to Oregon 99W east of Newberg and to Oregon 99W and Oregon 18 north of Dayton, and (2) the East Dundee Interchange, including a new road connecting the Bypass to Oregon 99W. The proposed comprehensive plan amendments include exceptions to Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization). Separate ordinances and findings were prepared for and adopted by the Board for the Comprehensive Plan and TSP amendments referenced in this paragraph. The Board takes official notice of those ordinances (No. 748 and 750) and their supporting findings. Because those ordinances and findings also have relevance to the amendments to the Comprehensive Plan and Zoning Ordinance adopted to protect

the function of the Bypass and Interchanges, the Board incorporates them herein by this reference.

2. During its consideration of exceptions authorizing the Bypass and the East Dundee Interchange, the Board also considered and approved the adoption of (1) new comprehensive plan policies associated with development of the Bypass and interchanges; (2) an Interchange Overlay District, which is a new land use regulation that would apply to unincorporated lands located within about ½ mile of the Bypass interchanges, and (3) amendments to the Yamhill County Zoning Map to apply the Interchange Overlay District to the areas regulated by the overlay. The adopted comprehensive plan policies include provisions to protect the identified functions of the bypass to serve statewide and regional traffic; to restrict UGB amendments, plan amendments and zone changes within the Overlay District in the interim period before Interchange Area Management Plans are adopted for the interchanges; and to provide notice to and coordinate with ODOT on all proposed land use and development applications within the boundaries of the Interchange Overlay District. These findings support the plan and ordinance amendments referenced in this paragraph.

3. The Exceptions Document contains detailed findings of fact and reasons supporting exceptions to Goals 3, 11 and 14 and explaining how the Bypass Project, including the supporting plan policies and ordinance amendments, complies with the Oregon Highway Plan, the Yamhill County Comprehensive Plan and all other applicable review standards. The Board finds ODOT's analysis of compliance with the applicable standards in its Exceptions Document to be credible, thorough, persuasive and correct. Accordingly, the Board adopts as its own and incorporates herein in its entirety by this reference, the facts and analysis of compliance with applicable standards set out in ODOT's Exceptions Document.

4. During the course of the public hearings, a great deal of oral and written testimony was provided both in support of and against the Bypass Project. Very little public testimony was submitted that focused specifically on the new Comprehensive Plan policies and Interchange Overlay District. Letters from the Department of Land Conservation and Development ("DLCD") and on behalf of Columbia Empire Farms ("CEF") did include specific comments on the policies and/or Interchange Overlay District and those letters are addressed in these findings.

B. Compliance with Applicable Statewide Planning Goals

1. The Board adopts as its own and incorporates herein in its entirety by this reference, the facts and analysis of compliance with applicable Statewide Planning Goals set out in ODOT's Exceptions Document at pages 136 – 142. The findings are supplemented below with a specific focus on why the new Comprehensive Plan policies and Interchange Overlay District assure compliance with Goals 1 (Citizen Involvement), 2 (Land Use Planning), 3 (Agricultural Lands), 12 (Transportation) and 14 (Urbanization).

2. Goal 1 requires opportunity for citizens to be involved in all phases of the planning process. Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in its acknowledged comprehensive plan and land use regulations.

Yamhill County's regulations for comprehensive plan and zoning ordinance amendments include individual property owner notice and general newspaper notice, notice of a "post acknowledgement plan amendment" to DLCDD, public hearings before the Yamhill County Planning Commission (which makes a recommendation to the Board of Commissioners), and public hearings and a final decision by the Board of Commissioners.

Columbia Empire Farms alleges violations of statewide planning goal 1 based on the procedures approved by the County. They claim that the County's decision giving ODOT an additional two weeks for its final rebuttal violates CEF's ability to fully participate in the County's decision-making process and to be involved in all phases of the planning process. The Board finds these arguments unpersuasive. It finds that CEF and other opponents have had substantial opportunity to attend the public hearings, present their case and make their record. They have also been given reasonable opportunity to rebut the factual evidence ODOT submitted in support of the Bypass Project. The Board finds, therefore, that Yamhill County has followed public involvement procedures set out in its comprehensive plan and land use regulations in considering the new Comprehensive Plan policies and Interchange Overlay District and has complied with Goal 1.

