

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

IN THE MATTER OF an Application to )  
Amend the Yamhill County Comprehensive )  
Plan, Transportation System Plan and Zoning )  
Ordinance and Adopt New and Modified )      ORDINANCE 875  
Exceptions to Goals 3, 11 and 14, to )  
Authorize Construction of Phase 1 of the )  
Newberg-Dundee Bypass; Planning Docket )  
PA-01-12; and Declaring an Emergency )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (“the Board”) sat for the transaction of County business on August 16, 2012, Commissioners Leslie Lewis, Kathy George, and Mary P. Stern being present.

IT APPEARING TO THE BOARD that the Planning Department initiated a legislative land use process to amend the Yamhill County Comprehensive Plan, Transportation System Plan, and Zoning Ordinance to adopt new and modified exceptions to Goals 3, 11 and 14, to authorize construction of Phase 1 of the Newberg-Dundee Bypass; and

IT APPEARING TO THE BOARD that the Yamhill County Planning Commission and the Board heard this matter at a duly noticed joint public hearing on August 2, 2012. The Planning Commission voted 6-2 to recommend approving the legislative amendment. The Board then voted unanimously to approve the legislative amendment. NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the Yamhill County Comprehensive Plan, Transportation System Plan, and Zoning Ordinance are hereby amended as detailed in the Findings, hereby incorporated in their entirety into this Ordinance by this reference. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective immediately.

DONE this 16<sup>th</sup> day of August, 2012, at McMinnville, Oregon.

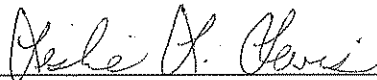
ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

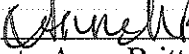
REBEKAH STERN DOLL

County Clerk

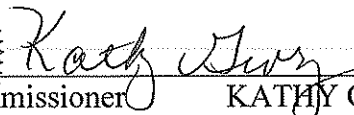
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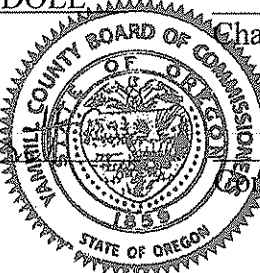
LESLIE LEWIS

By:   
Deputy Anne Britt


Commissioner



KATHY GEORGE



APPROVED AS TO FORM:

  
RICK SANAI, Yamhill County Counsel

  
Commissioner MARY P. STERN

## ORDINANCE 875 - FINDINGS OF FACT

Following public notice, this matter came before the Yamhill County Planning Commission (Planning Commission) and the Yamhill County Board of Commissioners (Board) for a joint public hearing on August 2, 2012. Following the close of the public hearing, the Planning Commission deliberated on the matter and voted to recommend that the Board adopt amendments to the Yamhill County Comprehensive Plan (YCCP), Yamhill County Transportation System Plan (YCTSP), and Yamhill County Zoning Ordinance (YCZO), including new and modified exceptions to Statewide Planning Goals 3, 11 and 14, to authorize construction of Phase 1 of the Newberg-Dundee Bypass (Bypass) Project. Immediately following the Planning Commission's vote, the matter came before the Board 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 application, the Board makes and adopts the following findings of fact and conclusions of law in support of its decision to approve the application.

### 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 YCCC, YCTSP and YCZO that are necessary to authorize construction of Phase 1 of the Bypass. The proposed comprehensive plan amendments include exceptions to Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization).
2. In 2004 and again in 2011, the Board adopted plan amendments, including statewide planning goal exceptions, initially establishing the Bypass corridor and interchange locations and then modifying their footprint in part and authorizing changes to local access and circulation. As approved, the corridor extends eastward from Dayton to east of Newberg, with interchanges at Dayton, East Dundee, Oregon 219 and East Newberg.
3. While the entirety of the Bypass Project has land use approval, funding constraints preclude full construction of the project at this time. To address this situation and similar road improvement funding shortfalls elsewhere in Oregon, the Oregon Legislature in 2009 enacted the Jobs and Transportation Act (JTA). Among other things, the JTA authorized

approximately \$192 million of bonds to be issued for the first construction phase (Phase 1) of the Bypass. Phase 1 will construct the westbound lanes of the Bypass between Oregon 219 and Oregon 99W south of Dundee (about four miles in length), with access limited to the two ends of Phase 1. The westbound travel lanes will be configured for use with one lane in each direction. Phase 1 also will include required local circulation changes needed to reconnect local roads disrupted by construction.

