

BEFORE THE BOARD OF COMMISSIONERS  
OF THE COUNTY OF YAMHILL

IN THE MATTER OF Consideration of	)	
Comprehensive Plan Amendments, Including	)	FINDING OF FACTS AND
Exceptions to Goals 3, 11 and 14, to Allow	)	CONCLUSIONS OF LAW
the Siting of the Newberg-Dundee Bypass	)	
and East Dundee Interchange.	)	

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 approve exceptions to Statewide Planning Goals 3, 11 and 14 to authorize the Newberg Dundee Bypass and the East Dundee Interchange. This matter then came before the Board on September 23 and 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 application, the Board makes and adopts the following findings of fact and conclusions of law in support of its decision on 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 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).

2. The proposed Bypass would be a new four-lane, limited access highway beginning east of Newberg, near the western bottom area of Rex Hill, and terminating near the existing intersection of Oregon 99W and Oregon 18 (commonly called “McDougal Corner”) north of the City of Dayton. Some portions of the Bypass would be located on rural lands, while others would be located on urban or urbanizable lands inside

the urban growth boundaries (UGBs) of Newberg and Dundee. Those portions of the Bypass located inside urban areas do not require goal exceptions. Indeed, Newberg and Dundee already allow for the Bypass in their local TSPs. However, the portions located on rural lands east of Newberg, between Newberg and Dundee and west of Dundee all require goal exceptions. These portions include the terminal interchanges east of Newberg and near Dayton.

3. 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 the East Dundee Interchange; (2) an Interchange Area Overlay Zone, which is a new land use regulation that would regulate uses on unincorporated lands located in the vicinity of the proposed Bypass interchanges, and (3) amendments to the Yamhill County Zoning Map to apply the Interchange Area Overlay Zone to the areas regulated by that overlay zone. The adopted comprehensive plan policies include policies to protect the identified functions of the Bypass to serve statewide and regional traffic by limiting permitted development near interchanges, as well as policies to protect nearby rural and resource lands from urban pressures that may result from development of a new limited access facility in the area. Separate ordinances and findings were prepared for and adopted by the Board for the comprehensive plan and zoning amendments referenced in this paragraph. The Board takes official notice of those ordinances and their supporting findings. Because those ordinances and findings also have relevance to the standards governing the adoption of the goal exceptions for the Bypass and the East Dundee Interchange, the Board incorporates them herein by this reference.

4. The Bypass and the East Dundee Interchange (together, “the Bypass Project”) are components of a larger project known as the Newberg-Dundee Transportation Improvement Project (“NDTIP”). Other NDTIP components include improvements to other parts of Oregon 99W; improvements to local street systems not addressed by the Bypass Project; and an “Alternative Modes and Land Use” program aimed at reducing the number of vehicles traveling along the Oregon 99W/Bypass corridor. These other components are not part of the current proceeding before the County, and they are not authorized by this decision. Planning for these other components is expected to occur over the next few years, when the Bypass Project enters its “design” phase. ODOT has entered into Intergovernmental Agreements (“IGAs”) with Yamhill County and with the cities of Dayton, Dundee and Newberg which outline the planning process for the completion of the Design Environmental Impact Statement during the design phase of the project. As these IGAs also have relevance to the current proceeding, the Board takes official notice of them and incorporates them by reference herein.

5. Consistent with the Land Conservation and Development Commission’s Transportation Planning Rule (“TPR”), set out at Oregon Administrative Rules (“OAR”) Chapter 660, Division 12, the proposed exceptions to Goals 3, 11 and 14 address and establish the need, mode, function and general location (which is specified as a corridor) for the Bypass and the East Dundee Interchange. Later, during the design phase of the

Bypass Project, ODOT will determine the precise alignment for the Bypass and the East Dundee Interchange.

Also during the design phase, ODOT will determine the location of supporting roadways, crossing roadways and interchange connections and identify modifications or improvements to existing elements of the local street network that are necessary to support the Bypass function or to achieve compliance with regulatory standards. Some of the road network modifications and improvements may require additional local land use decision-making, which would take place prior to the issuance of a final Design Environmental Impact Statement.

ODOT also will consider and determine appropriate mitigation measures during the design phase, including mitigation of impacts to riparian resources and wildlife habitat. These mitigation measures will address the requirements established by the Collaborative Environmental and Transportation Agreement for Streamlining (“CETAS”) Record of Agreement/Consensus for the Newberg-Dundee Transportation Improvement Project (hereinafter “CETAS Record”), dated February 2, 2004 and located at Volume 7, pages 86-98 of the ODOT Supporting Documentation, which the Board incorporates into these findings by this reference. The Board finds that final determination of measures to mitigate impacts to natural resources will require additional land use decision-making by Yamhill County. Only after ODOT has completed the design phase of the Bypass Project can ODOT go forward with construction of the Bypass and East Dundee Interchange.

6. As provided for in the Oregon Highway Plan (“OHP”), which is the highway element of ODOT’s transportation system plan required by OAR 660-012-0015(1), the Bypass would function as a “Statewide Highway”, an “Expressway” and a “freight route.” See OHP Policies 1C and 1H and Appendix D. Under OAR 660-012-0015(2)(a), county TSPs must be consistent with adopted elements of the State TSP. For reasons discussed throughout these findings, the Board finds that the Bypass Project is consistent with ODOT’s adopted OHP.

As defined in OHP Action 1A.1, the primary function of a *Statewide Highway* is to provide inter-urban and inter-regional mobility and provide connections to larger urban areas, ports and major recreation areas that are not directly served by Interstate Highways. A secondary function is to provide connections for intra-urban and intra-regional trips. The management objective of statewide highways is “to provide safe and efficient, high-speed, continuous-flow operation” in urban and rural areas, with minimal interruptions to flow in urban areas. See OHP 1A.1. As a Statewide Highway, the Bypass would take over the function that existing Oregon 99W currently provides from east of Brutscher Road to the intersection of Oregon 99W and Oregon 18 (McDougal Corner). Existing Oregon 99W connects the Newberg-Dundee urban area with the Portland metropolitan area to the northeast and with McMinnville and the Oregon coast to the west and south. It is a primary route for tourist traffic between the Willamette Valley and Oregon coastal communities. It also provides the Portland metropolitan area with access to Spirit Mountain Casino and to the wineries of Yamhill County.

Expressways are a subset of Statewide Highways. As defined in OHP Action 1A.2, Expressways “provide for safe and efficient high-speed and high volume traffic movements.” Their primary function is to provide for interurban travel and connections to ports and major recreational areas with minimal interruptions. A secondary function is to provide for long distance intra-urban travel in metropolitan areas. The Board finds that an Expressway designation for the Bypass is consistent with and, indeed, mandated by the OHP Bypass Policy (1H) and Action 1H.2, which directs ODOT to design new bypasses “for moderate to high speeds at freeway or Expressway standards for regional and statewide traffic.” The Board also finds that as an Expressway, the Bypass would provide for safe and efficient moderate to high-speed and high volume traffic movements from Newberg to Dayton and beyond. Indeed, with the Bypass, an Expressway designation will extend continuously along Oregon 99W for approximately 45 miles from Rex Hill to the Van Duzer Forest Corridor.

The State Highway Freight System is intended to facilitate interstate, intrastate and regional movements of trucks. As described in OHP Policy 1C, it is state policy to recognize the importance of maintaining efficient through movement of goods on major truck routes, which include Oregon 99W. OHP findings regarding freight indicate that freight depends upon timely and dependable movement of goods over the system, and also that highway efficiency for goods movement in an expanding economy requires investments in infrastructure to reduce congestion on freight routes. OHP Action 1C.4 directs ODOT to consider the importance of timeliness in freight movements in developing and implementing plans and projects on freight routes. OHP Action 1C.3 establishes a preference to treat designated freight routes as Expressways both outside of and within urban growth boundaries. The Board finds that the Bypass, which would be built to Expressway standards and which would serve statewide and regional traffic, will facilitate the timely and efficient movement of goods to and through the Newberg-Dundee area. Indeed, the Board heard significant credible testimony in support of the Bypass from businesses extending from Newberg to McMinnville confirming a very serious need to improve freight mobility along the Oregon 99W corridor in order for their businesses to remain competitive and successful.

7. As interpreted by the Department of Land Conservation and Development (“DLCD”), the TPR requires separate and independent justification, in the form of goal exceptions, for intermediate interchanges proposed to be located along limited access highways in rural areas. Accordingly, the East Dundee Interchange, including the roadway connecting that interchange to existing Oregon 99W, requires separate goal exceptions under the TPR. However, the Oregon 219 Interchange does not require goal exceptions because ODOT is proposing to locate it entirely within the City of Newberg’s UGB. If, at some future time, ODOT should determine that some or all of the Oregon 219 Interchange needs to be located on rural lands, goal exceptions then would be required to justify its location on rural lands.

8. The criteria applicable to the plan amendments authorizing the Bypass and East Dundee Interchange are set out in ORS 215.283(3)(a), ORS 197.732, OAR 660 Division 4, OAR 660 Division 12 (the TPR), the Statewide Planning Goals, the Yamhill County

Comprehensive Plan and Transportation System Plan, the Yamhill County Zoning Ordinance, and the OHP. ODOT's "Findings of Fact and Statement of Reasons in Support of Exceptions to Goals 3, 11 and 14" (hereinafter the "Exceptions Document") identifies the specific standards within these authorities that are relevant to the Bypass Project. Except as noted otherwise in these findings, the Board finds and concludes that the standards identified and addressed in ODOT's Exceptions Document are the only standards that apply to the Bypass Project.

9. The Exceptions Document contains detailed findings of fact and reasons supporting exceptions to Goals 3, 11 and 14 and explaining how the Bypass Project complies with the Oregon Highway Plan, the Yamhill County Comprehensive Plan and all other applicable review standards. Except as expressly noted otherwise in these findings, the Board finds ODOT's analysis of compliance with the applicable standards in its Exceptions Document to be credible, thorough, persuasive and correct. Accordingly, with the exceptions noted, 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.

An "Errata Sheet" submitted into the record by ODOT and dated July 22, 2004, indicates that the land use designations on pages 9 and 16 of the Exceptions Document incorrectly label as "rural residential" some lands that are zoned for exclusive farm use. The Board accepts the corrections set out in ODOT's Errata Sheet regarding the designations of these lands and incorporates them into the Exceptions Document by this reference.

ODOT's "Errata Sheet" also indicates that the Oregon Transportation Commission amended OHP Policy 1B in January, 2004, but that the Exceptions Document addresses *former* Policy 1B instead. The Errata Sheet sets out new findings addressing compliance with the *amended* Policy 1B. The Board accepts and agrees with ODOT's analysis of compliance with the amended Policy 1B as set out in ODOT's Errata Sheet, and it incorporates that analysis into the Exceptions Document by this reference. The Board incorporates the new findings in the form of a supplement to the discussion of *former* Policy 1B because it finds that the discussion of former Policy 1B has some continuing relevance. To the extent that the two sets of findings may conflict, the Board finds that the discussion of compliance with amended Policy 1B will control.

Finally, the Errata Sheet expands on a footnote in the Exceptions Document to explain how ODOT determined adverse impacts. The footnote indicates, and the Board finds, that ODOT applied a factor of 0.6 to each build alternative corridor to determine adverse impacts, because the bypass's actual footprint would only require about 60 percent of the area with any of those corridors. The Board finds that ODOT's application of this factor presents a more realistic determination of actual impacts, since approximately 40 percent of the land within the proposed Bypass corridor will not be developed, and it incorporates this revised footnote into the Exceptions Document by this reference.

10. During the course of the public hearings, a great deal of testimony was provided both in support of and against the Bypass Project. Much of the testimony focused on existing and future traffic congestion in the region, impacts to businesses operations and to the region's ability to retain and attract new businesses, impacts to agricultural lands and farm operations, impacts to community livability, and possible alternatives to the Bypass and the East Dundee Interchange. Some of the evidence presented was conflicting.

Having considered the evidence and testimony carefully, the Board finds the evidence and testimony provided by ODOT and its consultants, including ODOT's prime consultants (Parametrix Inc. and URS Corporation) and ODOT's sub-consultants (Kittelsohn and Associates, Inc., Geodatascape, Inc., Dorman and Associates and Mark Greenfield), to be more thorough and 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. This includes, but is not limited to, the testimony of ODOT and its consultants regarding existing and anticipated traffic volumes and traffic impacts; traffic engineering and operational feasibility issues; land use impacts; impacts to agricultural lands; consistency with TPR, OHP, County Comprehensive Plan and statewide planning goal standards; the need for the Bypass and the East Dundee Interchange; and whether or not alternative locations or methods not requiring goal exceptions can reasonably accommodate the identified transportation needs.

Accordingly, the Board also adopts as its own findings of fact and reasons, and incorporates by reference in their entirety herein, the facts and analysis set out in (1) ODOT's rebuttal to opponent testimony entitled "ODOT Responses to Opponents' Questions and Comments" dated July 22, 2004 (hereinafter "ODOT Responses Document"); (2) a letter from Bonnie Heitsch, Oregon Department of Justice to the Yamhill County Board of Commissioners and Planning Commission dated August 6, 2004 (hereinafter the "Heitsch letter"); and (3) a letter from Bonnie Heitsch to the Yamhill County Board of Commissioners and Planning Commission dated August 27, 2004 (hereinafter "Heitsch rebuttal letter"). The Board also believes and relies on the facts and reasoning set out in the supporting reports and memoranda prepared by ODOT or its consultants or relied on by ODOT that are expressly identified in the Exceptions Document, the ODOT Responses Document, the Heitsch letter, the Heitsch rebuttal letter or these findings.

## **B. Exceptions Justifying the Newberg-Dundee Bypass**

1. Based on the facts and reasons set out below and in ODOT's Exceptions Document, the Board concludes that a transportation need for the Newberg-Dundee Bypass exists that is statewide, regional and local. The Bypass is needed to accommodate the safe and efficient movement of people and goods around and through the Newberg-Dundee region and between the Newberg-Dundee region and other regions of the state. The Bypass also is needed to remove unacceptably high levels of congestion on existing Oregon 99W (exceeding 1.0 volume to capacity in both Newberg and Dundee

by the year 2025 under no-build conditions), thereby freeing up capacity on that highway to serve local and regional transportation movements.

2. Oregon 99W presently serves as both a Statewide Highway/Freight Route and as the “main street” for Newberg and Dundee. The highway connects Newberg and Dundee to the Portland metropolitan region, McMinnville, the Oregon coast (via Oregon 18) and other areas. Oregon 99W is a primary route for tourist traffic between the Willamette Valley and Oregon coastal communities. It provides the Portland area with access to Spirit Mountain Casino, which is currently the number one tourist destination in Oregon with an estimated 3.3 million visitors in 2002, and to the wineries of Yamhill County. Weekday commuters use Oregon 99W to travel between the Newberg-Dundee urban area and McMinnville and between Yamhill County and the Portland metropolitan area. Trucks use Oregon 99W to haul freight to and through this region.

3. Over the past decade, traffic on Oregon 99W in downtown Newberg and Dundee has increased by approximately 40 percent. On both weekdays and weekends, lines of vehicles often stretch along the highway for more than a mile in both directions from the intersection of Oregon 99W and 5<sup>th</sup> Street in Dundee, where Oregon 99W has just one travel lane in each direction. This level of congestion already exceeds ODOT’s peak hour volume to capacity (“v/c”) performance standard for Statewide Highways that are also freight routes, which is 0.75 v/c inside urban growth boundaries and 0.70 v/c on rural lands.

Traffic estimates indicate that 20 years from now, this congestion will get much worse. By the year 2025, with some local road improvements but no bypass, average daily vehicle trips on Oregon 99W in downtown Newberg are expected to increase by another 40 percent, from approximately 40,000 vehicle trips to an estimated 56,000 vehicle trips. In downtown Dundee, average daily vehicle trips are expected to increase by nearly 50 percent, from approximately 32,000 today to an estimated 47,000 vehicle trips in 2025.

By 2025, ODOT projects that downtown Dundee and Newberg will experience, respectively, 14 and 15 hours of congestion per day, during which traffic volumes would exceed ODOT’s performance standard for a statewide highway/freight route. The Board believes these estimates and so finds. It further finds that under a no-build scenario, it would take more than 40 minutes to drive the approximately 11 mile distance from the Rex Hill area immediately east of Newberg to McDougal Corner near Dayton, compared with 12-15 minutes with the Bypass. Such high levels of congestion would have adverse economic impacts (through delay, reduced movement of people and goods, reduced accessibility to businesses and markets, etc.), social impacts (increased noise, increased air pollution, reduced community cohesion, etc.) and safety impacts (increased potential for crashes, reduced ability to provide emergency services or to handle emergency evacuations in a timely manner). The Board concludes from these findings that such impacts would cause significant harm to the economic, social and environmental health and welfare of the region and would significantly reduce the region’s overall quality of life.

4. For reasons stated in the Exceptions Document, the Board finds that the Bypass is needed to provide significant congestion relief to travelers along existing Oregon 99W and to improve the movement of people and goods for all users in the Oregon 99W corridor. It is needed to accommodate substantial volumes of recreational traffic traveling between the Portland metropolitan area and the central Oregon coast, the Spirit Mountain Casino and Yamhill County wineries. It is needed to accommodate business and freight traffic traveling between the coast, McMinnville, the Newberg-Dundee urban area and the Portland area and I-5 corridor. It is needed to facilitate and improve the safety of local traffic and pedestrian movements within the Newberg-Dundee urban area. It is needed to maintain and improve the attractiveness of Newberg and Dundee as places to do business and to retain existing businesses located in and around Newberg, Dundee and McMinnville. By removing approximately 25,000 anticipated year 2025 daily statewide and regional trips from existing Oregon 99W in Newberg and (with the East Dundee Interchange) approximately 38,000 daily statewide and regional trips from existing Oregon 99W in Dundee, the Bypass would free up existing Oregon 99W to serve local and remaining regional trips. With this reduction in statewide and regional traffic volumes, the year 2025 volume to capacity ratio on existing Oregon 99W would be reduced to a level that would then meet city, county and ODOT roadway performance standards for arterial highway facilities.