3. Goal 2 Part I requires that actions related to land use be consistent with acknowledged comprehensive plans of cities and counties. The proposed amendments' consistency with applicable provisions in Yamhill County's Comprehensive Plan is demonstrated in Section D below.

Goal 2 Part I also requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base. In developing the Location Draft Environmental Impact Statement (LDEIS) and selecting the preferred alternative, ODOT (the lead agency) engaged in significant coordination efforts over an approximately seven year period with Yamhill and Marion County officials, officials from the cities of Newberg, Dundee, Dayton, and McMinnville, representatives of the Oregon Department of Land Conservation and Development and the Federal Highway Administration, and other agency and local officials.

The Board finds that development of a consistent and coordinated package of city and county comprehensive plan policies and zoning regulations to address the Bypass is critical because the Bypass and interchanges affect property in four different jurisdictions (Yamhill County and cities of Newberg, Dundee and Dayton). Additionally, the four interchanges are located close to established Urban Growth Boundaries (UGBs), and the Board recognizes that development pressures will be focused near the interchange areas.

Therefore, the plan policies for the four jurisdictions emphasize the following key themes:

- Support development of the Bypass in a southerly alignment described as 3J Modified;
- Support development of the Bypass as an “expressway” as defined by the Oregon Highway Plan, with access limited to the four interchanges;
- Recognize that the function of the Bypass is to accommodate and divert longer-distance through trips around the Newberg-Dundee urban area;
- Commit the County and Cities to coordinate with ODOT and affected property owners to adopt Interchange Area Management Plans (IAMPs) for each of the four interchanges;
- Limit UGB amendments and zone changes around the four interchanges in the interim period before the IAMPs are adopted; and
- Provide notice to ODOT of all proposed land use and development applications within the Bypass location corridor or interchange overlay areas.

The Board takes official notice of adoption of new plan policies for the Bypass by the City Councils of Dundee and Dayton on August 16, 2004; and by the Newberg City Council on September 20, 2004. Board adoption of consistent county policies for the Bypass will ensure that the land use and policy framework for the Bypass is coordinated between the county, affected cities, and ODOT as required by Goal 2.

Additionally, the Board finds that the policies included in Exhibit “A” have been refined and coordinated with the Department of Land Conservation and Development (DLCD) to address concerns. In a letter dated June 2, 2004, DLCD suggested that a specific policy be added to the plan amendment package to define the function of the Bypass and interchanges. The recommended policy is reflected in Policy a as shown in Exhibit “A”. DLCD also raised concern with a policy included in the initial draft package that stated: “Yamhill County will recognize the planned connector between the Bypass and Oregon 99W and Chehalem Creek as defined boundaries for the rural area south of 99W.” The draft policy has been deleted from the final policies adopted by the Board.

4. Goal 3 requires counties to preserve and maintain agricultural lands for farm uses. Counties must inventory agricultural lands and protect them by adopting exclusive farm use zones consistent with ORS 215. Goal 3 does not allow transportation improvements like a new road and new interchanges on EFU-zoned lands unless an exception to Goal 3 is justified. Findings and conclusions to support the exception to Goal 3 for the Bypass and East Dundee Interchange are included in a separate ordinance and are incorporated by reference.

The Board finds that the plan policies included in Exhibit “A” and the Interchange Overlay District included in Exhibit “B” will provide needed tools to minimize speculative development pressures and preserve and maintain agricultural lands for farm uses near the four interchanges in the interim period before Interchange Area Management Plans are prepared and adopted by Yamhill County, the respective Cities

and ODOT. With the adoption of a coordinated and consistent package of plan policies by Yamhill County and the Cities of Newberg, Dundee and Dayton – all of the jurisdictions have agreed to maintain the location of existing UGBs and retain existing zoning within ¼ to ½ mile of each interchange until the IAMPs are adopted. The new policies will not restrict land uses or development that is permitted by existing zones, including uses authorized in EFU zones.

In a letter dated August 6, 2004, Columbia Empire Farms (“CEF”) argues that the plan policies and interchange overlay district are more restrictive than necessary. CEF emphasizes that existing EFU and rural zoning and stringent statutory requirements for exceptions, UGB amendments, and conversion of rural lands to urban uses already accomplish ODOT’s stated purpose of protecting lands from conversion pressures as a result of the Bypass. CEF requested that Yamhill County not adopt the policies and interchange overlay district provisions that restrict UGB expansion and zone changes in the interim period before the IAMPs are adopted. CEF argues that the restrictions are unnecessary because any zone change or UGB amendment would be subject to the review procedures and requirements of the Overlay District.