4 To stay within the authorized budget, the Phase 1 connection to Oregon 99W south of Dundee (“Interim South Dundee Connection”) must be located outside the previously approved Bypass corridor. This necessitates a new goal exception. Under OAR 660-012-0070(10)(a), modifications to unconstructed transportation facilities or improvements authorized in an exception may be permitted without new exceptions only when the modifications are located *entirely within* the previously approved corridor. Because the Interim South Dundee Connection must go outside that corridor, where it will impact rural agricultural and nonresource lands, a new exception must be taken to Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization).

5. As the name indicates, the new Interim South Dundee Connection will take the form of an *interim* terminal interchange and connecting roadway extending from the approved Bypass corridor to Oregon 99W. When the Bypass Project is extended southward to Dayton along the previously approved Bypass corridor, the Dayton Interchange will become the terminal interchange at the south end of the Bypass and the Interim South Dundee Connection will be removed. Consequently, the impacts to the rural lands affected by this application will be temporary, even though it could be many years before funding is acquired to construct the Dundee to Dayton phase of the Bypass Project.

6. Adoption of goal exceptions to approve the Interim South Dundee Connection and allow Phase 1 to move forward to construction also requires some amendments to the Bypass policies in the YCCP and to provisions addressing interchange overlay districts in Section 908 of the YCZO. The findings and reasons justifying the goal exceptions, which themselves are an amendment to the YCCP and YCTSP, justify these plan and zoning text amendments as well.

7. In support of this application, ODOT has provided Yamhill County with a document entitled *Newberg Dundee Bypass Project: Phase 1 Amendments, Findings of Fact and Statement of Reasons in Support of an Exception to Statewide Planning Goals 3, 11 and 14*, dated June 29, 2012. This document describes the Bypass Project in its entirety and the Phase 1 modifications to the Bypass Project, identifies applicable state and county land use standards for which compliance must be demonstrated, and provides detailed findings of fact and reasons justifying the goal exceptions and explaining why the applicable standards are met. The Board has reviewed this document, finds ODOT’s findings of fact to be credible and supported by substantial evidence in the whole record, and finds ODOT’s analysis of compliance with the applicable review standards to be credible, persuasive and correct. For the reasons stated in ODOT’s document, which the Board incorporates herein in its entirety by this reference, the Board concludes that the application complies with the applicable land use standards.

8. Also in support of this application, the Board takes official notice of, and incorporates by reference herein, its previously adopted 2004 and 2011 goal exceptions for the Bypass Project and the findings of fact and supplemental findings of fact it adopted in support of those exceptions as identified in Yamhill County Ordinances Nos. 748, 750 and 866. Because the application approves an interim connection that will be removed following extension of the Bypass south to Dayton, the Board finds that the Bypass Project when fully completed remains the Bypass Project as modified in 2011, except for the Fulquartz Landing Road realignment as modified in this 2012 application.