5. The Board heard no testimony contradicting ODOT's assertions that congestion is a very serious problem impacting statewide, regional and local travel within the existing Oregon 99W corridor. Indeed, even opponents of the proposed Bypass acknowledged that the transportation problems the region is experiencing are real and demand attention. Testimony from these opponents instead focused on resolving this serious problem by using alternatives to a bypass or by locating a bypass within a different corridor than the one recommended for adoption. For reasons set out below, the Board believes that the identified transportation need can reasonably be accommodated only by a bypass. The Board further believes that the public testimony and the whole record very strongly support ODOT's identified need for the Bypass to serve anticipated statewide, regional and local traffic volumes to the year 2025.

The Board heard compelling testimony regarding the need for the Bypass from the leaders of municipal governments located along the Oregon 99W corridor in Yamhill County. Dave Haugeberg, speaking on behalf of Mayor Stewart of Newberg, testified that much like McMinnville has done, Newberg would like to develop an attractive downtown. However, this goal is thwarted by tens of thousands of trucks and cars that pass through Newberg's downtown every day. Mr. Haugeberg stated that during peak traffic hours, a semi-truck passes by City Hall on Oregon 99W every ten seconds, making it very difficult for Newberg to attract businesses to the city's downtown. He said that this traffic is pedestrian and shopper unfriendly, creates noise and pollution, and poses safety concerns both for people crossing streets and for emergency response vehicles. The Board agrees with this testimony and so finds. Indeed, the Board finds that by 2025, under a No-Build scenario, downtown Newberg would experience 2200 daily freight trips

traveling eastbound and another 2200 daily freight trips traveling westbound, while Dundee would experience 3700 daily freight trips through its downtown.

Similarly, Mayor Windish of Dayton testified that traffic at the intersection of Oregon 99W and Oregon 18 has been a nightmare for years and that the Bypass is needed to benefit Dayton's economy. Mayor Gormley of McMinnville testified that difficulties in getting products into the city or to market due to the heavy congestion along Oregon 99W has seriously impeded efforts to attract new businesses and family wages jobs to McMinnville. Mayor Gormley stated that transportation is key to many industries and to many manufacturing processes; that congestion on Oregon 99W has forced companies to leave the McMinnville area and take high paying jobs with them; and that loss of businesses is bad for McMinnville and Yamhill County. Mayor Worrall of Dundee testified that widening Oregon 99W to five lanes in Dundee would "destroy Dundee" by removing at least half of the businesses in the city's downtown and creating a 300 foot wide dead zone extending from Oregon 99W to the south side of the railroad tracks paralleling Oregon 99W because there is inadequate space to build businesses there. Mayor Worrall introduced letters from the proprietors of Rex Hill Vineyards, Sokol Blosser Winery, and Lange Winery stating respectively that the Bypass needs to become a reality, that congestion on Oregon 99W adversely affects safety and tourism, and that the cost impact associated with delay on Oregon 99W is costing them time and money and endangering their business. The Board believes and agrees with all of this testimony and it so finds.

Numerous Yamhill County business owners or representatives provided similar testimony to the Board. For example, Rosemari Davis, who is the CEO of Willamette Valley Medical Center in McMinnville, testified that in just 10 years the hospital emergency room volume has increased from 6000 (what?? Patients? Visits?) a year to over 20,000 a year, with motor vehicle accidents accounting for much of the overall volume. She emphasized that the Bypass would reduce the accident rate within the corridor by "big numbers." She added that anticipated growth in congestion along the Oregon 99W corridor could have very serious adverse health effects because Willamette Valley Hospital ships out its thoracic surgery and multiple trauma cases and does so mostly by ground transport. Kurt Zetsche, who is president of Cascade Steel Rolling Mills in McMinnville, testified that his company ships about 1200 to 1400 trucks of finished product a month and receives 250 to 300 shipments of materials each month that enable the company to produce steel. He said it is becoming very difficult for his company to compete in the market because of the delays associated with transporting goods and materials. Indeed, Mr. Zetsche told the Board that if he had to choose a location for his plant today, he would select a location along the I-5 corridor rather than McMinnville. He said it is imperative that a timely and efficient transportation connection be provided between McMinnville and the I-5 corridor. Willy Lunn, representing Argyle Winery in Dundee, testified that if Argyle Winery is forced to relocate, it will relocate outside of Yamhill County. And Sean Carlton, the national brand manager for Archery Summit in Dundee, stated that his company's financial success is tied directly to retail sales in Oregon and that congestion in Dundee will keep customers away if it requires 20 minutes for people to travel 1.2 miles. The Board finds

all of these people to be credible witnesses, and it agrees with and accepts as fact the statements that they made.

6. The Exceptions Document sets out thresholds for determining whether alternatives to the Bypass (and to the East Dundee Interchange) that do not require goal exceptions can “reasonably accommodate” the identified transportation need. Identified thresholds include operational feasibility and minimum transportation performance; cost; economic displacements, community livability and consistency with local adopted TSP and community vision statements; safety; and compliance with Oregon Highway Plan requirements.

The Board finds that these thresholds are reasonable and appropriate for the reasons set out in the Exceptions Document and below. In so finding, the Board takes particular notice of the fact that the OHP and the goals, policies and standards contained therein constitute the modal system plan for highways prepared and adopted by ODOT pursuant to OAR 660-012-0015(1) and OAR 731-015-0055. As such, the OHP, including its goals, policies and standards (including the maximum volume to capacity ratios contained in Table 6 of the OHP), as well as ODOT’s interpretation of the OHP and its provisions, warrants considerable weight by the Board and is an appropriate threshold to determine reasonableness pursuant to OAR 660-012-0070(6).

The Board expressly endorses the minimum performance threshold set out in the Exceptions Document, for the reasons stated therein. Further, because the OHP designates Oregon 99W as a Statewide highway and freight route, and because the identified transportation need is to serve statewide and regional traffic and freight movement and to separate this traffic from local traffic, the Board believes and finds that non-exception alternatives, in order to be considered reasonable, must be consistent with the functions and management objectives of Statewide Highways and freight routes as identified in the 1999 OHP and described in Paragraph A.6 above. The Board concludes that alternatives that are inconsistent with these policies or are incapable of achieving these functions and management objectives will be deemed incapable of reasonably accommodating the identified transportation need.

The Board expressly agrees with ODOT as to its justification for using economic displacements, community livability and consistency with local adopted TSPs and community vision statements as a threshold. As applied by ODOT to the East Dundee Interchange, this threshold considers whether an alternative not requiring exceptions would have unduly adverse effects on the City of Dundee in terms of economic dislocations; Dundee’s existing and future economic viability, vitality and attractiveness; Dundee’s outward appearance; development of a pedestrian friendly city environment within Dundee; and the city’s ability to achieve a reasonable vision for future growth and development consistent with standards in the city’s comprehensive plan and TSP. The Board finds that this threshold is appropriately based upon acknowledged policies in Dundee’s comprehensive plan and TSP. It further finds that ODOT has developed a reasonably objective measure for determining compliance with this threshold that is

consistent not only with Dundee comprehensive plan and TSP policies but also with a community's right to determine its desired urban form.

The Exceptions Document does not address in detail how cost would be used as a threshold. In its testimony to the Board and Planning Commission, ODOT opined that for alternatives to the Bypass *corridor* not requiring goal exceptions, cost should be *considered* in determining their reasonableness but *not relied on by itself* to eliminate any alternative. This is because a corridor study covering a very large geographic area, such as that performed here by ODOT under the National Environmental Policy Act, does not provide sufficiently detailed information at a site-specific level based on a conceptual design of the roadway to determine costs with any significant degree of accuracy. The Board agrees with ODOT and concludes that for non-exception alternatives to the recommended Bypass corridor, cost should not be a controlling factor in determining their reasonableness. Further, because cost estimates provided at a corridor level of analysis (called 'planning estimates' by ODOT) are based on unit costs of questionable accuracy, given the reduced level of site-specific analysis, the Board finds that cost should enter into the equation only if the Board first determines that non-exception alternatives can otherwise reasonably accommodate the identified transportation need when measured against the other identified thresholds.

With respect to alternatives to the East Dundee Interchange that do not require goal exceptions, ODOT testified that more reliable cost information is available because these alternatives cover a much smaller area and because ODOT engaged in conceptual design closer to that associated with a Design Environmental Impact Statement. Still, ODOT stated that these cost estimates remain preliminary -- for approximate comparison purposes only -- in the absence of design level engineering beyond the concept level, and the Board so finds. In line with this level of accuracy, ODOT suggested that an East Dundee Interchange alternative estimated to cost double or more the estimated cost of the East Dundee Interchange would seem unreasonable because the excessive cost would be an inefficient use of public funds. In the absence of very significant mitigating factors, such as preservation of substantially more acres of agricultural land, the Board agrees with ODOT's suggestion.

Because the record does not demonstrate any such significant mitigating factors associated with the non-exception alternatives that were presented to the Board, the Board concludes that when an alternative would cost approximately double or greater the cost of the East Dundee Interchange, that fact reflects poorly on the reasonableness of that alternative to meet the identified transportation need. Still, as with Bypass corridor alternatives, the Board finds that cost should not be the sole basis for eliminating any non-exception alternative. The Board also finds that it is appropriate to consider and compare the costs of the East Dundee Interchange and its non-exception alternatives separate and apart from the costs associated with the larger Bypass corridor because the TPR requires that the East Dundee Interchange be justified as an independent transportation facility through its own separate goal exceptions.

Another factor that the Board finds relevant concerns the level of disruption to the local transportation network and the impacts of associated mitigation. Existing roads that provide direct access to local residences or that serve a neighborhood collector function cannot be converted into a Statewide highway and freight route without providing new local accesses or collector roads as replacements to serve affected neighborhoods. Those new roads will have their own associated adverse impacts which contribute to the cumulative impact of an alternative. The Board finds that it is appropriate to consider these impacts.

7. Alternatives to the Bypass not requiring goal exceptions include alternative travel modes (such as transit, pedestrian and bicycle travel), transportation system management (“TSM”) measures, improvements to existing transportation facilities, and combinations of these three methods. For the reasons stated in ODOT’s Exceptions Document, the ODOT Responses Document, the Heitsch letter and these findings, the Board finds that these methods, alone and in combination, cannot reasonably accommodate the identified transportation need for the Bypass.

As part of the environmental analysis performed in accordance with requirements of the National Environmental Policy Act (“NEPA”), ODOT examined the feasibility of employing a combination of alternative travel modes, TSM measures and improvements to the local road system in lieu of a bypass. Among other project elements, ODOT looked at providing express bus service every 15 minutes between the Newberg-Dundee urban area and the Portland metropolitan area, adding transit stations with park and ride lots every few miles along Oregon 99W and Oregon 18, and providing additional transit service to complement the express bus service. It looked at adding bicycle lanes within city limits and adding bicycle and pedestrian links to express bus stations. ODOT also considered a wide range of TSM measures, including driveway consolidation, raised medians and new turning lanes along Oregon 99W, the use of traffic calming measures, the use of transportation demand management measures such as dial a ride shuttle service, employee shuttles to transit stations, carpooling programs, telecommuting, compressed work weeks and the like. And ODOT examined roadway improvements to Oregon 99W and local roadways like Edwards Road and Dayton Avenue that could connect Dundee and Newberg.

However, ODOT found that these alternatives, taken together and combined with Oregon 99W improvement projects undertaken over the past 30 years, still would not decrease the level of congestion sufficiently to eliminate the need for the Bypass. Even with these improvements, the year 2025 v/c ratio would be approximately 0.90 in Newberg and 1.25 in Dundee, compared to a state v/c standard of 0.75 for Oregon 99W. ODOT determined that in order to meet state standards, Oregon 99W would need to be widened from three lanes to seven lanes in Dundee; from six lanes to eight lanes within the downtown Newberg couplet; and from four lanes to eight lanes between Newberg’s east UGB and the downtown couplet. ODOT also concluded that this combination of alternatives would not improve the movement of through traffic or the efficiency of the overall regional transportation network, nor would it enhance the safety of travelers

through the area or the safety, economy, social fabric or livability of the communities of Newberg or Dundee. The Board believes ODOT's testimony and so finds.

The Board further agrees with ODOT that the required widening of Oregon 99W in particular would significantly adversely impact the cities of Newberg and Dundee, making both downtowns unrecognizable due to the displacements required for right of way. The Board finds that the resulting development pattern would discourage bicycle travel, make pedestrian crossings more dangerous, discourage a compact urban form of redevelopment, discourage new business investment, create a significant barrier between neighborhoods, and decrease overall livability. Like ODOT, the Board concludes that a combination of alternative modes, TSM and improvements to existing roadway facilities cannot reasonably accommodate the identified transportation need.

8. The Board heard testimony from Friends of Yamhill County and 1000 Friends of Oregon emphasizing a need for "near term" improvements to help ease the congestion problems along Oregon 99W. The Board does not disagree that such improvements are necessary, and indeed the Board finds that the TSM alternative contains a variety of non-Bypass improvements. Still, as described in the preceding paragraphs, those improvements are not sufficient by themselves to reasonably accommodate the statewide, regional and local transportation needs identified by ODOT and confirmed by virtually all persons who appeared before the County. Those improvements cannot meet the minimum performance threshold or the management objectives for Statewide highways and freight routes. They will not provide for timely and dependable freight movement that both the existing and an expanding economy require. They do not support local livability objectives in acknowledged plans. The Board concludes that the fact that near term improvements are desirable in no way undermines or defeats the justification for the Bypass. Nonetheless, the Board encourages ODOT to work on interim improvements to provide some modicum of relief to the congestion on Oregon 99W.

9. The Board finds that ODOT considered improvements to Bell Road as a possible alternative to the Bypass. For the reasons set out below, in Section 7.4.3 of the Exceptions Document, in the Heitsch letter and in memoranda prepared by Kittelson & Associates dated April 11, 2003 and September 11, 2003, incorporated herein in their entirety by this reference, the Board concurs with ODOT that Bell Road cannot reasonably accommodate the identified transportation need.

The Board finds that at an approximate length of about 20-25 miles and with an estimated travel time of 35-40 minutes, the two identified Bell Road alternatives would take too long to travel to constitute a reasonable alternative to the Bypass. The Board agrees with ODOT that the Bell Road alternatives are comparable to the no-build condition in the year 2025. As such, they are unlikely to remove much traffic from Oregon 99W.

The Board further finds that one-third to one-half of each of the two Bell Road alternatives would have slopes greater than 10 percent, and another approximately 15-20 percent of these alternatives would have slopes between six to ten percent. These steep

slopes would require significant modifications to the horizontal and vertical curvature, necessitating substantial cuts and fills as well as truck climbing lanes. The Board finds that truck climbing lanes are slow and inefficient for moving freight. The Board believes and finds that it is more difficult and hazardous for trucks to drive on steep, curvy roads, as attested by the use of runaway truck escape ramps on Cascade mountain passes in Oregon with slopes less steep than would occur here. The Board also finds it self-evident that the costs associated with building on very steep slopes, and the potential environmental damage that can occur in the form of slides or slumping, are much greater than building on flat lands. The Board finds that the recommended Bypass corridor, by comparison, would be located on predominantly flat terrain (less than 3 percent slope) on which truck travel would be faster, easier and safer. Because one of the identified transportation needs for this Project is the need to move trucks safely and efficiently, the Board concludes that the Bell Road alternative cannot reasonably accommodate that need for these reasons.

The Board also finds that Bell Road currently is used to provide rural area residents with access to local and regional destinations. As such, it serves the functions of a local and collector roadway. Many properties rely on Bell Road for their access. Were Bell Road converted into a limited access expressway to accommodate the over 25,000 statewide and regional trips that would pass through the Newberg-Dundee area each day by the year 2025, it would no longer be available to provide direct access to the local residents. New access roads would be required to meet their needs. These roads likely would involve significant out-of-direction travel and, like Bell Road, would have steep slopes and be hard to build in a safe manner. These roads also would remove additional land from the agricultural land base and would add more overall cost to the project.

Finally with regard to Bell Road, the Board finds that because neither Bell Road alternative would be attractive enough to divert large volumes of traffic off of Oregon 99W, ODOT still would need to widen Oregon 99W to four travel lanes through Dundee and south to McDougal Corner. The Board agrees with ODOT that this would result in redundant transportation infrastructure as well as cost, and it finds that the impacts of such widening on Dundee would be unacceptable, for reasons explained below in the findings addressing the East Dundee Interchange.

For these same reasons, the Board also rejects an alternative route presented by John Ekman at the July 22, 2004 public hearing that would travel well north of Dundee and existing Oregon 99W along Kuehne Road between the city of Lafayette and a location on Oregon 99W between Newberg and Dundee. The Board finds that this route would extend far out of direction over lands that have steep slopes and would be difficult to build upon.

10. ODOT also considered improvements to Edwards Road and Dayton Avenue in lieu of building the Bypass. For the reasons set out below, in Section 7.4.3 of the Exceptions Document and the various memoranda prepared by Kittelson & Associates, Inc. and David Mayfield that are identified in that section, and in the ODOT Responses

Document and Heitsch rebuttal letter, the Board concurs with ODOT that an Edwards/Dayton connection cannot reasonably accommodate the identified transportation need.