In response to the issues raised by CEF as summarized above, the Board adopts as its own findings of fact and reasons, and incorporates by reference in their entirety herein, the facts and analysis set out in a letter from Bonnie Heitsch to the Yamhill County Board of Commissioners and Planning Commission dated August 27, 2004 (“Heitsch rebuttal letter”). Key conclusions of the Heitsch rebuttal letter are summarized below:

- The Oregon Highway Plan requires that Interchange Area Management Plans be adopted prior to bypass project development.
- The coordinated policies provide ODOT and the local jurisdictions with a reasonable period of time (estimated 3 years) to plan and design the interchanges and local street connections without the game board changing dramatically with UGB expansions and zone changes.
- The policies were collaboratively developed and coordinated with each of the three Cities. The policies are reciprocal in nature requiring the Cities to impose identical restrictions on zone changes and UGB amendments during the interim time when the IAMPs are being developed and adopted.

CEF has not been singled out for special restrictions; the plan policies and interchange overlay zone are applied in an equal manner around each of the four interchanges and EFU areas east of Newberg and Dayton are affected by the same interim limitations that will apply to the Columbia Empire Farm east of Dundee. The Board finds that the policies and overlay district will have very little impact to CEF as it can continue its farm operations and develop within existing zoning regulations. Further, the Board recognizes that the Yamhill County Planning Commission passed a resolution to require that planning staff bring the policies and interchange overlay adopted in Exhibits “A” & “B” back to the Planning Commission for a status report and review in approximately three years. The Board supports this resolution and concludes that it is not necessary to include a specific sunset clause in the Interchange Overlay District as requested by CEF.

5. Goal 12 requires local governments to “provide and encourage a safe, convenient and economic transportation system.” Goal 12 is implemented through the Transportation Planning Rule (TPR), OAR 660, Division 12. OAR 660-012-0045 requires that local governments adopt regulations to protect transportation facilities for their identified functions. The Board finds that this provision of the TPR provides the key impetus for Yamhill County and the cities of Newberg, Dundee and Dayton to amend their comprehensive plans to protect the bypass and interchanges to accommodate primarily longer-distance through traffic. Moreover, as part of project development following preliminary design – ODOT, Yamhill County, and the Cities of Newberg, Dundee and Dayton will prepare and adopt Interchange Area Management Plans also aimed at protecting these functions. The plan policies and regulations will restrict UGB amendments and zone changes near the interchanges in the interim period before the interchange area management plans are adopted. This provision will provide ODOT and the local jurisdictions with the time needed (estimated 3 years) to plan land uses and local circulation that support the function of the interchanges as required by Goal 12 and the TPR.

6. Goal 14 requires that local governments establish urban growth boundaries in accordance with seven factors listed in the goal in order to separate urban and urbanizable lands from rural lands. The Cities of Newberg, Dundee and Dayton, in coordination with Yamhill County, have established UGBs for their respective urban areas. As described earlier in these findings, the Bypass will have full access control and access will be limited to the four interchanges. Therefore, development pressures associated with improved highway accessibility and visibility will be focused at the interchanges. The Oregon 219 interchange will be located within, but at the edge of the Newberg UGB. The East Newberg, East Dundee and Dayton interchanges will be located in close proximity, but outside of established UGBs. To avoid speculative development pressures near the planned interchanges in the interim period before the interchange area management plans are adopted, the Cities of Newberg, Dundee and Dayton have already adopted policies to restrict UGB amendments near the interchanges for an interim period. To provide a consistent and coordinated city and county approach to planning for the Bypass, the Board finds that county adoption of a similar limitation on UGB amendments and zone changes near the interchanges is warranted and appropriate and is consistent with the intent of Goal 14 to provide an efficient transition between urban and rural uses.