9. The staff report identifies several YCCP policies not mentioned in ODOT's findings and reasons document, including Urban Area Development Policy a, City Growth and Development Policy f, Fish and Wildlife Policies b and c, Transportation Policy n, Willamette Greenway Goal Statement 1, and Bypass Policy f. Urban Area Development Policy a directs the county, in coordination with cities in the county, to encourage urban growth to take the form of a series of compact, balanced communities. The Board finds that this policy is aspirational and not directly applicable to this application, and it finds that the new and modified exceptions contained in this 2012 application will not impede the abilities of Newberg or Dundee to achieve a more compact, balanced urban form inside their urban growth boundaries. City Growth and Development Policy f addresses Newberg urban reserve areas. The Board finds that this policy does not apply because these 2012 amendments do not impact urban reserve lands in Newberg. Fish and Wildlife Policies b and c require the county to consider the location and construction of highways in terms of protecting fish and wildlife habitat and to limit undesirable impacts on sensitive wildlife areas. The Board finds that the Interim South Dundee Connection will impact nearly three acres of fish and wildlife habitat but that the impacts can be mitigated through compliance with the 2004 CETAS Record of Agreement for the Bypass Project, which includes measures such as constructing a bridge crossing over Hess Creek that spans the width of the flood plain of Hess Creek. The Board finds that Policy c does not apply because the affected area is not identified as a sensitive wildlife area. But if Policy c were applicable, it would be met for the reasons stated in the 2011 findings of compliance with this policy. Transportation Policy n directs the county to utilize existing facilities and rights of way to the fullest extent possible. As part of this application, ODOT considered the feasibility of using the Parks Drive right-of-way but concluded that the associated adverse impacts would be unreasonable. The Board agrees with ODOT's determination for the reasons set out in ODOT's findings and reasons document. The Board finds that the amendments do not affect the Willamette River Greenway. However, they are consistent with Willamette Greenway Goal Statement 1 because the Bypass Project includes roadway improvements to maintain Greenway access. The Board also finds, as it did in 2011, that Bypass Policy 2f, which states that "ODOT may coordinate with property owners/applicants on a voluntary basis to protect the planned right-of-way for the bypass and interchanges" is merely direct and does not constitute a mandatory approval standard.

10. During the public hearing, the Board heard testimony both in support of and against the application. Having considered the evidence and testimony carefully, the Board finds the evidence and testimony provided by ODOT and its consultants, including its prime consultant, Parametrix Inc., and land use consultant Mark Greenfield, to be more comprehensive and more credible and persuasive on the matters raised by the applicable

review standards than the evidence and testimony submitted by opponents to the Bypass Project.

### **B. Additional Findings Responsive to Public Testimony**

11. In the course of this proceeding, the Department of Land Conservation and Development (DLCD) and several members of the public made observations or raised issues that the Board believes warrant responses. The following paragraphs provide the Board's findings and reasons in response to the public testimony.

12. In a letter dated July 5, 2012, the Department of Land Conservation and Development (DLCD) wrote that the application does not address how the new goal exceptions relate to the previously acknowledged exception and that the county will need to make findings that the needs cannot be met without the new exception. The Board finds that the application does, in fact, address how the new goal exceptions relate to the previous exceptions and demonstrate why a new exception is needed to comply with the legislature's directive and with budget limitations in the JTA. ODOT's findings and reasons document clearly indicates that the South Dundee Connection is an interim interchange that will be removed when the Bypass Project is extended to Dayton. It clearly indicates that the new exception is needed to build Phase 1 of the Bypass Project within available funding constraints. It also states ODOT's ultimate intention to build the Bypass Project as identified in 2011, with the single modification to the Fulquartz Landing Road realignment. Should ODOT change its mind at some future time and decide to make the South Dundee Connection permanent, a new or modified goal exception will be required since the Bypass Project authorizes only four permanent interchanges. Until such future time, however, ODOT and Yamhill County are entitled to rely on the previous land use decisions taken for the Bypass.

DLCD states that because the interchange will be in service for only an interim period, ODOT should evaluate additional at-grade rail crossing options. It says the grade-separated crossing costs more and would impact 32 acres of farmland. But as ODOT's supporting findings indicate, Oregon Highway Plan Policy 2G calls for reducing and preventing conflicts between railroad and highway users, and Action 2G.1 directs ODOT to eliminate crossings at grade wherever possible. The Board rejects DLCD's suggestion that ODOT ignore and violate its own policies. The Board further notes that ODOT's recommended alternative affects only about 9 acres of EFU-zoned agricultural land. The remaining affected acreage consists of exception and other land not protected for farm use under current zoning.