The Board finds that the improvements to Edwards Road and Dayton Avenue that would be necessary in lieu of a bypass would fail to bring Oregon 99W back into compliance with ODOT v/c performance standards for a Statewide highway and freight route. It finds that using Edwards Road and Dayton Avenue to serve statewide and regional transportation movements would be incompatible with and detrimentally impact and disrupt local residential development and roadway circulation patterns because Edwards Road and Dayton Avenue directly and indirectly serve many private residences and function to connect these residences to the local and arterial street systems. The Board also finds that Edwards Road and Dayton Avenue would continue to be needed to serve this connector function, even with construction of a Bypass. Hence, these roads would require replacement were Edwards Road and Dayton Avenue to substitute for the Bypass.

Both Columbia Empire Farms (“CEF”) and 1000 Friends of Oregon have challenged ODOT’s determination that improvements to Edwards Road and Dayton Avenue cannot reasonably accommodate the identified transportation need. However, the Board finds that many of the assumptions upon which both 1000 Friends and CEF base their respective examinations are incorrect and inaccurate and have not been considered for engineering constraints. In his letter on behalf of CEF dated August 6, 2004, attorney Jeffrey Condit sets out four “building blocks” that he asserts support a reasonable alternative to the Bypass. One of those building blocks is an Edwards Road-Dayton Avenue connection. Mr. Condit argues that with this connection and with alternate travel modes and transportation system management, year 2025 traffic volumes on Oregon 99W would be only 1000 vehicles more per day than they are now. The Board disagrees. It finds that Mr. Condit has misinterpreted and misapplied the data in the Exceptions Document and in memoranda prepared by Kittelson & Associates, Inc. More particularly, the Board finds that even with these measures and an Edwards Road-Dayton Avenue connection, there would be an average of 35,000 to 36,000 daily traffic volumes on Oregon 99W by the year 2025. This is in part because through traffic using other routes would return to Oregon 99W. For reasons stated in Section C of these findings, the Board finds that the traffic impacts on downtown Dundee associated with this level of daily traffic would unreasonably impact the city of Dundee.

The Board further finds that neither CEF nor 1000 Friends has demonstrated the operational feasibility of using Edwards Road and Dayton Avenue in lieu of or as a substitute alignment for the Bypass. For example, neither has shown how, from an engineering standpoint, semi-trucks, including triple trailers, can safely negotiate a sharp 90 degree turn where Edwards Road intersects with Parks Drive. The Board believes and finds that such a sharp angled turn would make it much more likely that freight trips would remain on Oregon 99W. Also, neither CEF nor 1000 Friends has provided a footprint entirely inside Dundee’s UGB containing adequately designed curvature to accommodate truck turning movements, nor have they identified or evaluated the

economic, social or environmental impacts associated with such a footprint. Similarly, neither has addressed safe and appropriate curvature for this facility where Parks Drive reconnects to Oregon 99W or evaluated the impacts associated with such curvature. Here again, the Board finds that the sharp angles required to keep these turning movements within the Dundee UGB would most likely result in truck traffic remaining on Oregon 99W.

Neither CEF nor 1000 Friends has addressed the issue of how an Edwards/Dayton connection and an Edwards/Parks connection would safely cross the railroad tracks parallel to Oregon 99W in Dundee or how they would be consistent with OHP policy to reduce rail/vehicle conflicts. As neither entity has employed the services of a traffic engineer to lend support to any of their contentions that their proposed alternative is reasonable, the Board has no factual basis to conclude that the impacts associated with this alternative are less adverse than those associated with the Bypass. The Board declines to make such assumptions or to speculate as to what the facility footprint would look like, how it would operate, or whether it can operate safely. Instead, the Board finds that neither 1000 Friends nor CEF has demonstrated that their Edwards Road-Dayton Avenue proposal in lieu of the Bypass would be safe or operationally feasible.

Overall, the Board finds that the evidence and argument provided by CEF and 1000 Friends regarding the viability of Edwards Road and Dayton Avenue as an alternative to or as a substitute alignment for the Bypass is substantially lacking both in detail and in credibility. It finds that CEF and 1000 Friends make no attempt even to address the thresholds set out in the Exceptions Document, including impacts to local access and community livability concerns. In contrast, the Board finds ODOT's analysis to be thorough, comprehensive, credible and persuasive. Based on the analysis provided by ODOT, and for the reasons stated above, the Board concludes that an Edwards Road/Dayton Avenue alternative to the bypass is unreasonable.

11. With respect to Bell Road, Edwards/Dayton improvements, a regional bypass (discussed below), the 1000 Friends "boulevard" alternative (discussed below), and other Bypass alternatives advocated by Bypass opponents (such as undergrounding the Bypass through Dundee), the Board finds that ODOT has provided detailed and credible factual information and persuasive reasoning to support findings that these alternatives cannot reasonably accommodate the identified transportation need for the Bypass. The Board further finds that in this circumstance, OAR 660-012-0020(2)(b)(C) imposes on the opponents a responsibility to provide facts to support assertions why these or other alternatives can reasonably accommodate the identified transportation need. Specifically, OAR 660-012-0020(2)(b)(C) states: "Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can *more reasonably* accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required *unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.*" (Emphasis added.)

While Bypass opponents such as 1000 Friends of Oregon, Friends of Yamhill County, Columbia Empire Farms and John Ekman have criticized the location of the proposed Bypass corridor and argued in favor of non-exception alternatives, the Board finds that no opponent has provided the kind of factual information required by OAR 660-004-0020(2)(b)(C) to support their assertions that their preferred alternatives are “more reasonable” to accommodate the identified transportation need. As the findings in Paragraph B.10 above demonstrate, these opponents routinely have asserted that one or another non-exception alternative is better without addressing whether that alternative is operationally feasible or safe or identifying and analyzing the economic, social, environmental, energy and traffic impacts associated with that alternative. In some instances, the opponents have not even identified the location of their preferred alternatives with specificity. The Board believes and finds that under OAR 660-012-0020(2)(b)(C), this is not enough. Under the applicable LCDC rule standards, it is not ODOT’s or the County’s responsibility to do that work for them.

Evaluating the reasonableness of alternatives to accommodate an identified transportation need requires consideration of a greater range of factors than just soil type or impacts to agricultural land or farm operations. This point is clearly brought home by the thresholds requirement in OAR 660-012-0070(6). In making their arguments, 1000 Friends, Columbia Empire Farms, John Ekman and others have ignored operational feasibility, safety, economic dislocations and “other factors” that may be appropriate to determining the “reasonableness” of a non-exception alternative. Instead, their approach has been entirely one dimensional. For this reason, they have failed even to make the most elementary case to support a finding that their alternative proposals could “reasonably accommodate” the identified transportation need.

12. In the process of selecting a general location for the Bypass corridor, ODOT considered many potential alternatives requiring goal exceptions. As described and depicted in Chapter 2 of the LDEIS, these included northern corridor alternatives traversing north of Newberg or through its north side; southern corridor alternatives that extended more through rural residential areas than farmland in its central segment; southern corridor alternatives that extended more through farmland than rural residential areas in its central segment (which is the current application); and “regional bypass” alternatives that extended through Marion County.

ODOT found, and the Board agrees and finds, that the overall net economic, social, environmental and energy (“ESEE”) impacts of the recommended southern alternative would not be “significantly more adverse” than the net impacts associated with the other corridor alternatives requiring goal exceptions. See OAR 660-012-0070(7)(b). In reaching this conclusion, the Board agrees with ODOT that the net adverse ESEE consequences of the two southern Bypass corridors tend to balance out each other, as shown on Table 3 of the Exceptions Document, while the northern corridor alternative that ODOT studied in greater detail has more net adverse ESEE impacts than either southern alternative.

The Board finds that a key difference distinguishing the recommended southern alternative from the southern rural residential and northern corridor alternatives is that the recommended southern corridor would maintain the 300-acre Dundee Farm (CEF) in two large, commercially viable pieces, while the northern corridor alternative and the southern rural residential alternative would fragment the farm by creating a much smaller piece of land for which urbanization pressures would be high. The Board believes and finds that the recommended alternative is more consistent with the policy objectives of ORS Chapter 215 and Goal 3 to protect agricultural land, even though it would take several more acres than the other two alternatives. The Board finds that by avoiding fragmentation, retaining both parcels in sizes at or above the minimum lot size for lands zoned Exclusive Farm Use, and providing mitigation to assure farm vehicle and equipment access between the farm parcels, the recommended alternative is more likely to maintain the commercial viability of the Dundee Farm and less likely to adversely impact farm operations there.

Regarding the “regional bypass”, the Board finds that its net adverse ESEE impacts would be significantly greater than the recommended Bypass alternative. In particular, the Board finds that this alternative would: displace over 500 acres of agricultural land, compared to about 175 acres for the recommended alternative; affect 30 to 50 percent more wetland area; require a new Willamette River crossing, impacting floodplains and threatened and endangered species; have much greater growth-inducing impacts by introducing 30,000 vehicles per day into rural northern Marion County; and not eliminate the need to widen Oregon 99W to five lanes in Dundee and four travel lanes between Dundee and McDougal Corner. The Board concludes that these substantially more adverse impacts are sufficient to eliminate this alternative as unreasonable.

13. In determining a general location for the Bypass corridor, ODOT also considered a proposal by 1000 Friends of Oregon that involved constructing a new boulevard with roundabouts through Newberg. That alternative, reproduced at page 115 of the Exceptions Document, is difficult to follow in terms of its location. Based on that drawing, ODOT found, and the Board agrees and finds, that this alternative would require goal exceptions. But even if this boulevard alternative did not require goal exceptions, it still would not constitute a reasonable alternative to meet the identified transportation need. ODOT found, and the Board agrees and finds, that the use of a boulevard with roundabouts and speed limits of 25-35 miles per hour is inconsistent with OHP management objectives for Statewide Highways and statewide freight routes. For this reason alone, this alternative cannot reasonably accommodate the identified transportation need. The slower travel times would not divert sufficient traffic from Oregon 99W to sufficiently reduce the congestion on Oregon 99W. Also, the very nature of this facility is likely to induce new commercial development near its intersections, resulting over time in a mixture of statewide, regional and local traffic not unlike that currently found on Oregon 99W. The Board finds that such a facility is not desirable or consistent with the purposes and objectives of the OHP Bypass Policy (1H).

The Board also finds that this alternative does not meet the identified transportation need because the traffic delay associated with this proposal reduces its

value to a point where statewide and regional traffic would remain on Oregon 99W. Further, the Board finds that by terminating the facility east of Dundee or by extending it through downtown Dundee as 1000 Friends has subsequently advocated, this alternative would require Oregon 99W in Dundee to be widened to *seven* travel lanes to accommodate year 2025 average daily traffic volumes of approximately 47,000 vehicles. In the findings below addressing the East Dundee Interchange, the Board concludes that widening Oregon 99W even to *five* lanes would have unacceptably severe and unreasonable impacts to the livability and economic vitality of Dundee. The Board concludes in those findings below, and here as well, that widening Oregon 99W through Dundee to five or more lanes would be pedestrian unfriendly, increase the likelihood of accidents in Dundee, violate numerous acknowledged Dundee comprehensive plan and TSP policies, displace many businesses in downtown Dundee and discourage new businesses from locating there, and render Dundee's downtown unrecognizable. The Board concludes that these impacts would be significantly more adverse than those associated with the recommended alternative. It finds this alternative to be unreasonable and unacceptable.

14. In its July 22, 2004 letter, 1000 Friends of Oregon asserts that “reasonable non-exception alternatives” must be considered and analyzed for each of three distinct segments of the proposed Bypass corridor because each segment has “separate utility and can ‘stand alone’”. The Board rejects this contention for several reasons.

First, the Board is not aware of any legal authority requiring local governments to consider goal exceptions for new transportation facilities in separate segments. In its argument, 1000 Friends identifies no such authority.

Second, ODOT has identified, and the Board above has found, that there are statewide, regional and local transportation needs in the Newberg-Dundee region that extend the length of existing Oregon 99W from east of Newberg to west of Dundee and over to McDougal Corner. 1000 Friends has not demonstrated how any segment, alone, can reasonably accommodate these identified transportation needs, and the Board finds that none of the segments alone can satisfy these needs. The Board finds instead that to accommodate these needs, the project must be built in its entirety.

Third, the Board believes that 1000 Friends misconstrues the role that “phasing” plays in project development. Constructing the Bypass and East Dundee Interchange in two or three phases may be desirable or necessary as a way to build the whole facility in fundable pieces, because it is possible that ODOT will not receive the entire funding for the project at one time or from a single source. However, to accommodate the identified statewide, regional and local transportation needs, the Bypass is needed in its entirety. Each segment by itself cannot accommodate these identified needs.

15. Also in its July 22, 2004 letter, 1000 Friends recommends a variety of Bypass alternatives, some requiring goal exceptions and some not. These alternatives include (1) moving the Dayton Interchange an unidentified distance west into the Dayton UGB; (2) using existing Oregon 99W between Dayton and Dundee; (3) widening Oregon 99W in

Dundee; (4) providing a Dayton Road/Edwards Avenue connection; (5) eliminating the East Dundee Interchange and its connecting road; (6) moving the East Dundee Interchange and the connecting road entirely inside the Dundee UGB; (7) moving the East Dundee Interchange and the connector road onto rural residential land northeast of its proposed location; (8) using existing Oregon 99W between Newberg and Dundee; (9) relocating the East Newberg Interchange to avoid EFU lands; and (10) redesigning the northern alternative through rural residential lands.

The Board rejects these alternatives for a number of reasons. First, for reasons mentioned in this section and in the following section concerning the East Dundee Interchange, many of these alternatives cannot “reasonably accommodate” the identified transportation needs. Second, for every one of these alternatives, 1000 Friends of Oregon has not provided the Board with sufficient factual analysis to conclude that these alternatives are “more reasonable” or have “significantly fewer adverse impacts” than the proposed Bypass and East Dundee Interchange. See OAR 660-004-0020(2)(b)(C) and 660-004-0020(2)(c).

The alternatives proposed by 1000 Friends of Oregon, like the alternatives proposed by CEF, all reflect a narrow focus on avoiding impacts to agricultural lands generally or for CEF, the Dundee Farm, at all costs. However, under OAR 660-012-0070, the Board need not and indeed, may not consider only this issue to the exclusion of other relevant factors. OAR 660-012-0070(6) directs the Board to establish thresholds for judging whether alternatives that do not require exceptions can reasonably accommodate the identified transportation needs. Those thresholds include economic displacements, operational feasibility and “other relevant factors.” The Board rejects 1000 Friends’ effort to reinterpret or amend the TPR in such a way as part of this proceeding.

For each alternative recommended by 1000 Friends that does not require goal exceptions, the Board finds that 1000 Friends has failed to consider the identified thresholds for determining whether it can “reasonably accommodate” the identified transportation needs. For example, 1000 Friends has not considered, or it ignores, the adverse displacement, local access and community livability impacts associated with using Edwards Road or Parks Drive, with widening Oregon 99W, or with locating a bypass interchange entirely inside Dayton’s or Dundee’s UGB. 1000 Friends also has not considered or ignores whether these alternatives can meet ODOT highway performance standards for Statewide highways or comply with ODOT management objectives for Statewide highways and freight routes,

Similarly, 1000 Friends does not address the adverse economic and social impacts associated with directing 47,000 vehicles per day through downtown Dundee. As noted in Paragraph B.10 above, it nowhere addresses whether its recommended alternatives are operationally feasible or safe. It nowhere identifies the business or residential displacements associated with its alternatives or considers safety concerns or visual impacts associated with grade-separated railroad crossings. 1000 Friends nowhere addresses compliance with the minimum performance threshold. Instead, 1000 Friends

leaves it to the Board and to ODOT to speculate on those impacts. The Board believes that this level of alternatives analysis provided by 1000 Friends of Oregon is not sufficient to demonstrate the reasonableness of the proposed alternatives such that further analysis is warranted, and it so finds.

The Board further finds that the alternatives presented by CEF suffer the same defects and deficiencies. As with the alternatives recommended by 1000 Friends, the Board finds that the alternatives recommended by CEF are not sufficiently analyzed or supported by substantial evidence to demonstrate their reasonableness such that further analysis is warranted.

16. In the course of the public hearings, the Board heard testimony from 1000 Friends of Oregon and Columbia Empire Farms to the effect that in comparing alternatives that require exceptions, the Board must select the alternative that has the *least impact* on agricultural lands.

The Board finds nothing in LCDC's rules or in any other applicable authority to support the contention that the Board must give disproportionately greater weight to agricultural land preservation over other concerns when comparing alternatives requiring exceptions. While the Board clearly recognizes and respects the protections afforded to agricultural lands under state law, and while the Board also deems it reasonable and appropriate to pay particularly careful attention to impacts to agricultural lands and operations when comparing ESEE consequences (as it has done here), neither OAR 660-012-0070(7) nor OAR 660-004-0020(2)(c) creates a system under which agricultural land protection has priority once a county has determined that the identified transportation need cannot be met by alternatives which do not require new exceptions.

By their plain and unambiguous terms, OAR 660-012-0070(7) and OAR 660-004-0020(2)(c) direct counties first to identify and consider a full range of adverse economic, social, environmental and energy consequences, which include but are not limited to agricultural impacts, and then to determine whether the *net* adverse impacts associated with the proposed alternative are significantly more adverse than those associated with other alternatives requiring exceptions. Yamhill County has done so in rendering this decision. As its findings reveal, the Board has carefully considered impacts to agricultural lands and operations in assessing the overall net impacts of the various alternatives. That is all the County need do to comply with these standards.

1000 Friends of Oregon also testified to the effect that alternatives involving only small amounts of exception acreage should not require comparison to alternatives involving much larger amounts of exception land. However, the Board finds no support for this contention in the applicable review standards. That the exceptions associated with one alternative may impact more land, or even much more land, than the exceptions associated with another alternative, does not change how the standards apply. As long as an alternative requires an exception anywhere along its alignment, the method of comparison set out in LCDC's rules is the net adverse ESEE impact standard in OAR 660-012-0070(7) and OAR 660-004-0020(2)(c).