C. Compliance with Oregon Highway Plan Policies and Actions

1. The 1999 Oregon Highway Plan (“OHP”) contains 27 policies and associated actions with which local and regional transportation system plans must be consistent. The Board finds that the OHP policies and actions identified in the Exceptions Document at pages 143-163 and pages 1-9 of Errata Sheet submitted July 22, 2004, are the only OHP policies and actions that apply to the bypass project. The Board also concludes that the applicable OHP policies and actions are satisfied for the reasons set out in the Exceptions Document. The Board also concludes that the new plan policies set forth in Exhibit “A” and the new Interchange Overlay District set forth in Exhibit “B” and

implemented through the Zoning Map amendment shown in Exhibit "C" are consistent with specific OHP policies and actions as summarized below.

2. Action 1B.6 of Policy 1B provides for ODOT to collaborate with local governments in developing land use ordinances that provide a process for coordinated review of future land use decisions affecting transportation facilities, corridors, and sites, including a process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities and corridors. The Board finds that new policies (See Exhibit "A" - policies e, f & g) and the Interchange Overlay District (See Exhibit "B" - Section 908.3) provide such a mechanism for coordinated review of future land use decisions within the Bypass location corridor and Interchange Overlay using the County's established Site Design Review process. This process includes an opportunity to apply conditions to protect the function of the Bypass and interchange facilities.

3. Action 1B.8 seeks to avoid UGB expansions along Statewide Highways and around interchanges unless ODOT and the appropriate local governments agree to an IAMP to protect interchange operation or access management for segments along the highways. The Board finds that new policies (See Exhibit "A" - policies h, i and j) and provisions in the Interchange Overlay District (See Exhibit "B" - Sections 908.06 and 908.07) comply with and implement Action 1B.8.

4. Action 1H2b directs ODOT, in cooperation with local governments, to develop management plans for new interchanges, and bypass termini protection. The Board finds that policy m of Exhibit "A" commits that Yamhill County will coordinate with ODOT and the affected jurisdictions and property owners to adopt Interchange Area Management Plans for each of the four interchanges, consistent with the requirements of the 1999 Oregon Highway Plan. The Cities of Newberg, Dundee and Dayton have already adopted a similar plan policy.

5. Action 1H.4b requires Yamhill County to address how its comprehensive plan, TSP, and implementing ordinances protect the regional and statewide mobility function of the new Bypass. In a letter dated June 2, 2004, DLCDC recommended that Yamhill County adopt a policy that more specifically defined the function of the bypass and interchanges. The Board finds that the policies have been revised (See Exhibit "A" - policy a) to define the functions of the Bypass and intermediate interchanges as recommended by DLCDC. With this additional policy and implementation of the Interchange Overlay District, the Board concludes that the amendments are consistent with Action 1H.4b. These measures will help both to protect the regional and statewide mobility function of the Bypass and minimize development pressures on rural lands.

D. Compliance with Applicable Yamhill County Comprehensive Plan and Zoning Ordinance Provisions

1. The Board finds that there are few goals and policies in the Yamhill County Comprehensive Plan that are directly relevant to the legislative adoption of supplemental policies to address the Bypass. However, the Board concludes the policies and

interchange overlay are in compliance with goals and policies relating to Urban Area Development, Commercial Development and Transportation as summarized below.

2. The first goal for urban area development is to encourage the containment of growth within existing urban centers. The Board finds that the new policies and interchange overlay zone will reinforce and encourage the containment of growth within the existing urban centers of Newberg, Dundee and Dayton. The respective cities have adopted policies to "freeze" the existing urban growth boundaries and existing zoning within the interchange areas in the interim period before interchange area management plans are adopted. Additionally, policy a states that "it is not the function of the interchanges to provide for or attract regional commercial or highway commercial development in the vicinity of the interchanges."

3. The Board recognizes that major transportation improvements can have an impact on the rate and direction of urban growth. Yamhill County will continue to cooperate with the cities of Newberg, Dundee, and Dayton to adopt interchange area management plans to assure that the purpose and function of the Bypass and interchanges in serving primarily statewide and regional transportation needs. The new city and county plan policies, supplemented with IAMPs, will provide a strong and interrelated framework to assure that the county's goal of containing urban growth is achieved.