DLCD suggests that an "expedient option" for approving goal exceptions would be to repeal the existing goal exception for the East Dundee Interchange and modify the Bypass exception to exclude improvements southwest of the South Dundee Interchange. The Board rejects this option and stands by the Bypass Project as planned, primarily for the reasons justifying that interchange that were set out in the 2004 exceptions and supporting findings. The Board finds that no legal standard requires such repeal or modification and that ODOT has not requested such action as part of this application. Should ODOT, in coordination with Yamhill County and the affected cities, decide at some future time to further modify the Bypass Project, the Board will consider such modifications at that time. For now, however, this issue is not before the Board for review.

DLCD also states that the comprehensive plan amendments and goal exception must include provisions to ensure that the interim improvements are removed at such time as the Bypass is completed. The Board finds the goal exceptions are plan amendments and that they explicitly provide for the removal of the Interim South Dundee Connection when the Bypass is extended to Dayton. Nothing more is required.

Finally, DLCD objects to the proposed conditions to minimize accessibility to rural lands. The Board finds that ODOT will purchase access control along Oregon 99W and along Niederberger Road and deed back reservations of access limited to current uses or uses consistent with existing rural zoning. ODOT also will develop an interchange area management agreement to protect the function of the interchange and surrounding rural lands. Because only rural uses are permitted in affected zones, the Board finds that no further conditions are necessary.

13. At the public hearing, the Board heard testimony that was predominantly in favor of or neutral to the application. The Board heard testimony from several people that many businesses and communities west of Dayton, including coastal communities, want the Bypass approved. It also heard concerns regarding potential construction impacts along Fulquartz Landing Road that ODOT can address with affected neighbors when construction is about to begin. Several people testified that Phase 1 should extend farther south and reconnect to Oregon 99W beyond the dip in the road, where Oregon 99W expands from a two lane to a four lane highway. ODOT testified that it considered such an alternative and rejected it for several reasons, not least of which was that the cost of extending Phase 1 to this location would have exceeded its budget for Phase 1. The Board finds ODOT's testimony to be credible. The Board also heard testimony that ODOT should build the entire section from Newberg to Dayton because money to build future phases is uncertain. While the Board strongly supports completion of the Bypass Project in its entirety, it recognizes that funding is not available at this time to build the project all at once, and it finds that something needs to get built now to relieve the congestion on Oregon 99W in Newberg and Dundee that already is harming communities and businesses along the corridor. The Board finds that it must work within the budget available to it, and that Phase 1 provides a good start that will significantly reduce congestion on Oregon 99W in Newberg and Dundee.

## CONCLUSIONS

For all of the reasons stated above, the Board concludes that the proposed amendments and goal exceptions comply with all applicable land use review standards and are hereby approved.

## DECISION

Based on its determination that the proposed amendments and goal exceptions comply with all applicable standards, the Board hereby:

1. Amends the Yamhill County Comprehensive Plan to include new exceptions to Statewide Planning Goals 3, 11 and 14 to authorize the Interim South Dundee Connection.

2. Amends the Yamhill County Comprehensive Plan to include modifications to the Statewide Planning Goals 3, 11 and 14 exceptions approved in 2011 for the Fulquartz Landing Road Realignment.
3. Amends the Yamhill County Comprehensive Plan policies relating to the Newberg Dundee Bypass Project to accommodate Phase 1 of the Project.
4. Amends the Yamhill County Transportation System Plan to identify the Phase 1 Interim South Dundee Connection and the modifications to the Fulquartz Landing Road Realignment.
5. Amends Yamhill County Zoning Ordinance Section 908 *et seq.* relating to the Interchange Overlay District to accommodate Phase 1 of the Bypass and address these modifications.