The Board also rejects an assertion by CEF in its letter dated August 12, 2004, that Goal 14 factors 4 (maximum efficiency of land uses within and on the fringe of urban areas) and 6 (retention of agricultural lands) mandate that the Board select the alternative with the least impact to agricultural lands. The Board finds that these provisions relate solely to the establishment or change of an urban growth boundary. Here, Goal 14 exceptions have been taken not for the purpose of establishing or expanding urban growth boundaries, but to allow urban uses on rural lands. The seven Goal 14 factors applicable to urban growth boundary amendments do not apply in such circumstances. See, e.g., OAR 660-014-0040.

17. The TPR requires that goal exceptions authorizing transportation facilities on rural lands describe the adverse effects each proposed transportation improvement is likely to have on surrounding rural lands and land uses, including increased traffic and pressure for non-farm or highway oriented development on areas made more accessible by the improvement, and adopt facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility and support the continued rural use of rural lands. The Board finds that the Bypass would adversely impact rural lands and rural land uses in the manner described in Sections 7.7.1 and 7.8 of the Exceptions Document. It also finds that the Bypass would increase population in Yamhill County by less than five percent through the year 2050, with most growth occurring within the McMinnville area within 20 years following opening of the Bypass.

However, while there would be additional traffic traveling through rural areas as a result of the Bypass, the Board finds that these trips would be predominantly commuter trips between the Newberg-Dundee urban area and McMinnville which are unlikely to be diverted onto local rural roads. See ODOT Transportation Planning Analysis Unit, "Exploratory Analysis of OTIA Projects Using the Gen1 Statewide Model, Newberg-Dundee Case Study Methodology and Results (May 3, 2002), incorporated herein in its entirety by this reference. Indeed, the Board agrees with ODOT that the risk of traffic diversion onto local roads is greater under a no-build scenario, due to the very high level of traffic congestion and delay on Oregon 99W under that alternative.

The Board also finds that rural driver infiltration is less likely to occur because the Bypass design would not easily facilitate such movements. The directional interchanges at the Bypass termini would keep Bypass traffic on the main roads of Oregon 99W and Oregon 18 rather than providing drivers with easy access onto rural roads. Additionally, wherever practicable, ODOT would relocate existing accesses near interchanges to a distance of at least 1,320 feet away from the interchange ramps to comply with ODOT interchange design standards. The Board finds that this will help minimize travel into rural areas and help reduce pressures to establish non-farm or highway oriented development in rural areas.

Moreover, the Board finds that during the course of this proceeding, Yamhill County and the cities of Newberg, Dundee and Dayton have adopted new comprehensive plan policies intended in large measure to minimize accessibility to rural lands from the

Bypass and its interchanges, support continued rural uses of surrounding rural lands, and protect the function and capacity of the Bypass and its interchanges. These new policies include, but are not limited to, policies committing the local government to participate in the development of Interchange Area Management Plans that will be intended in part to ensure compatible land uses near the Bypass and its interchanges; policies to avoid UGB expansions near interchanges where feasible; and policies to retain existing zoning of urban lands located within approximately ¼ mile of Bypass interchanges and rural lands located within approximately ½ mile of Bypass interchanges. The policies Yamhill County has adopted are addressed in greater detail in separate findings which the County officially notices and incorporates herein by this reference. The County also takes official notice of and incorporates by reference herein the new comprehensive plan policies adopted by the cities of Newberg, Dundee and Dayton, and their adopting ordinances and findings.

In addition to the new plan policies, Yamhill County and the City of Newberg have adopted new zoning regulations that retain existing rural zoning (for the County) and/or limit the nature or scale of development near the Bypass interchanges. Among other things, these regulations prevent more intensive commercial uses within Newberg's existing industrial zones, prevent rezonings of land to commercial uses pending adoption of Interchange Area Management Plans, and prevent expansion of urban growth boundaries into rural areas that are within Yamhill County's Interchange Overlay District pending adoption of Interchange Area Management Plans. Together with the new plan policies, these regulations will help to maintain and protect agricultural and rural exception lands for rural uses and reduce urban development pressures on these lands. The Board takes official notice of these legislative enactments.

Further, the Board finds that while highway projects nationwide may have had indirect impacts on land use, Oregon's restrictions on land uses in EFU and rural zones, especially when combined with access management measures, facility design measures and the kinds of land use mitigation measures required by OAR 660-012-0070(8)(b), have been effective at reducing development pressures on rural lands. In particular, the Board finds that urban growth boundaries, combined with restrictive agricultural and forest zoning, have controlled leapfrog development in Oregon and limited the expansion of urban areas. Because of this, the more dispersed development that has occurred around freeways elsewhere in the nation has not occurred in Oregon to the same degree. The LDEIS (Land Use Technical Report at pages 25-33), the Exceptions Document (Section 7.8.1.2) and the ODOT Responses Document all provide facts and reasons that support the conclusion that the Bypass will not significantly induce population or employment growth in Yamhill County or create pressures to convert rural resource lands to non-resource uses. The Board finds that this is even more the case given the measures contained in the new plan policies adopted by Yamhill County and the cities of Newberg, Dundee and Dayton during the course of this proceeding. The Board expressly agrees with these analyses and it so finds.

The Board concludes that with design and land use measures including full access control, directional interchanges at the Bypass termini, establishment of overlay zones to

protect rural lands within about 0.5 miles of Bypass interchanges, new zoning restrictions inside UGBs that limit high traffic-generating uses on urban lands near interchanges, and county and city adoption of policies prohibiting zone changes near interchanges and limiting UGB expansions onto EFU lands near interchanges, the Bypass and its interchanges will not likely have any significant adverse impacts on surrounding rural lands and land uses in terms of increased traffic or pressure for non-farm or highway oriented development. Moreover, the Board is committed to addressing vehicle circulation issues during the design phase of the Bypass Project, to ensure that farm vehicles and equipment reasonably can get around and under the Bypass.

18. For all of the reasons stated above, in the Exceptions Document, and in the ODOT Responses Document, the Heitsch letter and the Heitsch rebuttal letter, the Board concludes that the Bypass is needed to meet statewide, regional and local transportation needs; that this transportation need cannot reasonably be accommodated by one or a combination of alternatives involving alternative modes, TSM or improvements to existing facilities; that the net adverse ESEE impacts associated with the proposed Bypass corridor are not significantly more adverse, or even more adverse, than those associated with other alternative corridors; and that the facility design and land use measures identified by ODOT and adopted by local jurisdictions and by Yamhill County will minimize accessibility of rural lands from the Bypass, support continued rural use of surrounding rural lands, and render the Bypass compatible with surrounding uses. For all of these reasons, the Board concludes that the Bypass is consistent with and satisfies the exceptions requirements for transportation facilities on rural lands set out in OAR 660-012-0070.

### **C. Exceptions Justifying the East Dundee Interchange**

1. Based on the facts and reasons set out below and in ODOT's Exceptions Document, the Board concludes that there is a statewide, regional and local transportation need for the East Dundee Interchange. The East Dundee Interchange is needed to accommodate the safe and efficient movement of people and goods through the Newberg-Dundee region and between the Newberg-Dundee region and other regions of the state. It is needed to remove unacceptably high levels of congestion on existing Oregon 99W in Dundee (that even with the Bypass would exceed a 1.0 v/c by the year 2025 if Oregon 99W remains a three lane facility through Dundee), thereby freeing up capacity on that highway to serve local and regional transportation movements. The East Dundee Interchange also is needed to facilitate and improve the safety of local traffic and pedestrian movements in Dundee. And it is needed to support and achieve Dundee's vision for an economically vibrant community utilizing a more compact and pedestrian friendly urban form consistent with "smart growth" development principles.

2. The East Dundee Interchange would allow traffic traveling between Newberg and locations west of Dundee to avoid downtown Dundee via the Bypass. It also would allow traffic traveling between Dundee and locations east of Newberg to avoid downtown Newberg. Without this interchange, there would be approximately 25,000 average daily local, regional and statewide trips on Oregon 99W through Dundee in 2025, of which

approximately 16,500 trips would be statewide or regional trips. The interchange would reduce the number of total trips through Dundee to approximately 13,000 in 2025, with most of that reduction coming through the redirection of regional trips to and from Newberg.

3. The Oregon Highway Plan refers to travel movements between Newberg and locations west or south of Dundee, and between Dundee and locations east or north of Newberg, as “regional through travel.” OHP Bypass Policy 1H provides that regional through travel is best served by limited access facilities that allow higher speeds and require infrequent stops. The policy notes that as congestion increases, regional travel and local access may need to be separated. The Board finds that increased levels of congestion in Dundee by the year 2025 warrant separation of statewide and regional through traffic from local traffic for many reasons. These reasons are addressed below in the findings discussing the need for and alternatives to the East Dundee Interchange. The Board concludes that provision of the East Dundee Interchange is consistent with the recommended method in the OHP for accommodating regional through travel and warranted to effectively serve statewide and regional traffic.

4. With the East Dundee Interchange, Oregon 99W can be maintained as a three-lane roadway in compliance with OHP and Dundee roadway performance standards. Without the interchange, Oregon 99W would need to expand to five lanes through Dundee and to four lanes with turn lanes south of Dundee to McDougal Corner in order to meet OHP or local highway performance standards. For reasons explained in detail in the Exceptions Document and below, the Board finds that widening Oregon 99W to five lanes through Dundee or constructing a couplet through Dundee cannot reasonably accommodate the identified transportation need. While these alternatives may be operationally feasible, they would have unreasonably severe adverse impacts on the economic health and livability of the City of Dundee, virtually destroying Dundee’s downtown. The Board finds such an impact would be unacceptable.

5. Alternatives to the East Dundee Interchange addressed in the Exceptions Document include (1) establishing a “Special Transportation Area” in Dundee to permit higher levels of congestion to occur; (2) retaining Oregon 99W as a three-lane highway and improving other roads in the area; (3) widening Oregon 99W through and south of Dundee to five lanes; and (4) creating a couplet in Dundee and expanding Oregon 99W to five lanes south of Dundee. Based on the facts and reasons stated in Section 7.4.4 of that document and in the ODOT Responses Document and Heitsch letter as well, the Board finds and concludes that none of these alternatives can reasonably accommodate the identified transportation need for the East Dundee Interchange. The Board finds this is so despite the fact that average daily traffic volumes in Dundee would be reduced by the presence of the Bypass. In particular, the Board finds that each one of these alternatives would have unreasonably and unacceptably high adverse economic, social and livability impacts on the City of Dundee and its businesses and residents. For reasons explained below, the Board also finds that these impacts are due, to a significant degree, to the presence and location of the railroad right of way through Dundee.

6. A “Special Transportation Area” (“STA”) is an OHP-authorized designation that may be applied to a state highway segment to foster compact development patterns when a downtown, business district or community center straddles a state highway inside a UGB. As explained in OHP Policy 1B (amended January 2004), within an STA convenience of movement is focused on pedestrian, bicycle and transit travel rather than on automobile movement. The primary objective of an STA is to provide access to and circulation amongst community activities, businesses and residences and to accommodate pedestrian, bicycle and transit movement along and across the highway. Under the OHP, traffic speeds are slow, generally 25 miles per hour or less. The maximum permissible volume to capacity ratio in an STA is 0.95.

The Board finds that an STA is not a reasonable alternative to the East Dundee Interchange because an STA in Dundee cannot meet OHP standards for STAs. As explained in the Exceptions Document, without the East Dundee Interchange, an STA in Dundee could not meet ODOT’s maximum v/c ratio of 0.95 unless Oregon 99W were widened to four travel lanes. As a three lane highway, Oregon 99W would operate at a v/c in exceed of 1.0. For reasons stated below, such a widening of Oregon 99W through Dundee would not be reasonable. Also, Dundee neither exhibits the attributes of an STA, as described in the OHP, nor was planned as an STA in Dundee’s acknowledged comprehensive plan at the time that the OHP was adopted or even now. Rather than exhibiting mixed uses, buildings spaced close together, interconnected local streets and convenient automobile and pedestrian circulation within the downtown, Dundee’s current downtown character is more appropriately described as rural strip development. There is no discernible city center, the buildings are not spaced closely together, there are substantial gaps in the sidewalk network, parking lots are not shared or behind buildings, and there is not convenient automobile and pedestrian circulation in the downtown.

7. The Board rejects the alternative of retaining Oregon 99W as a three lane highway and improving other roads. While improvements to local roads, including Edwards Road and Dayton Avenue, might delay the need to widen Oregon 99W for 10 to 15 years, the TPR requires Yamhill County and Dundee to base their regional and local transportation systems on population and employment forecasts covering a 20-year period. The Board agrees with ODOT that it should not ignore 20-year projections and the conclusions drawn from them simply because the identified transportation need arises in the latter half of the planning period.

Moreover, the Board finds that the level of congestion associated with a three-lane facility would exceed levels currently experienced in other communities, including Seaside and Lincoln City, where projects now are underway to relieve the congestion. The Board also finds that with an Edwards Road/Dayton Avenue connection in place, established Dundee residential neighborhoods would experience substantial traffic infiltration because diverted regional through traffic would need to find its way back onto Oregon 99W farther west in Dundee. This traffic would result in key intersections along Oregon 99W in Dundee operating at v/c ratios over 1.0 unless Oregon 99W in Dundee is widened to five lanes. A v/c ratio over 1.0 (“gridlock”) violates both ODOT and local transportation performance standards for arterials.

8. Without the East Dundee Interchange, and with Oregon 99W remaining a three-lane roadway, year 2025 daily traffic volumes through Dundee would average 25,000 vehicle trips and the v/c would be well over 1.0, in violation of state district highway and local arterial performance standards. To meet ODOT and local performance standards without building the East Dundee Interchange, Oregon 99W would need to be widened to five lanes in Dundee and west to McDougal Corner.

For the reasons stated herein and in ODOT's Exceptions Document, the Board finds that a five lane roadway through Dundee would result in significant adverse impacts to the community that, render a five lane roadway through Dundee unreasonable to accommodate the identified transportation need for the East Dundee Interchange. Most notably, the Board finds that a five lane facility through Dundee would preclude Dundee's ability to develop as a "main street" in the manner provided for in the City's TSP.

The Board finds that Dundee's adopted TSP and comprehensive plan contain a number of policies that are relevant to a determination as to whether alternatives to the East Dundee Interchange can reasonably accommodate the identified transportation need. These policies are described in Section 7.6.2 of the Exceptions Document, incorporated herein by reference. They include policies to provide and maintain a transportation system that: serves the travel needs of all Dundee residents, businesses and visitors while minimizing the adverse impacts on Dundee associated with through traffic; fosters a pleasant, small city and preserves and enhances existing neighborhoods and businesses; supports the goals, objectives and visions of the Dundee community, which the Board finds includes the visions set out in Dundee's 2022 Vision Statement; and supports the economic vitality of the Dundee community. They also include policies directing the city to develop parking and circulation strategies that minimize pedestrian and vehicle conflict and support downtown business retention and development.

Primarily because of the reduced lot depth between Oregon 99W and the parallel railroad right-of-way resulting from the widening of Oregon 99W to five lanes, the Board finds that these policies cannot be achieved. It finds that over the past 10 years, Dundee has taken actions towards improving its economic development potential and fulfilling its vision of its downtown being a pedestrian friendly "main street" by attracting fine restaurants and wineries with regional and statewide reputations, including Tina's, the Red Hills Provincial Dining, the Dundee Bistro, and the Argyle and Ponzi wine tasting rooms. All of these establishments are complimented by renowned wineries in or just outside of Dundee, including Archery Summit, Cameron, Daedalus, Domaine Drouhin, Domaine Serene, Duck Pond, Dundee Springs, Erath, Lange, Sokol-Blosser, Torii Mor, , , , and Wine Country Farms Winery. The Board believes and finds that with a threelane highway, economic development could and is likely to continue in this direction.

However, with a five lane roadway, the lot depth between Oregon 99W and the parallel railroad right of way would be reduced to only about 150 to 170 feet, compared to 200 feet and larger in other communities. Provision of land for automobile circulation

north of the railroad right-of-way reduces this lot depth even further, to about 130 feet. For the reasons stated in the Exceptions Document, the Board finds that this reduced lot depth would impede development and associated off-street parking. It finds that the widening would substantially adversely affect over 80 percent of the businesses along the south side of existing Oregon 99W, displacing 10 buildings and effectively displacing some businesses through the loss of adequate parking spaces. Impacted businesses include the Argyle Winery, an anchor business for downtown Dundee.

The Board finds that with the narrower lot depths, Dundee would be at a disadvantage to compete economically with other cities for new businesses which require larger lots for commercial establishments. It finds that the right of way for a five lane roadway, combined with the parallel right of way for the railroad, would dominate the city's character in a manner inconsistent with and adverse to achieving its vision. Further, the Board finds that the much smaller lot depths resulting from widening Oregon 99W to five lanes would preclude Dundee from achieving the pedestrian friendly "main street" urban form that is called for in its TSP and 2022 Vision Statement. Indeed, it finds this is so even if Oregon 99W utilized a narrower 92-foot wide right of way that does not include on-street parking. Like ODOT, the Board concludes that a five lane facility is more likely than not to encourage and foster an automobile oriented, strip commercial development pattern that would violate the City's comprehensive plan, TSP and vision statement.