4. The county plan includes three policies that address highway-oriented commercial development. Existing Policy E emphasizes that highway service and tourist commercial uses catering to the needs of the traveling public will be encouraged to locate within existing urban centers. Traditional central commercial uses will be encouraged to locate or relocate only in existing town centers and the dispersal of such uses to peripheral highway locations will be discouraged. Existing Policy H states that new highway-oriented commercial development at limited-access highway interchanges will only be permitted in urban areas where direct access is provided from a local street system. To maintain the integrity and function of the highway system, Existing Policy I states that new commercial development shall be discouraged along the route of any limited-access highway.

Yamhill County adopted the referenced commercial development policies at the last periodic review in anticipation of the Bypass. Similar policies were also included in the Newberg Comprehensive Plan at the last periodic review. As noted earlier, the Bypass will have full access control and interchange area management plans will be prepared and adopted for each of the four interchanges, as required by the OHP. The adopted policies, supplemented with the new policies and interchange overlay district set forth in Exhibits "A" and "B", provide a framework for the county and cities to anticipate and avoid highway-oriented commercial development pressures that would typically be attracted to new interchange locations. The Board finds that the new land use policies, which have already been adopted by the three cities, will provide land use protection to the critical areas within about ¼ to ½ mile of the interchanges in the interim period before the IAMPs are adopted. Further, the Board concludes that the new policies and interchange overlay district are consistent with existing county plan policies on commercial

development because they emphasize that it is not the function of the interchanges to provide for or attract regional commercial or highway commercial development in the vicinity of the interchanges.

5. Yamhill County's Comprehensive Plan includes several general policies relating to transportation. Existing Policy c states that Yamhill County will cooperate, support, and coordinate with ODOT, the cities of the county, and other transportation agencies on matters relating to the location, design, and programming of roads and other transportation facilities to guide and accommodate the emerging development patterns of the county.

The Board finds that, while ODOT has had the lead role in the planning, programming, and design of the Bypass, Yamhill County and the affected cities have played a strong cooperative and coordinated role in the process. The affected local governments have a key role in implementing the corridor decision through amendments to local comprehensive plans and transportation system plans. Additionally, ODOT, the county, and the cities will have a role in coordinating and implementing a range of transportation improvements (such as local road connections) and land use controls to assure that the Bypass and interchanges support and reinforce planned land use patterns. IAMPs will be developed and adopted during the design phase of the Bypass Project to achieve these results. The cities of Newberg, Dundee and Dayton have already adopted new plan policies and commitments to interim land use controls and adoption of interchange area management plans. The Board concludes that adoption of the new county comprehensive plan policies for the Bypass and implementation of a new county interchange overlay district will ensure a coordinate and consistent land use framework across the four jurisdictions to guide development of the Bypass in compliance with policies on transportation.

6. Sections 1207 and 1402 of the Yamhill County Zoning Ordinance set out, respectively, the procedures for a legislative amendment and for public hearings. The legislative amendment procedures address initiation of a legislative amendment, require hearings before both the Planning Commission and the Board of Commissioners pursuant to Section 1402, and require that a decision approving the legislative amendment be supported by findings demonstrating consistency with applicable standards. The adoption of new plan policies and adoption and application of a new interchange overlay zone has been initiated and considered in accordance with established notice and public hearing procedures for a legislative amendment and these findings demonstrate consistency with applicable standards.

E. Conclusions

For all of the reasons stated above, the Board concludes that the proposed legislative amendments to adopt new plan policies to address the Bypass, to amend the Zoning Ordinance to establish a new Interchange Overlay District, and to amend the Official Zoning Map to apply the Interchange Overlay District comply with all applicable land

use review standards. Accordingly, the Board approves those legislative applications to support the goal exceptions for the Bypass and East Dundee Interchange.

F. Decision

Based on its determination that the amendments to the Yamhill County Comprehensive Plan, Zoning Ordinance and Official Zoning Map comply with all applicable standards, the Board hereby:

1. Amends the Yamhill County Comprehensive Plan, Section III.A (Transportation) to delete one policy and adopt fourteen new policies specific to the Newberg-Dundee Bypass as set forth in Exhibit "A". The deleted policy is shown in strikeout type and the new policies are shown in underline type.
2. Amends the Yamhill County Zoning Ordinance to adopt a new Interchange Overlay District as set forth in Exhibit "B".
3. Amends the Official Yamhill County Zoning Map to apply the new Interchange Overlay District as set forth in the maps attached in Exhibit "C".