



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

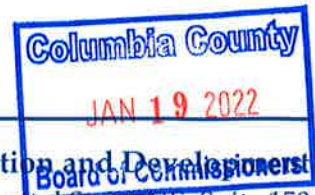
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January 18, 2022



Chair Henry Heimuller  
Columbia County  
230 Strand Street  
St. Helens, OR 97051

Re: File # CU 21-04 / DR 21-03 & V 21-05 – SENT VIA EMAIL

Dear Chair Heimuller and Commissioners,

We appreciate the opportunity to comment on File #CU-21-04/DR 21-03 & V-21-05 and ask for this letter to be included in the record. The Department of Land Conservation and Development (DLCD) met with the applicant and County staff on December 2, 2021 to talk about several issues that were raised during the review of the above referenced applications. These matters included the ordinance language associated with development in wetlands, the proposed branchline, and the need for proper analysis required by Oregon's farm protection statutes regarding impacts to the agricultural-zoned lands. The intent of this testimony is to focus on the latter two issues.

### PROPOSED "BRANCHLINE"

The rail facility in CU-21-04, Exhibit 03 appears to be a storage yard or rail yard and not a transportation facility-related "branchline" as defined 660-012-0065(3)(j). The applicant provided no narrative to address how this line will be used, where and how the on- and off-loading will occur, and what measures are in place to ensure that adjacent uses and resources are protected from the activity that may take place there. Based upon the information provided, DLCD does not believe that the Board of Commissioners has the necessary information to determine that the proposed rail facilities qualify as a "branchline" under OAR 660-012-0065(3)(j). If not a branchline, then the rail facility would not be an allowed use in the County's Exclusive Farm Use zoning district, and the applicant would need to apply for a reasons exception to Statewide Planning Goal 3 (Agricultural Land) to justify the proposed use of the site.

## CUMULATIVE IMPACTS ANALYSIS

Whatever the County's decision regarding the rail facilities on land zoned for Exclusive Farm Use, any approval of a branchline on the land zoned for farming will require the county to make findings required by ORS 215.296.<sup>1</sup> This statute is known as the "farm impacts test." The most recent Oregon Supreme Court decision interpreting this statute, *Stop the Dump Coalition v. Yamhill County*, 364 Or 432 (2019), provides guidance to the County in reviewing this application.

In the department's review of the application, the applicant fails to adequately address the agricultural impact and the impacts test cumulatively under the standard established in *Stop the Dump Coalition v. Yamhill County*. Under ORS 215.296, a county may approve certain nonfarm uses on land zoned EFU if the use will neither force a significant change in, nor significantly increase the cost of, accepted farm practices on surrounding farmlands. However, conditions of approval or proposed mitigation intended to prevent a nonfarm use from significantly changing or increasing the cost of accepted farm practices on surrounding farmlands may not be sufficient where there is no quantification in the record regarding the actual effectiveness of the condition. The applicant provides conclusory statements without providing any quantifiable evidence to support the contention that the proposed railyard that does not force a significant change in, nor significantly increase the cost of accepted farm practices on surrounding farmlands. The applicant does not address the proposed relocation of drainage ditches (evident on the site plan drawings) or impacts to the water table that might be related to crossing and relocating existing drainage infrastructure and filling such a substantial amount of wetlands. The application does not have any discussion of spill containment or the potential hazards of a spill of raw material or processed fuel on surrounding agricultural crops, including food grade mint. There is also no discussion of how the applicant might participate in the drainage district or maintenance of drainage facilities over time.

During the earlier discussion that DLCD staff had with the applicant and the County staff, DLCD raised these issues, and the applicant was encouraged to consider

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<sup>1</sup> ORS 215.296 provides, in part:

(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

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

alternatives to the proposed branchline including shifting the railyard portion of the branchline onto the Industrial-zoned property or phasing the project so that the rail line was installed after the final decision has been made regarding the zone change associated with property (not part of this application).

DLCD understands the economic value that this project brings to the region and these comments are intended to focus only on the applications in front of you and not on the allowed industrial use proposed in the Industrial zone. We are concerned that, given the controversial nature of this application, the deficiencies we are identifying in this application regarding the rail facility will lead to litigation that is unlikely to end up favorably for the project.

If you have any questions, please feel free to contact Lisa Phipps at 503-812-5448 or [lisa.phipps@dlcd.oregon.gov](mailto:lisa.phipps@dlcd.oregon.gov).

Sincerely,



Gordon Howard  
Community Services Division Manager

Cc: Robert Wheeldon, Planning Manager  
Robin McIntyre, Sr. Assistant County Counsel  
Jesse Winterowd, Winterbrook Planning  
Garrett Stephenson, Shareholder (Schwabe Williamson & Wyatt)  
Brian Varricchione, PE & Senior Associate | Land Use Planning (Mackenzie)