The Board also finds that a narrower five lane roadway design used to minimize the adverse impacts associated with narrower lot depths would not be reasonable, for the reasons set out in Section 7.4.4.6 of the Exceptions Document. It finds that narrower lanes are not appropriate where, as here, substantial truck traffic would be present. It finds that narrower lanes without on-street parking areas are unfriendly to pedestrians and inconsistent with Dundee's planning objectives for its downtown area. Narrower lanes also are less safe for bicyclists, as there is a higher probability that vehicles will encroach onto bicycle lanes.

Mayor Worrall of Dundee testified to the Board that widening Oregon 99W to five lanes in Dundee would remove at least half of the businesses in the city's downtown, create a 300 foot wide dead zone extending from 99W to the south side of the railroad tracks because there is inadequate space to build businesses there, and "destroy Dundee". The Board heard testimony from Argyle Winery, that if it is displaced, it will relocate outside of Dundee. Evidence in the record indicates that if Oregon 99W is widened to five lanes, many businesses, including Argyle Winery, will be displaced. The Board believes Argyle Winery's testimony that if displaced, it will relocate elsewhere, and the Board finds that the loss of Argyle Winery to Dundee's economic well-being and to realization of its "vision" would be severe. It further agrees with the Mayor and finds that the widening of Oregon 99W, combined with the railroad, would likely create a broad "dead zone" and destroy Dundee's ability to achieve its plan policies and its long term vision for a vibrant downtown.

For all of these reasons, the Board concludes that widening Oregon 99W to five lanes cannot reasonably accommodate the identified transportation need for the East Dundee Interchange. In reaching this conclusion, the Board takes notice of the fact that the impacts associated with widening Oregon 99W to five lanes would run contrary to the mission established by the Department of Land Conservation and Development's new Economic Development Planning Team, which is "to ensure that Oregon's land use planning program meets the economic development planning needs of the state, local governments and citizens by supporting policy initiatives and local planning projects that *promote sustainability, business recruitment, expansion and retention.*" (Emphasis added.) The Board expressly finds that widening Oregon 99W to five (or more) lanes through downtown Dundee would have precisely the opposite effect.

9. ODOT's Exceptions Document explores whether building a couplet through Dundee could meet the identified need for the East Dundee Interchange. ODOT considered two couplet options, one with both couplet legs north of the railroad tracks and one with the eastbound leg south of the railroad tracks. Under both options, existing Oregon 99W would become a one way road westbound.

The Board finds that a couplet through Dundee, whether located north or south of the railroad right of way, cannot reasonably accommodate the identified transportation need served by the East Dundee Interchange. The Board finds that the right-of-way needed to construct the eastbound leg of the couplet just north of the railroad would reduce the depth of the block between the couplet legs to only about 115-135 feet. This lot depth is substantially smaller than typical lot depths for commercial properties in other Yamhill County cities and would provide insufficient space for buildings, parking and circulation, placing Dundee at a significant competitive disadvantage to compete with other cities for commercial development, especially those with two-way main streets. Moreover, with this alignment, most if not all businesses located within this block would be displaced either directly or indirectly due to loss of adequate parking space and access. The Board finds that with this couplet, redevelopment would likely take the form of isolated businesses with needed parking in between the businesses. This would not represent a compact, pedestrian friendly "main street" urban design as called for in Dundee's TSP. The Board further finds that the dimensions of the land between the two couplet legs would not encourage new businesses to locate in Dundee but would, instead, likely cause a net decrease in business development along Oregon 99W in Dundee. The Board concludes that because these impacts, the north couplet option cannot reasonably accommodate the identified transportation need served by the East Dundee Interchange.

The Board also rejects the second couplet option as unreasonable. Under this scenario, the eastbound portion of the couplet would be located south of the railroad right-of-way, between the railroad tracks and Maple Street, which divides the light industrial part of Dundee from a residential area. The Board finds that this design would eliminate land identified for industrial development and reduce block depth for new industrial development to 175 feet while introducing highway and regional truck traffic serving Dundee and Newberg into a residential area. The Board finds that this couplet

would displace 10 residences and affect 30 more with adverse noise, visual impacts, and increased infiltration onto neighborhood streets. The Board also finds that with this design, existing businesses along Oregon 99W, which currently front a two-way street, would be exposed only to west and southbound travelers. Pedestrian use of the couplet would be limited because of the relatively long distance between the couplet legs (approximately 450 feet) plus limited locations for crossing the railroad tracks. The resulting development pattern would likely be an automobile oriented, scattered commercial development pattern that would not support a compact, pedestrian friendly “main street” urban design as provided for in Dundee’s TSP. Further, this couplet alternative would require area residents and visitors traveling eastbound along the couplet to cross the railroad tracks to access Dundee’s central business district along existing Oregon 99W. Either they would drive, walk or bike a block or two out of direction to access a local street that crosses the railroad tracks, or they would jaywalk across the tracks to shorten the connection. The Board believes that railroad crossings pose a hazard to public safety, and it finds and concludes that an alternative that requires railroad crossings at multiple locations and increases the incidents of conflicts between railroad and highway users is inherently unsafe and unreasonable and should be avoided where possible. The Board finds substantial support for its conclusion in OHP Policy 2G, which promotes safety and transportation efficiency through the reduction and prevention of conflicts between railroad and highway users. Indeed, Action 2G.1 directs ODOT to design highway projects to avoid rail crossings at grade where possible. The south couplet option is inconsistent with this OHP policy.

Finally, the Board finds it more likely than not that either couplet option would encourage and foster an automobile oriented, strip commercial development pattern that would violate Dundee comprehensive plan and TSP policies, the City’s 2022 Vision Statement and the mission of DLCD’s Economic Development Planning Team. For the reasons discussed in its findings addressing the widening of Oregon 99W to five lanes, the Board concludes that this impact renders both couplet options unreasonable to accommodate the identified transportation need for the East Dundee Interchange.

It has been suggested by opponents that the downtown of Dundee should be removed and relocated to allow expansion of Oregon 99W within Dundee. This Board does not believe that the statewide planning goals and regulations were intended or required to be applied so severely as to entirely avoid roadway uses on protected resource land. [I don’t recall the only reason for this suggestion being that we could entirely avoid roadway uses on protected resource land; opponents claimed it would be cheaper and easier just to relocate the entire downtown. I thought this was not being considered because it would be too costly, would interfere with businesses and homes already located in the “new downtown area”, would still mean Argyle would leave town, and was not part of Dundee’s plan for its town. ] The Board finds that such an approach is inherently unreasonable and warrants no further consideration.

10. ODOT also considered whether the East Dundee Interchange and its connecting road reasonably could be located entirely inside Dundee’s UGB. ODOT rejected this alternative because the impacts associated with this alternative were unreasonable. As

described in a Kittelson & Associates Memorandum dated July 15, 2004, entitled “East Dundee Interchange”, which the Board agrees with and incorporates in its entirety by reference herein, this alternative would have severe and unreasonable adverse impacts on Dundee. Initially, because of the location of the railroad right-of-way and its proximity to Oregon 99W, the connecting road would need to be constructed either as an above grade facility or a depressed grade facility all the way from the Bypass corridor to Oregon 99W in order to maintain appropriate vertical clearance. Elevating or depressing an up to 170-foot wide facility for this distance by itself would have a severe adverse visual impact on the City of Dundee and its residents.

ODOT considered two possible connections to Oregon 99W: at 5<sup>th</sup> Street or at 1st Street. With a 5<sup>th</sup> Street connection in downtown Dundee, this facility would displace four businesses, including the Argyle Winery and the Dundee Bistro, which are considered to be anchors in the community. As described earlier in these findings, the loss of a business like Argyle would be a severe economic blow to Dundee. The facility also would impact 1.55 acres of land subject to federal 4(f) requirements due to likely impacts to a park and Dundee School or, alternatively, displace five buildings from a Senior Housing complex. Additionally, it would displace about 26 homes and a post office and result in another 83 properties being classified as “noise sensitive.” It also would require the termination of the existing 5<sup>th</sup> Street intersection and potentially the 7<sup>th</sup> street intersection as well. Traffic from these roads would need to be rerouted to other city streets. Finally, this alternative would segment parts of east Dundee from the remainder of the city.

With a connection to Oregon 99W at 1st Street in downtown Dundee, this facility would displace five businesses along Oregon 99W and displace 36 houses. Under this scenario, a small amount of 4(f) property would be impacted and about 158 properties would be classified as “noise sensitive.” Access to several local streets (Locus, Elm, Cedar, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup>) would be severed if the connector road traveled along Edwards Road. A local roadway circulation system would need to be constructed to provide access to these neighborhoods under this alternative. The new connections would require 60 foot right of ways. Finally, this alternative would segment the Rolling Acres neighborhood east of Edwards Road and cut off access to Dundee Farm. For Dundee Farm to maintain current access into Dundee, a bridge or tunnel would need to be constructed.

These facts lead the Board to conclude that a connecting road along 5<sup>th</sup> or 1<sup>st</sup> Streets would have unduly adverse impacts on the City of Dundee in terms of business and residential displacements, noise and visual impacts, and the city’s outward appearance and economic attractiveness. Either alternative would segment parts of Dundee from other parts of Dundee. While a very large city like Portland, Salem or Eugene might be able to tolerate such an impact, it is not tolerable in a very small community like Dundee. The Board concludes that locating the East Dundee Interchange entirely inside Dundee’s UGB is not a reasonable alternative.

11. In determining a general location for the East Dundee Interchange, ODOT considered several alternatives during its environmental analysis. These included a North Option (which is the alternative proposed for approval), a Middle Option and a South Option. Section 7.7.4 of the Exceptions Document provides a comparison of these alternatives in terms of their ESEE consequences. ODOT's analysis finds that the three alignments are relatively similar in terms of their overall net adverse ESEE consequences. ODOT recommends the North Option primarily because its connector road does not further fragment the approximately 300-acre Dundee Farm owned by Columbia Empire Farms. Unlike the other two options, the North Option connector road would be located along the northern edge of the farm, rather than cutting through the farm. ODOT concludes, and the Board agrees and finds, that particularly for this reason, the net adverse impacts associated with the North Option would not be significantly more adverse than the net adverse impacts associated with the other two options. The Board is aware that the North Option would adversely impact a private airstrip, and it is sensitive to the needs and interests of that property owner. However, given the emphasis Statewide Planning Goal 3 places on preserving and maintaining agricultural lands for farm use, compared with an absence of state land use protections for private airstrips, the Board believes that protecting farming operations on the Dundee Farm must be given precedence over protecting the airstrip. It finds that the North Option provides the greatest level of protection for agricultural uses on the Dundee Farm property.

12. 1000 Friends suggested relocating the East Dundee Interchange approximately 150 meters farther north and east to avoid impacts to EFU-zoned lands. The Board finds initially that 1000 Friends has not demonstrated that it is operationally feasible to do so. The Board further finds that even if the interchange were so shifted, it would have greater overall net adverse effects and still would not avoid EFU-zoned lands.

As explained in an August 4, 2004 Kittelson & Associates, Inc. memorandum set out at ODOT Supporting Documentation Volume 8, page 47, which the Board believes, agrees with and incorporates into these findings by this reference, ODOT gave careful consideration to the location of the Bypass corridor between Newberg and Dundee. There are significant constraints in this area that limit potential alignments of the Bypass, including the alignment of Chehalem Creek. The Kittelson memorandum states, and the Board finds, that that the proposed Bypass corridor crosses Chehalem Creek at its narrowest point and minimizes natural resource impacts. Moving the East Dundee Interchange and connector road would require realignment of the Bypass and would have significantly more adverse net impacts on the creek and natural resources as well as economic and social resources in Newberg. The memorandum adds, and the Board finds, that if the connector roadway and interchange footprint were moved 150 meters to the north, portions of the interchange ramps would still be located on EFU land. The Board accepts the Kittelson memorandum as expert testimony supporting this finding, and it finds no evidence in the record demonstrating otherwise.

13. The TPR requires that goal exceptions authorizing transportation facilities on rural lands describe the adverse effects each proposed transportation improvement is likely to have on surrounding rural lands and land uses, including increased traffic and

pressure for non-farm or highway oriented development on areas made more accessible by the improvement, and adopt facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility and support the continued rural use of rural lands. The Board finds that the East Dundee Interchange, including the road connecting it to existing Oregon 99W, will impact rural lands and rural land uses in the manner described in Sections 7.7.4 and 7.8 of the Exceptions Document.

The Board finds that rural driver infiltration is less likely to occur because the East Dundee Interchange design will not easily facilitate such movements. As a limited access roadway, the East Dundee Interchange connector road will direct all traffic using that roadway either onto the Bypass or onto existing Oregon 99W, rather than onto local rural roads. Additionally, wherever practicable, ODOT will relocate existing accesses near the East Dundee Interchange to a distance of at least 1,320 feet away from the interchange ramps to comply with ODOT interchange design standards. The Board finds that this will help minimize travel into rural areas.

The Board also finds that Yamhill County and the City of Dundee have adopted plan policies to maintain and protect agricultural and rural exception lands for rural uses and reduce urban development pressures on these lands. The Board finds that Newberg, Dundee, Dayton, ODOT and Yamhill County have agreed to a coordinated planning approach for the areas around the interchanges. This coordinated planning effort will closely examine and resolve circulation and access issues within the interchanges areas. The planning effort will also consider the land uses currently existing and agree upon future land uses that may be appropriate to retain the rural nature of the area and the functional capacity of the interchange. Until the planning is completed, Yamhill County and the cities of Dundee, Dayton and Newberg have agreed not to expand the cities' UGBs in the direction of the interchanges or allow zone changes within the Interchange Management Areas.

14. For the reasons stated above and in the Exception Document, the Board concludes that the East Dundee Interchange is needed to meet statewide, regional and local transportation needs; that this transportation need cannot reasonably be accommodated by one or a combination of alternatives involving alternative modes, TSM or improvements to existing facilities, including the widening of Oregon 99W in and south of Dundee; that the East Dundee Interchange and its connecting road cannot reasonably be located entirely within the Dundee UGB; that the net adverse ESEE impacts associated with the proposed East Dundee Interchange and connecting road are not significantly more adverse, or even more adverse, than those associated with other alternative corridors; and that the facility design and land use measures identified by ODOT will minimize accessibility of rural lands from the East Dundee Interchange, support continued rural use of surrounding rural lands, and render the East Dundee Interchange compatible with surrounding uses. For all of these reasons, the Board concludes that the East Dundee Interchange, including the road connecting it to existing Oregon 99W, is consistent with and satisfies the exceptions requirements for transportation facilities on rural lands set out in OAR 660-012-0070.

#### **D. Compliance with Other Applicable Statewide Planning Goals**

1. Except as indicated otherwise below, the Board finds that the statewide planning goals identified in the Exceptions Document as applicable to this proceeding are the only goals that apply to the Bypass Project. The Board further finds and concludes that the applicable statewide planning goals are satisfied for the reasons set out below and in the Exceptions Document.

2. Columbia Empire Farms alleges violations of statewide planning goals 1 and 2 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 the 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 has submitted in support of these exceptions. The Board also finds that providing an applicant a chance for final argument is statutorily permitted in the provisions governing quasi-judicial land use proceedings set out in ORS 197.763(6)(e). Given this, the Board sees no reason why applying such a provision in a legislative proceeding would prejudice any opponent's substantial rights in any way. The Board further finds that this proceeding was initiated at ODOT's request, and that ODOT prepared and presented the application to the Board.

The Board also rejects CEF's argument that ODOT violated Goal 2's coordination requirement by improperly narrowing the field of alternatives. The Board finds that CEF has not adequately explained how this is so. More importantly, the Board finds that CEF and other opponents have had ample opportunity during the hearing process to identify alternatives. Indeed, the Board finds that CEF has shown an interest in this matter dating back to at least December, 2002. See ODOT Supporting Documents, Volume 2, pages 527-584. Given this, CEF is hard pressed to show how any alleged procedural violation has prejudiced its substantial rights, and the Board finds that such prejudice has not occurred.

3. 1000 Friends of Oregon alleges violations of LCDC's Goal 5 rule, OAR 660, Division 23, as it relates to riparian corridors, wetlands, wildlife habitat and ecologically and scientifically significant natural areas. While the Board finds that the Exceptions Document misapplies Goal 5 in some respects, the Board nevertheless finds that the Bypass Project complies with Goal 5 and its implementing rule for the reasons set out below.

OAR 660-023-0250(3)(b) governs the applicability of Goal 5 to this proceeding. Under that provision, local governments are not required to apply Goal 5 in consideration of a post-acknowledgment plan amendment (PAPA) "unless the PAPA affects a Goal 5 resource." As relevant to this proceeding, the rule then states that a PAPA would affect a Goal 5 resource if the PAPA "allows *new uses* that could be conflicting uses with a

particular significant Goal 5 resource site on an acknowledged resource list.” (Emphasis added.)

The Board believes that under the terms of this rule, Goal 5 does not apply to this proceeding. This is because (1) the only impacted significant Goal 5 resource sites are four creeks with fish and riparian resources that are also identified as fish habitat; and (2) the County’s acknowledged Goal 5 Comprehensive Plan policies already permit development of the nature here proposed within these resource sites. More particularly, because the Bypass and East Dundee Interchange are uses already authorized within affected resource sites under the County’s acknowledged Goal 5 program, they would not be “new uses” within the terms of OAR 660-023-0250(3)(b), and Goal 5 does not apply.

Examining this matter more closely, the Board finds that there are no wetlands, or ecologically and scientifically significant natural areas identified as significant Goal 5 resource sites in Yamhill County’s Comprehensive Plan that would be impacted by the Bypass. The Board recognizes that some wetland areas would be affected. However, those areas are not identified as significant in the County’s Goal 5 inventory. Regarding riparian and fish and wildlife habitat resources, the Board finds that the Bypass Project would impact the following four resources: (1) Chehalem Creek and its tributary; (2) Hess Creek; (3) Miller Creek; and (4) an unnamed creek located between Oregon 99W and Riverwood Road, all of which are tributaries to the Willamette River. Upper Willamette steelhead (winter run) and the Upper Willamette chinook (spring run) are fish species that have been identified as being threatened or endangered species. The Board finds that these fish species might occupy Willamette River tributaries that contain fish habitat, although whether they in fact do is not clear.

Water Resources Goal 1, Policy J states that it is the policy of Yamhill County to protect riparian vegetation from damage that may result from land use applications by reviewing land use applications for development in riparian areas in an effort to mitigate or prevent damage to riparian vegetation that might result from the development. The Board interprets this policy as allowing a full range of development, including new roads, in riparian areas, subject to review for mitigation or impact avoidance. Similarly, Fish and Wildlife Goal 1, Policy B provides for the protection of fish and wildlife habitat in the context of land use proposals subject to county review. Again, the Board interprets this provision as permitting development uses subject to review for mitigation. This interpretation finds support in Fish and Wildlife Goal 1, Policy C, which states that no major land use changes, including road construction, will be permitted in identified sensitive wildlife areas “without approval of measures to limit undesirable impacts on sensitive wildlife areas.” Regarding Fish and Wildlife Goal 1, Policy D, which directs the County to preserve the habitat of all species indicated as endangered, threatened or vulnerable to act, the Board does not interpret this language as a blanket prohibition on new road construction. Instead, the Board interprets this policy within the context of the other policies cited in this paragraph. In particular, the Board recognizes that new roads, as linear facilities, often cannot reasonably avoid crossing streams that may contain fish species listed under the federal or state Endangered Species Acts. In this way, roads differ from other, more site specific types of development. Consequently, the Board

interprets this policy as allowing such development, again subject to appropriate mitigation to limit undesirable impacts.

In summary, the Board believes that OAR 660-023-0250(3)(b) is intended to apply only to “new” conflicting uses that have not previously been authorized in Goal 5 resource sites under an acknowledged Goal 5 program. Because the acknowledged Yamhill County Comprehensive Plan already permits new roads within these resource areas, there is no need to amend the County’s Goal 5 program, and Goal 5 does not apply. If the County’s Goal 5 program had authorized only certain specific uses within these resource areas, and if this application involved other uses not so authorized, then Goal 5 would apply. However, the County finds that this is not the case here.

The County further finds that impacted Goal 5 resource sites will be mitigated as required by its Comprehensive Plan. As provided for in the CETAS Record agreed to by ODOT, mitigation measures include enhancement of fish passage on affected creeks, a commitment by ODOT to develop bridge crossings that fully span the width of affected creek floodplains, storm water treatment of the Bypass and its interchanges and commitment to treat storm water on existing state facilities currently without treatment, and enhancement of riparian areas and wildlife habitat within the project area. The Board finds these measures to be consistent with its acknowledged Goal 5 program.

In the event that the County has misinterpreted OAR 660-023-0250(3)(b) and the Goal 5 rule applies to the Bypass and East Dundee Interchange, then the County makes the following findings, in the alternative. It is the County’s position that these alternative findings would apply if, and only if, a reviewing body should determine that Goal 5 does apply to this proceeding.

As earlier noted, the Bypass corridor would pass through four riparian corridors that contain fish and wildlife habitat: Chehalem Creek and its tributary; Hess Creek; Miller Creek; and an unnamed creek located between Oregon 99W and Riverwood Road. The Board agrees with 1000 Friends of Oregon that the County may not apply the “safe harbors” standards in OAR 660-023-0090(8) to riparian corridors because Yamhill County has not adopted an ordinance to protect riparian corridors under the safe harbors standards. Likewise, Yamhill County has not adopted an ordinance pursuant to OAR 660-023-0110(4) addressing wildlife habitat. Consequently, an ESEE analysis is required as provided in OAR 660-023-0040 and 0050 for the impacted riparian/fish and wildlife habitat areas.

The Board first concludes that the Bypass and East Dundee Interchange, including its connecting road, are conflicting uses with the affected resource sites. These uses, which are permitted within these resource sites under the County’s acknowledged Goal 5 program, would permanently alter the resource sites by placing structures and impervious surfaces within the sites and by removing vegetation from the sites.

Second, with regard to impact area, because the corridor footprint for the Bypass and East Dundee Interchange (including its connecting road) is approximately 40% wider

than the planned roadway, the Board believes and finds that an appropriate impact area for the Bypass Project would be the full width of the Bypass corridor traversing through each identified riparian/fish habitat area as shown in the Exceptions Document.

With regard to ESEE impacts, the Board finds that the adverse economic impacts of allowing the conflicting uses would be minor, because with mitigation as proposed in the CETAS Record, impacts to the fisheries industry can be minimized. Conversely, the adverse impacts of prohibiting the conflicting uses would be enormous. The findings in Section B and C above, incorporated herein by this reference, identify a compelling need for the Bypass and East Dundee Interchange. This includes a need to move freight through the area in a timely and efficient manner. For the reasons stated in those findings, the Board finds that failure to provide the Bypass and East Dundee Interchange would have significant negative adverse impacts on the region in terms of lost customers and loss of new businesses in the area due to unacceptably high levels of congestion. The Board believes the same negative results would occur were the Bypass and East Dundee Interchange somehow “limited” to something less than their proposed size and capacity. To eliminate the problems with congestion, the identified need is for a four lane highway and an East Dundee Interchange. The Board does not see how these proposed improvements could reasonably be limited to something less.

Regarding social impacts, the Board believes there are few adverse social consequences to the resource sites associated with allowing the Bypass. Some people might dislike the location of the Bypass and East Dundee Interchange within these resource sites. It could impact their sense of livability or their use and enjoyment of such sites. On the other hand, the adverse social consequences of not permitting the Bypass and East Dundee Interchange through these areas are enormous. If these facilities cannot cross these sites, there would be much greater social impacts to residents of the area in terms of roadway congestion along Oregon 99W and in terms of loss of area livability.

Regarding environmental impacts, the Board finds that the Bypass Corridor has been extensively inventoried using Oregon Department of Forestry fish presence maps, ODF&W Streamnet species distribution maps, USGS maps, National Wetland Inventory maps, FEMA maps and aerial photographs as described in the LDEIS at pages 3-35 and 3-45 and in ODOT’s Supporting Documents, Volume 2 at page 185. It finds that US Fish & Wildlife Department biologists conducted a qualitative habitat assessment using methodology developed by the US Department of Agriculture and the Natural Resources Conservation Service in 1998. See ODOT Supporting Documents, Volume 2 at page 185. The Board finds that this methodology provides an accurate and adequate framework to evaluate fifteen fish habitat elements within a given stream reach and to rate the quality of the riparian corridor and fish habitat.

The Board further finds that based upon this scientific methodology, Chehalem Creek contains medium quality fish habitat. It finds that Hess Creek, Miller Creek; and the unnamed creek located between Oregon 99W and Riverwood Road have low quality fish habitat. Given this, the Board finds that the environmental impacts of allowing the conflicting uses in these areas would be low to medium without any mitigation, and even

less adverse with the mitigation that has been proposed. The Board also finds that there would be no adverse environmental impacts to these resources if the conflicting uses were prohibited. But that stated, the Board also finds that impacts to the identified riparian corridors were evaluated with the Alternatives analysis and that the proposed Bypass corridor had the lowest impacts to the riparian area containing fish habitat of the eight alternatives evaluated. In other words, if the Bypass is relocated elsewhere, its overall impacts on riparian areas and fish and wildlife resources would be greater.

In terms of energy consequences, the Board finds that allowing the conflicting uses in these resource areas would have positive energy consequences by providing a faster, less congested facility for moving traffic through the area. Prohibiting the conflicting uses could result in much greater congestion, depending on whether other alternatives are available that could move traffic as efficiently.

Based on these findings, the Board concludes (1) that there is a compelling need for the Bypass and East Dundee Interchange; (2) that the adverse impacts of the Bypass and East Dundee Interchange on the four affected resource sites would be low to moderate, because the impacted sites are only of low to medium quality; and (3) that the adverse impacts to the affected resource sites can be reduced through mitigation measures required under the CETAS Record. The Board further finds and concludes that the needs for the Bypass and East Dundee Interchange greatly outweigh the cumulative impacts to all affected natural resources, including the impacts to the riparian areas and fish habitat, and that the Bypass and East Dundee Interchange should be allowed fully, notwithstanding those potential impacts. The Board believes that nothing less than the full, proposed Bypass and East Dundee Interchange can be provided to meet the identified transportation need. In that regard, the Bypass Project cannot be allowed in some “limited” way. Still, the Board is aware that mitigation can and will occur to reduce the overall impact to the resource, as required by federal law. Such mitigation measures include enhancement of fish passage on affected creeks, a commitment by ODOT to develop bridge crossings that fully span the width of affected creek floodplains, storm water treatment of the Bypass and its interchanges and commitment to treat storm water on existing state facilities currently without treatment, and enhancement of riparian areas and wildlife habitat within the project area.

On a different note, in arguing that OAR 660-012-0110 applies, 1000 Friends asserts that it does not concede the accuracy of Yamhill County’s Goal 5 inventory regarding natural areas. The Board finds that OAR 660-023-0110 does not address natural areas. Instead, these are regulated by OAR 660-023-0160. Under that section, Yamhill County is required to inventory such areas as significant during periodic review and then develop a program to achieve the goal following the standard Goal 5 process. The Board finds that there are no natural areas within the Bypass Project corridor. Consequently, the Board need not consider or address the Goal 5 rule standards applicable to such resources.

4. 1000 Friends alleges violations of Goal 8 based entirely on language in the Goal 8 planning guidelines. The Board finds that these guidelines are advisory, not mandatory.

See ORS 197.015(9). As such, they provide no basis for the Board to determine that Goal 8 is not satisfied. The Board also finds that access to the Willamette River has been addressed in the IGAs and comprehensive plans adopted by the cities of Newberg and Dundee.

5. 1000 Friends alleges violations of Goals 9 and 10. However, 1000 Friends concedes up front that these goals apply inside urban growth boundaries. The Board finds that Goal 9 and Goal 10 issues are appropriately addressed to the cities of Newberg and Dundee, not to Yamhill County. It finds that these issues are not relevant to the Yamhill County goal exceptions process. The Board further finds that it has coordinated these proposed exceptions with Newberg and Dundee that both of these cities testified in support of the proposed goal exceptions before Yamhill County.

6. 1000 Friends alleges violations of Goal 12 based primarily on language in the Goal 12 guidelines. However, these guidelines are advisory only and provide no basis for determining a Goal 12 violation. 1000 Friends also alleges violations of OAR 660-012-0040, which concerns financing of transportation improvements. The Board first finds that this issue is adequately addressed in the Exceptions Document. The Board further finds that under this TPR section, anticipated timing and financing provisions and programs are not considered land use decisions.

1000 Friends argues that under OAR 660-012-0040, the County must amend its TSP to address the costs of building the Bypass Project. The Board finds that 1000 Friends is confusing the financial program for a TSP with that for a project. OAR 660-012-0040 provides only that the financial program for the TSP include a list of planned transportation facilities and major improvements; a general estimate of the timing for planned transportation facilities and major improvements; and a determination of rough cost estimates for the transportation facilities and improvements identified in the TSP. The Board finds its current TSP has an acknowledged financial program. Further, as identified in the newly adopted Comprehensive Plan Transportation Policy 2k and in the Intergovernmental Agreement No. 21,323 between ODOT and Yamhill County the Bypass project is being developed as a two tiered project through the NEPA development process where the corridor will first be approved and then the design of the project approved. ODOT and Yamhill County have agreed upon a proposed schedule found at attachment "A" of the IGA. Yamhill County Comprehensive Plan Policy 2k states that reliance upon the Bypass for additional planned capacity cannot occur until after the Oregon Transportation Commission has approved a financing plan for the project. At that time, the Yamhill County will add the Bypass project to its financing program consistent with the OTC financing plan for the Bypass Project.

7. 1000 Friends alleges violations of Goal 15, stating that the Bypass would be located "near" the Willamette River Greenway and, as such, must maintain the qualities of the Greenway. The Exceptions Document states that Goal 15 does not apply because no Greenway lands are directly affected. The Board agrees with ODOT that the Bypass corridor is located entirely outside the Greenway boundary. It also believes and finds

that the location of the Bypass corridor near the Willamette River Greenway will not adversely affect the Greenway.

At issue is whether Goal 15 applies to these exceptions. 1000 Friends is correct that Goal 15 contains the words “[m]anagement of uses on lands within and near the Greenway to maintain the qualities of the Greenway.” However, these words are used in the context of developing a “Greenway program”. This application does not involve the development of such a program, although it might impact that program. Also, other provisions cited by 1000 Friends involving farm areas adjacent to the Greenway create at least an argument that Goal 15 might apply. Accordingly, while the Board remains uncertain as to whether Goal 15 in fact applies, it will treat the goal as applicable here.

1000 Friends’ allegation is that the proposed exceptions would impact agricultural lands and uses near the Greenway, including lands owned by Columbia Empire Farms. It then alleges generally that compliance with Goal 15 has not been shown. The Board finds it appropriate to limit its consideration to the general Goal 15 language and to the specific policies raised by 1000 Friends. The Board first repeats its finding above that the Bypass will not directly impact any lands inside the Greenway. Second, the Board finds that maintenance of Greenway qualities has been considered through ODOT’s IGAs with the County and the cities to ensure adequate public access to the Greenway, and also through the Collaborative Environmental and Transportation Agreement for Streamlining (CETAS) process, which among other things directs ODOT to (1) implement measures to protect and enhance tributaries to the Willamette River and the Willamette River floodplain in the project area with the goal of long-term protection; (2) work with state resource agencies to protect and enhance stream habitat values in the Willamette River and its tributaries within the project area; (3) work to maintain and improve water quality in the adjacent stretch of the Willamette River and its tributaries; and (4) work to develop a viable stabilization strategy on the bank adjacent to Chehalem Creek.

Regarding those provisions addressing agricultural lands cited by 1000 Friends, the Board finds that the Bypass, where it passes through the Columbia Empire Farms property, will be located on a bluff well above and away from the Greenway. As Figure 13 of the Exceptions Document indicates, a large expanse of agricultural land lies between the Bypass corridor and the Greenway, providing a buffer between the uses. Given these facts, and given particularly the substantial distance between the Bypass corridor and the Greenway, the Board does not believe that the agricultural lands underlying the Bypass corridor are “adjacent” to the Greenway as that term is used in Goal 15. However, if they were, the Board finds that these features (bluff, distance) are sufficient to preserve, enhance and protect the Greenway and Greenway values.

As to the language in Goal 15 cited by 1000 Friends relating to preserving agricultural lands to maintain Greenway purposes, the Board finds that this language applies to those agricultural lands that are “in the [Greenway] inventory.” ODOT has stated that Goal 15, including this provision, does not apply. In response, 1000 Friends has provided no evidence showing that the Columbia Empire Farms property at issue is

“identified in the inventory.” The Board further finds that the agricultural lands at issue are not “near” the Greenway, but are instead quite a distance away.

#### **E. Compliance with Oregon Highway Plan Policies and Actions**

1. The Board finds that the Oregon Highway Plan policies and actions identified in the Exceptions Document as applicable to this proceeding 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 and in ODOT’s Response Document and for the additional reasons set out below.

2. As noted in Section A.9 above, the Exceptions Document addresses *former* OHP Policy 1B, not the amended version adopted in January 2004. Subsequently, ODOT developed findings addressing the amended Policy 1B. Those findings are attached to an Errata Sheet which the Board has incorporated by reference into the Exceptions Document. The Board finds that the Bypass Project is consistent with amended Policy 1B for the reasons stated in the Errata Sheet attachment.

3. 1000 Friends alleges violations of OHP Policies 1F and 1G. Much of the discussion under Policy 1F constitutes disagreement with the policy. The Board finds that Policy 1F was adopted by the Oregon Transportation Commission in accordance with provisions in ODOT’s State Agency Coordination rule requiring ODOT to adopt modal plans. The OHP is the highway modal plan for ODOT, and it applies to the Bypass Project proceeding. The Board further finds that the volume to capacity standards in the OHP were adopted through a public process. 1000 Friends of Oregon may not like those standards, but its policy disagreement with them provides no lawful basis for the Board to change or ignore them.

The Board finds that 1000 Friends’ comments regarding funding are not relevant to this land use decision. And for the reasons stated in the Exceptions Document, the Board disagrees with 1000 Friends’ assertion that it is not feasible to meet ODOT’s mobility standard in this instance.

1000 Friends’ arguments regarding OHP Policy 1 G are not persuasive because they address only one aspect of land use planning: farmland protection. The TPR standards provide for a more comprehensive approach to land use decision-making. The Board finds that Policy 1G is met for the reasons set out in the Exceptions Document.

4. The Board takes particular notice of OHP Policy 1H, which is the Bypass policy. The Board finds the design standards contained in this policy to be particularly instructive in assessing the reasonableness of the Bypass Project, especially in light of challenges from other parties.

The Board finds that OHP Action 1H.2 requires ODOT, “whenever practical,” to design new bypasses (including a Newberg-Dundee bypass) “for moderate to high speeds at freeway or expressway standards for regional and statewide traffic.” The Board is

aware of no physical impediments in the Newberg-Dundee urban area that would render such a design impractical. The Board further finds that such designs would best carry out the management objective of Statewide Highways to provide safe and efficient high-speed, continuous-flow operation, and best meet the objectives for statewide freight routes.

The Board concludes from Action 1H.2 that as a matter of state policy, limited access, moderate to high speed (45-55 mile per hour) facilities are strongly favored to serve the transportation need to move statewide and regional traffic efficiently. In reaching this conclusion, the Board notes that the adopted OHP has undergone goal compliance review in accordance with ODOT's agency coordination agreement with DLCD, OAR 731, Division 15, and is deemed acknowledged as in compliance with the statewide planning goals. Accordingly, the Board believes that alternatives that would operate at speeds slower than 45-55 miles per hour over the entire length of the project would operate in a manner inconsistent with OHP policy objectives and would not "reasonably accommodate" the identified transportation need to serve statewide and regional traffic in the Newberg-Dundee urban area.

**F. Compliance with the Yamhill County Comprehensive Plan and the Yamhill County Transportation System Plan (TSP) and Zoning Ordinance**

1. Except as otherwise noted in this section, the Board finds that the goals and policies of the Yamhill County Comprehensive Plan and Yamhill County Transportation System Plan and the provisions of the Yamhill County Zoning Ordinance identified in the Exceptions Document and in the Heitsch letter as applicable to this proceeding are the only applicable Comprehensive Plan, TSP and Zoning Ordinance standards that apply to the Bypass Project.

2. The Board finds that Yamhill County Comprehensive Plan and TSP goals and policies that are written in directory, advisory or aspirational language do not constitute mandatory review standards applicable to land use applications and provide no basis for denying this application. By "directory, advisory or aspirational", the Board is referring to goals and policies that, for example, use words like "may" or "should" rather than "shall" or "must"; that "support" or "encourage" an activity or result rather than require a specific action or result; or that establish general planning directives to the County, such as to coordinate with agencies in planning activities or to develop land use regulations.

3. The Exceptions Document addresses compliance with the Yamhill County Comprehensive Plan, TSP and Zoning Ordinance. Except where indicated otherwise below, the Board agrees with and adopts herein the findings and analysis of compliance with these standards as set out in the Exceptions Document.

4. The Heitsch letter addresses a number of Yamhill County Comprehensive Plan goals and policies that the Exceptions Document states are not applicable. The Heitsch letter states that some of these additional goals and policies are applicable and some are not, and it provides reasons for its conclusions of applicability. The Board agrees with

the Heitsch letter in these determinations, and it so finds. To the extent that the Heitsch letter and the Exceptions Document are inconsistent with regard to these goals and policies, the Board adopts the findings and rationale set out in the Heitsch letter. The Board also agrees that the applicable policies are satisfied for the reasons set out in the Heitsch letter.

5. The Heitsch letter addresses and responds to Comprehensive Plan goals and policies identified as applicable by Columbia Empire Farms in a letter from Miller Nash LLP to the Board and Planning Commission dated July 22, 2004. In a letter also dated July 22, 2004, 1000 Friends of Oregon also identifies goals and policies it believes are applicable to this proceeding. The Board finds that most of these goals and policies are addressed in the Exceptions Document or the Heitsch letter. For those goals and policies, the Board finds that they are satisfied or not applicable for the reasons set out in the Exceptions Document and Heitsch letter. As the Board deems necessary, those findings are supplemented below.

6. Water Resources Goal 1, Policy 1J is addressed in the Exceptions Document. Those findings state that further land use review will be needed to show compliance with this policy. Four riparian corridors identified as providing fish habitat: (1) Chehalem Creek and its tributary; (2) Hess Creek; (3) Miller Creek; and (4) an unnamed creek located between Oregon 99W and Riverwood Road, are subject to review and approval pursuant to Water Policy 1J. The Board finds that it has reviewed the Bypass proposal and the impacts that it may have upon these four riparian areas. The Board examined many documents including the LDEIS at pages 3-30 through 3-46 and Technical memorandum for Fish Ecology, Wetlands, Wildlife Ecology and Water Quality found at ODOT Supporting Documentation, Volume 2, pages 184-197, 441-462, 463-477, 482-486.

The Board believes and finds that Policy 1J can and will be met, based on the CETAS Record of Agreement that is part of the record of this proceeding. ODOT has worked closely with environmental agencies under the CETAS process to minimize impacts to significant natural resources and to water and air quality. Those agencies include the NOAA-Fisheries, US Fish and Wildlife Department, Environmental Protection Agency, Department of Environmental Quality and Oregon Department of Fish and Wildlife. Through the CETAS process, ODOT and the environmental agencies have reached an agreement whereby ODOT has agreed to incorporate certain measures into its design elements. These include measures to mitigate impacts to riparian zones, wildlife habitat and wetland areas and major tributaries to the Willamette River and the Willamette River floodplain. Specific measures include a commitment to construct bridge crossings that span the width of the flood plains for the respective creeks; implementation of viable stream stabilization strategies for the Chehalem Creek; removing existing fish and wildlife crossing blockages on existing Oregon 99W; and the establishment of a mitigation bank or possible mitigation project. This Board finds that ODOT has committed to mitigate the impacts commensurate with the area and severity of the impact. It also finds that mitigation for habitat impacts will be measured by the ecological value lost.

The Board concludes that with the measures identified in the CETAS Record, Policy 1J can and will be met. Based on these measures in the CETAS Record, the Board further finds that the Water Resources and Fish and Wildlife policies determined by the Board to be applicable can be met.

7. Transportation Policy 1K provides that all transportation-related decisions will be made in particular consideration of energy efficiency and conservation. The Board agrees that this policy applies. The Board finds that the Bypass Project will result in both the Bypass and Oregon 99W functioning efficiently within their established highway performance standards. Indeed, with the Bypass and the East Dundee Interchange, both roadway facilities will operate at a relatively low volume to capacity ratio. The absence of congestion on these roadways means there will be little if any stop and go movement, which wastes energy. Without the Bypass, congestion would be at levels resulting in constant stop and go movements. Also without the Bypass, travelers would seek out-of-direction routes that use more energy. For these reasons, the Board concludes that the Bypass Project will improve energy efficiency and conservation.

8. Transportation Policy O provides that all transportation related decisions will be made in support of the efficient and economic movement of people, goods and services throughout the region. The Board agrees that this policy applies. It finds that this policy is met for the reasons set out in Section B above and in the portion of the Exceptions Document justifying the need for the Bypass. The Board finds that the Bypass is necessary to support the efficient and economic movement of people, goods and services throughout the region, and it finds that non-exception alternatives to the Bypass cannot reasonably achieve this result.

9. Scenic Goal 1 directs Yamhill County to protect outstanding scenic views and sites for future generations. Parks and Recreation Policy 1C states that the County will “seek to offer” greater opportunities for water-based recreation on the Willamette and South Yamhill Rivers and their tributaries. Parks and Recreation Policy 1I directs the County to encourage cooperation among governmental agencies to increase recreation opportunities, programs and facilities for county residents.

1000 Friends argues that the Bypass Project violates each of these goals or policies because of language in the Exceptions Document indicating that the Bypass “could have negative impacts on public access to and enjoyment of the natural, scenic, and recreational qualities of the Willamette River.” However, the Exceptions Document explains that these impacts are associated with access issues or with design concerns in urban areas. The Board finds that ODOT, and Dundee and Newberg have adequately addressed these access issues in their comprehensive plans and agreements with ODOT. It further finds that impacts occurring inside the boundaries of Newberg or Dundee are matters for those cities, not the County, to address. Inside the boundaries of Newberg and Dundee, Yamhill County has no jurisdiction to engage in land use decision-making.

The Board believes and finds that these policies do not apply as mandatory review standards to the Bypass Project, and it so interprets these policies. Scenic Goal 1 is a broadly worded, aspirational policy to protect scenic views and sites. The Board interprets this policy as a planning directive to the County. Similarly, Parks and Recreation Policies 1C and 1I use language that is directory to the County (“seek to offer”, “encourage”), and the Board interprets them as such. These policies are directed at the County to engage in certain planning actions, rather than intended as review standards for individual land use applications.

10. Air, Water and Land Resources Quality Policy 1B directs the County to consider proximity of the proposed use to residential areas and meteorological factors when “making land use decisions relative to industrial or other uses likely to pose a threat to air quality.” The Board finds that air quality was considered as part of the LDEIS process, with particular emphasis given to unhealthy concentrations of air pollutants. The Board further finds that the proposed Bypass alignment, with an East Dundee Interchange but without an interchange just west of Dundee, will significantly improve air quality in the region by reducing or eliminating the number of air quality “hot spots” in the area.

Because roads serve motor vehicles, they have the potential to pose a threat to air quality. The Board finds this is not likely to happen with the Bypass, at least throughout the 20 year planning period. The Board finds that the recommended Bypass corridor will help to minimize potential adverse air quality impacts on residential areas by its location predominantly south of, rather than within, the rural residential area between Newberg and Dundee. The Board further finds that meteorological factors are more relevant to decisions involving site-specific uses such as heavy industrial uses, for which air quality controls are required and/or where air emissions come from specific areas or point sources. For a facility like a new highway, the Board believes that meteorological factors do not play an important role because motor vehicles will be moving throughout the corridor rather than remaining stationary in a single location.

Finally, the Board finds that 1000 Friends’ specific arguments regarding this standard relate to impacts to low-income housing inside the City of Newberg and on farmworker housing on the Dundee Farm property. The Board finds that the Bypass corridor alignment within the City of Newberg is a city issue governed by the City’s comprehensive plan. The Board does not have jurisdiction over Newberg on this issue. Accordingly, that matter is not properly before the Board. Regarding Columbia Empire Farms, Figure 14 at page 120 of the Exceptions Document shows the Bypass corridor location to be at least several hundred feet away from the farmworker housing, by the Board’s best estimate. The Board believes that air quality is not a problem under this circumstance. Indeed, the Board finds no evidence of any potential air quality problems along the Bypass corridor at this location.

11. Energy Conservation Policy A states that Yamhill County will encourage and support the highest possible current and future energy efficient design standards in all land use issues. The Board finds that this policy is aspirational and directory to the County rather than a mandatory review standard. But if this standard did apply, the

Board would find that the OHP highway performance standards for Statewide highways and freight routes would best support energy efficiency because they are least likely to result in energy-wasting congestion. Alternatives like STAs, the boulevard proposal, or widening of Oregon 99W will lead to higher levels of fuel inefficiency because of the greater potential for congestion and because of the presence of traffic signals along the route.

**G. Supplemental Findings: Bypass and East Dundee Interchange**

1. The record includes testimony from local residents and property owners, a major agricultural enterprise (Columbia Empire Farms), local and statewide interest groups (Friends of Yamhill County and 1000 Friends of Oregon) and others who are either opposed to the Bypass and/or the East Dundee Interchange or prefer different corridor locations for these facilities. Likewise, the record includes testimony from many area residents, businesses and others who strongly support ODOT's application. The Board is aware that transportation projects of this nature and scale can generate significant adverse economic, social and environmental impacts that can result in a high level of controversy, particularly on properties that are directly affected. It also is sensitive to the fact that the Bypass Project will adversely impact some property owners. At the same time, the Board is aware of the difficult circumstances that generate the need for these transportation projects, and it recognizes the significant positive economic, social and environmental impacts projects like this can have on the community at large. The Board greatly appreciates the efforts the public has made in bringing many issues to its attention as it reaches a decision on this matter.

2. The Board heard and considered testimony from Columbia Empire Farms ("CEF") supporting the need for a Bypass but opposing a Bypass corridor passing through its Dundee Farm property. Among many points that it raised, CEF argued that the TSM, Bell Road and "regional bypass" alternatives were prematurely dismissed and that reasonable "non-exception" alternatives exist that can reasonably satisfy project objectives, including undergrounding Oregon 99W or designating Oregon 99W in Dundee as an STA or rerouting the traffic onto Edwards Road and Dayton Avenue. The Board has addressed many of these arguments above in Sections B and C of these findings. The Board rejects these arguments for the reasons stated in Sections B and C above and for the additional reasons stated in this section.

The Board rejects undergrounding of Oregon 99W because the acknowledged Dundee TSP considered and rejected this alternative and for the reasons set out in the Heitsch letter. The Board also finds that given the credible facts and explanation ODOT already has provided demonstrating why alternatives like Bell Road, TSM, the regional bypass and undergrounding cannot reasonably accommodate the identified transportation need, CEF has not met its responsibilities under OAR 660-004-0020(2)(b)(C) or 660-004-0020(2)(c) to provide facts and reasons demonstrating why these alternatives are reasonable.

The Board rejects the argument that designating Oregon 99W as an STA in Dundee can reasonably accommodate the identified transportation need for a bypass. As noted in Section A of these findings, Oregon 99W through the Newberg-Dundee region is a statewide freight route. OHP Policy 1B provides that within STAs, local auto, pedestrian, bicycle and transit movements are deemed generally as important as the through movement of traffic. However, OHP 1B also expressly provides that for designated freight routes, “highway mobility has greater importance” than local access concerns. Here, ODOT has identified a transportation need to move statewide and regional traffic (including freight traffic) through the region in a safe, efficient and timely manner. Given this identified “mobility” need to serve through travel, the much higher congestion levels permitted for STAs, and the fact that STAs focus on local travel movements rather than through travel, the Board concludes that an STA in Dundee cannot reasonably accommodate the identified need. The Board also notes that CEF has not demonstrated how a Statewide highway and freight route through downtown Dundee accommodating 47,000 daily vehicle trips by the year 2025, including 3700 daily freight trips, would be compatible with the concept of an STA.

3. At the July 22, 2004 public hearing, and in its letters to the County dated August 6, 2004 and August 12, 2004, CEF argued that Dundee’s circumstances are more comparable to Highway 43 in Lake Oswego than to Highway 30 in Scappoose. CEF made this assertion to support its argument that Dundee’s downtown can develop a pedestrian-friendly neo-traditional downtown even with a major state highway passing through it.

The Board finds CEF’s argument unpersuasive for several reasons. First, the Board finds that the railroad tracks in Lake Oswego run alongside less than half the length of Oregon 43 through Lake Oswego. In contrast, the railroad tracks in Dundee and Scappoose run alongside the entire length of Oregon 99W and Highway 30 respectively. Accordingly, the impact of railroad tracks in Lake Oswego is much less than in Dundee or Scappoose. Indeed, on the east side of Oregon 43 along the portion where railroad tracks do not exist in Lake Oswego, substantial commercial development has taken place. This opportunity is not available in Dundee or Scappoose.

Second, the Board finds that Oregon 43 through Lake Oswego is not a designated freight route, while Oregon 99W through Dundee and Highway 30 through Scappoose both are. Indeed, the Board questions whether Lake Oswego’s downtown would be as pedestrian friendly as advertised if thousands of semi-trucks barreled through Lake Oswego’s downtown along Oregon 43 each day.

Third, the Board finds that Lake Oswego is a large community, capable of supporting an expansive commercial district, while both Dundee and Scappoose are small. Lake Oswego’s population is greater than 35,000, compared to a Dundee population that is less than 3,000 and a Scappoose population of about 5,500.

Fourth, the Board finds that Oregon 43 through Lake Oswego serves predominantly local and regional traffic, while Oregon 99W through Dundee and

Highway 30 through Scappoose serve predominantly statewide and regional traffic. It finds that Oregon 99W and Highway 30 are principal routes connecting the Portland metropolitan area with the coast. In contrast, Oregon 43 connects the city of Portland with Lake Oswego, West Linn and Oregon City. As a consequence, the Board believes and finds that very little traffic travelling outside the Portland metropolitan region would use Oregon 43 as its principal route. Instead, regional or statewide traffic would use I-5, I-205 or Oregon 99E, which are nearby and function to serve longer trips. Conversely, there are limited facilities in the vicinity of US 30 and Oregon 99W that serve as alternative routes to the Oregon coast.

In summary, considering the location of the railroad within the community, the proportions of local traffic using the roadway, the designation of the highway as a freight route and other factors, the Board believes and finds that Scappoose provides a much more accurate comparison of likely impacts for Dundee than does Lake Oswego. In support of its findings on this issue, the Board incorporates by reference herein the August 4, 2004 Kittelson & Associates, Inc. memorandum regarding Oregon 43 and US 30 set out at pages 99-100 of ODOT Supporting Documents, Volume 8.

4. CEF argued that approval of the Bypass would violate state law because alternatives with less impact to farmland but more impact to exceptions land have been discarded. However, as the Board found above in Section B of these findings, the ESEE consequences standards in OAR 660-012-0070(7) and OAR 660-004-0020(2)(c) do not contain such a requirement. Rather, they require consideration of net adverse impacts, which include but are not limited to impacts to farmlands.

5. CEF argued that the Bypass Project violates City of Newberg and City of Dundee comprehensive plan policies. The Board finds that these arguments constitute an invalid collateral attack on earlier land use decisions that have subsequently been acknowledged by LCDC. Both the Newberg and the Dundee comprehensive plans provide for the Bypass in the approximate location where the proposed Bypass is located. The time to raise these issues would have been when these cities adopted those plans. In Dundee, issues concerning an adequate housing supply have been addressed by City Council. The Board agrees with the Dundee City Council that Dundee will retain a surplus of land for housing, even with the construction of a bypass.

6. CEF argued that the proposed goal exception should include a UGB amendment to bring the CEF Dundee Farm into the Dundee UGB because the Bypass will render the Dundee Farm unsuitable for agriculture. In support of this argument, CEF presented testimony from Andrews and Associates asserting that the Bypass corridor will convert the western portion of the Dundee Farm property to urban use and significantly impact agricultural activity on the eastern portion of that property. The Board disagrees with CEF's contentions. It finds the Andrews letter unpersuasive and a number of its factual assertions inaccurate or exaggerated. It believes, finds and concludes that the Dundee Farm can and should continue as a profitable commercial agricultural enterprise despite the presence of the Bypass traversing it.

CEF and the Andrews letter assert that the Bypass will disrupt farm continuity, displace 20 acres of valuable farmland and crop production, disrupt value added processing, harm CEF's marketing image, displace 250 seasonal and full time jobs, reduce crop quality due to proximity of traffic, and destroy a large profitable economic farming unit by breaking it into three small pieces that create added expense and management cost.

The Board finds that the Bypass corridor will displace up to 11 acres of the 300-acre Dundee Farm, and the East Dundee Interchange will displace up to an additional 5.5 acres. The Board also finds the presence of the Bypass will create some added expense and management cost and may reduce crop quality during roadway construction. However, the overall impact of the Bypass on Dundee Farm will not be anywhere near as severe as CEF and the Andrews letter imply. For one thing, the Bypass will separate the Dundee Farm only into two pieces, not three. The Board would agree that dividing the farm into three pieces would have had significantly greater adverse affects, and ODOT admitted as such in its decision to revise the location of the East Dundee Interchange and its connecting road. The Board finds that ODOT relocated the East Dundee Interchange alignment precisely to avoid this impact.

Second, contrary to assertions in the Andrews letter, the Board finds that the Bypass should have only minor adverse impacts on the economic viability of the Dundee farming operation and on value added processing at the Dundee Farm. This is due in large measure to ODOT assurances that it will provide adequate connectivity between the two portions of the Dundee Farm, replace damaged tiles or irrigation lines, and take other similar kinds of actions as part of its project mitigation. The Board is not persuaded that the loss of about 16 acres of a 300 acre farm would severely damage profitability. The Board believes that the two separated portions of the farm can continue to work as a single farming operation, particularly with the mitigation ODOT will provide. The Board finds that an approximately 285-acre farm is a significantly sized farm that can contribute substantially to the agricultural enterprise of Yamhill County. The Board also believes that CEF should be able to replace the lost acreage with other productive acreage with the payments it receives for its loss of land.

The Board finds not credible the assertion that the Bypass would result in the loss of 250 seasonable and full time jobs. In essence, CEF is arguing that virtually every farmworker job at the Dundee Farm would disappear. The Board does not believe this. The Board also rejects CEF's argument that the displacements resulting from the Bypass would significantly harm CEF's production facility. As Figure 13 of the Exceptions Document shows, the Bypass corridor and East Dundee Interchange would be located some distance away from both this facility and from farmworker housing on the site.

The Board further finds that roadways throughout Oregon cross farmlands that nonetheless continue to be operational and productive. The fact that a road crosses farmland is not in itself a basis to support a UGB expansion. Indeed, much of the I-5 corridor between Portland and Eugene remains in productive farmland.

The Board fully agrees with a statement in the Heitsch letter that ODOT has approached the CEF operations as being very productive farmland and has taken extensive measures to protect it. In addition to ODOT's relocation of the East Dundee Interchange and its promise of mitigation, ODOT has designed the Bypass to be a limited access facility, meaning that no vehicles will be able to exit on or off the roadway except at interchanges. This will avoid making the Dundee Farm more accessible to the general public, and it will support continued agricultural use at the farm. The Board also finds that the presence of urban or rural nonresource land along a portion of the Dundee Farm does not commit it to urban or nonfarm uses. The Board finds there are countless locations in Yamhill County and in Oregon where farms adjoin urban and/or rural nonfarm uses on one or even several sides and still operate productively. Indeed, in the caselaw there are multiple instances where, in circumstances like this, the reviewing body found that the agricultural land in question was not committed to urban or rural non-farm uses.

Finally on this issue, the Board agrees with ODOT that the presence of the Bypass will improve CEF's accessibility to markets and provide CEF with greater exposure for its products. And while the Bypass might impact the marketing image of CEF products, which uses a photograph of the farm juxtaposed against Mt. Hood on its promotional materials, the Mt. Hood image does not affect the soils or the agricultural production on EFU lands. Rather, it involves the sale of farm products after it has left the fields.

7. CEF President Floyd Aylor also testified that the Bypass would "very likely lead to the eventual closure of the operation." As it found with the Andrews letter addressed above, the Board finds this testimony to be speculative, exaggerated and lacking evidentiary support in significant ways. First, as explained immediately above, the Board does not agree that the Bypass will result in circumstances where the Dundee Farm would be entirely surrounded by urban development. While the Bypass would be deemed an urban facility, the Board finds that many farms operate successfully alongside freeways like I-5 or alongside major roadways like Oregon 99W. These roads may create some inconvenience to the farm operator, but they do not destroy the farm enterprise.

Second, the Board finds that the Bypass will not directly or significantly impact the processing plant or the farmworker housing. Mr. Aylor is correct that the Bypass may make the farm less of a "showcase" based on visual impacts, but the Bypass and East Dundee Interchange together will remove only a small percentage of the farm from production.

Third, the Board disagrees with Mr. Aylor that reduced access from the west side of Dundee Farm to its east side will have major adverse consequences to farming operations. ODOT testified, and the Board finds, that ODOT will provide access between the east and west sides of Dundee Farm as part of its project mitigation. Also, upon questioning by Board and Planning Commission members at the July 22, 2004 hearing, Mr. Aylor admitted that the single road extending eastward from the processing plant towards the river is used regularly to provide access to the eastern portion of the property. The Board believes this testimony and so finds.

Mr. Aylor also testified that the loss of acreage for marionberries could seriously harm the farming operation. While the Board does not question the quality of the soils and weather conditions in this area for growing marionberries, it does question Mr. Aylor's inference that other nearby lands are inadequate for this purpose. Indeed, the Board finds that marionberries are grown both throughout the Willamette Valley. It concludes that Columbia Empire Farms could replace its lost acreage with other lands for growing marionberries.

8. In its August 12, 2004 letter, CEF claims that the presence of the Bypass would make the Dundee property a higher priority for inclusion inside Dundee's UGB because the land would be completely surrounded by urban land or exception areas. The Board is not persuaded by this argument. First, CEF testified, and the Board finds, that the Dundee Farm consists of Class I and II agricultural soils. The Board also finds that large areas of committed lands adjoin the City of Dundee UGB. By state law, Dundee would be expected to expand its city limits onto these committed lands before urbanizing the Dundee Farm property. Second, the Board does not believe that a public facility crossing resource land creates an "exception area" as that term is used in ORS 197.298(1)(b). The focus of the statute is on lands zoned for rural residential, commercial or industrial lands. Third, CEF's argument is inconsistent with OAR 660-012-0060(4), which provides that the presence of a transportation facility on rural land is not the basis for an exception to allow even rural scale residential, commercial, industrial or institutional uses on rural lands.

9. In letters to Yamhill County dated August 6, 2004 and August 12, 2004, CEF asserts that the identified transportation need can be met through a series of "building blocks" that include (1) alternative modes, traffic management measures and improvements to existing transportation facilities; (2) an Edwards-Dayton connection; (3) a narrow five lane roadway through Dundee; and (4) an STA designation in Dundee. A map provided by CEF shows that east of the Edwards/Dayton connection, the facility would apparently continue through the Newberg couplets and east Newberg on existing Oregon 99W.

The Board will not repeat here all the reasons why it finds this alternative unreasonable. In sections B and C of these findings, the Board explains why each one of these alternatives, alone, cannot reasonably accommodate the identified transportation need. Also in those sections the Board considered and rejected many of these improvements in combination. The Board finds that CEF has provided no detailed factual analysis supplementing its earlier oral and written testimony that explains how or why this alternative would be able to move statewide and regional traffic through the Newberg Dundee area in a timely and efficient manner consistent with the stated purpose and need for this project. It finds that CEF, like 1000 Friends, has provided no testimony from professional engineers to support its implications that its alternative is operationally viable or that renders its testimony more persuasive than that of ODOT or ODOT's traffic consultant. Further, like 1000 Friends, CEF has failed to consider the full range of economic, social, environmental, energy and traffic impacts associated with its proposal.

Indeed, neither has provided an adequate footprint for the proposal. Given the need of large freight vehicles for wide turning movements, the Board is highly skeptical that the needed facilities could in fact be located entirely within Dundee's UGB without goal exceptions or without tremendous displacement of existing development in Dundee. In summary, both CEF and 1000 Friends have failed to back up their assertions with detailed analysis and with credible and substantial evidentiary support. Without a more detailed illustration of where the roadway would go, without credible factual support showing that their alternatives are operationally feasible and safe, and without realistic analysis of how these alternatives would impact existing development, the Board cannot find these alternatives to be reasonable.

10. In its oral testimony to the Board on June 24, 2004, 1000 Friends of Oregon advocated widening Oregon 99W west from Dundee to McDougal Corner as a substitute for extending the Bypass to Dayton. 1000 Friends claimed this would have a lesser impact on agricultural lands. However, the Board finds instead that this proposal would have greater net adverse impacts than extending the Bypass to Dayton, including greater impacts to agricultural lands.

First, as stated in a Kittelson & Associates Memorandum dated July 19, 2004 regarding "Oregon 99W South of Dundee", which the Board believes and incorporates herein by this reference, Oregon 99W under this scenario is forecast to carry more than 38,000 vehicles per day by the year 2025. To safely and efficiently accommodate all of those vehicles in a rural expressway design, Oregon 99W would need to be widened to four through lanes and quite possibly to six through lanes.

Second, as stated in the ODOT Response Document and also in documents prepared by Chris Watson, GeoDataScape LLC dated July 19, 2004 (ODOT Supporting Documents, Volume 7, pages 25-30), which the Board agrees with and incorporates into these findings by this reference, a four or six lane expressway on Oregon 99W would need to find a way around or through Dundee. 1000 Friends' boulevard proposal, which would require a seven lane section in downtown Dundee, is unreasonable to achieve this result because the adverse impacts of a seven lane highway through Dundee would be even greater than those associated with a five lane highway. The Board already has concluded that the impacts of a five lane highway through Dundee would be unreasonable. 1000 Friends has not demonstrated how the projected traffic volumes can be moved around Dundee in a safe and operationally feasible manner in the absence of a bypass. If 1000 Friends proposes funneling that traffic along Edwards Road and Parks Drive, then the Board finds that new at-grade railroad crossings on Edwards Road or on Parks Drive would violate OHP Policy 2G while elevated crossings would result in the same adverse impacts that a new East Dundee Interchange connector road would have inside Dundee.

Were the Bypass to terminate just west of Dundee and reconnect to Oregon 99W at that point, then the improvements required for that connection, the widening of Oregon 99W to McDougal Corner, new frontage roads north and south of Oregon 99W, and a new interchange at McDougal Corner, would impact over 175 acres of EFU-zoned land,

compared to 138 acres for the proposed Bypass. The Oregon 99W widening also would impact more wildlife habitat and much more lineal feet of fish habitat than would the Bypass alternative, and it would have greater business and residential displacement and noise impacts. The Board finds that such an alternative would require goal exceptions. It further finds that the net adverse impacts associated with the proposed Bypass corridor would not be significantly more adverse than those associated with terminating the Bypass just west of Dundee and widening Oregon 99W. Indeed, it finds that the Bypass would have fewer net adverse impacts than the Oregon 99W alternative.

11 In its July 22, 2004 written testimony, 1000 Friends argued that the Bypass should be shown as an alignment and not as a corridor. The Board disagrees. OAR 600-012-0070(3) states expressly that the general location for a transportation improvement on rural land “be specified as a corridor within which the proposed facility or improvement is to be located.”

12. 1000 Friends also testified that if the identified transportation need can be accommodated with exceptions to Goals 11 and 14 but without the need for a Goal 3 exception, then an alternative located on lands requiring exceptions to Goal 3 cannot be justified. However, 1000 Friends identified no authority supporting this contention, and the Board is aware of none. In particular, the Board finds that OAR 660-012-0070 requires that where exceptions to Goals 3, 4, 11 *or* 14 are required, consideration must be given to thresholds that encompass much more than agricultural lands impacts.

13. 1000 Friends and CEF assert that it is not unreasonable to widen Oregon 99W to five lanes in Dundee for the reasons stated in a February 6, 2003 letter from DLCD to ODOT. That DLCD letter asked ODOT to consider various “potentially reasonable” non-exception alternatives to meet travel needs through Dundee. The Board finds that ODOT considered the alternatives identified in that letter but then rejected them as unreasonable. ODOT’s reasons for rejecting those alternatives are set out in the Exceptions Document and also in a Kittelson & Associates Memorandum dated July 21, 2004 entitled “Oregon 99W Improvement Options in Dundee”, which the Board agrees with and incorporates herein by this reference. For the reasons stated in both documents, the Board finds that the combination of alternatives identified in the DLCD letter cannot reasonably accommodate the identified transportation need. The Board further finds that neither 1000 Friends of Oregon nor CEF has made any effort to provide factual evidence that contradicts ODOT’s or the Board’s conclusions.

14. 1000 Friends also suggested that the East Newberg Interchange and the easternmost section of the bypass corridor be relocated to avoid EFU-zoned lands. But as with its other recommended alternatives, 1000 Friends has not provided facts demonstrating that these alternatives would be more reasonable taking into consideration the full range of economic, social, environmental and energy consequences. The Board finds that an argument that considers only agricultural lands impacts and ignores all other kinds of impacts fails to meet the standard in OAR 660-004-0020(2)(c) that specific alternative sites be “specifically described with facts to support the assertion that the sites

have significantly fewer adverse impacts during the local exceptions proceeding.” It also fails to provide the breadth of analysis required by OAR 660-012-0070(7).

15. 1000 Friends claims that the Northern alternative should have been rerouted more through rural residential areas to minimize impacts to farmland. However, the Board finds that ODOT considered a number of northern alternative routes, including some located more inside the Newberg UGB. These alternatives were rejected for reasons set out in the LDEIS at 2-15 and in Chapter 4. The Board agrees with the reasons for rejecting these northern alternatives. The Board further finds that 1000 Friends has failed to provide sufficient facts warranting more detailed study of a “redesigned” northern alternative, including facts identifying the economic, social, environmental and energy impacts associated with its alternative.

16. In documents dated August 6, 2004, and August 13, 2004, 1000 Friends offers still more argument objecting to the Bypass and supporting its alternative. Most of these arguments are addressed earlier in these findings. However, the Board makes the following additional findings:

In its August 6 memorandum, 1000 Friends objects to ODOT’s application of Expressway standards to the Bypass. 1000 Friends claims that Expressways need not be high speed or limited access facilities. The Board agrees with 1000 Friends that under OHP Action 1A.2, Expressways may be moderate speed facilities in urban areas. See also Action 1H.2(a)(1), which provides that new bypasses should be designed “for moderate to high speeds.” But the Board also finds that the Expressway designation can apply to a wide range of state highways, including Interstate highways, Statewide highways, Regional highways and District highways. See OHP Action 1A.2. For Statewide highways, unlike Regional and District highways, the management objective is to provide “high speed” continuous flow operations rather than “moderate to high speed” operations. And where Statewide highways are classified as Expressways, Action 1A.2 emphasizes the importance of “maintaining system mobility.” Further, OHP Action 1H.2(d) directs ODOT to use grade separation and interchanges whenever practical and appropriate for safety and mobility.

Overall, the Board believes and finds that the text and context of the OHP direct ODOT to design a moderate to high speed, grade separated facility with interchanges to maintain and support system mobility. The Board believes that a moderate to high speed facility is one that operates at speeds of about 45 miles per hour or higher, rather than the much lower speeds 1000 Friends of Oregon has suggested. The Board also finds that 1000 Friends’ alternatives are not consistent with this identified function, as they do not provide for a grade separated facility, a facility with interchanges, or a facility that can operate at such speeds.

1000 Friends challenges the accuracy of ODOT’s analysis comparing farmland impacts of its proposed alternative with the impacts of widening Oregon 99W between Dundee and Dayton. However, the Board finds that ODOT’s analysis to be more reasonable and credible, including ODOT’s determination of need for and the location of

frontage roads north and south of Oregon 99W. Much of 1000 Friends' argument here is little more than a disagreement with OHP Expressway policy. The Board believes and finds that such issues should be directed not to the Board but to the Oregon Transportation Commission.

1000 Friends also alleges a number of violations of City of Newberg comprehensive plan policies. The Board cannot speak for the City and recognizes that the portions of the Bypass Project inside incorporated cities are beyond the Board's jurisdiction.

The August 6 memorandum also attempts to describe more clearly the 1000 Friends alternative. The Board finds that the alternative has expanded in some instances to involve choices, some of which require goal exceptions. The proposed exceptions (such as an alignment extending in part through rural residential land west of Dundee) are intended to avoid agricultural land. However, these exceptions fail for the same reason that 1000 Friends' alternatives fail generally, which is a complete lack of analysis demonstrating operational feasibility and safety, addressing the relevant thresholds, and considering the full range of economic, social, environmental, energy and traffic impacts. 1000 Friends asserts that its alternatives would have significantly less adverse consequences to prime farmland or to developed residential areas, but there are no facts or analysis backing this up. The Board concludes that 1000 Friends assertions lack sufficient substantial evidence backing them up to warrant further, more detailed analysis of its alternatives.

17. The Board heard testimony that the proposed Bypass would not solve congestion problems in Sherwood, Tigard and Tualatin. Whether or not that is so, the Board finds that the Bypass will solve congestion problems in the Newberg-Dundee area and has utility as an independent transportation project for that reason.

18. The Board heard testimony that downtown Dundee should be moved somewhere else in the city. The Board finds that this is neither the option that Dundee has chosen for itself nor one that ODOT or the Board finds reasonable. Indeed, this proposal runs contrary to Dundee's acknowledged comprehensive plan and TSP and the Dundee vision statement. It also runs contrary to the new DLCD mission statement for economic development.

19. The Board heard testimony that the Bypass violates civil rights laws due to impacts on low income and migrant housing in Newberg. The Board agrees with ODOT that the portions of the Bypass subject to Yamhill County's review do not impact low income or migrant housing and thus the issue is not relevant to the standards for land use decision-making.

20. The Board heard opponent testimony regarding the estimated price tag of the Bypass Project. The Board finds that because all identified non-exception alternatives to the Bypass corridor cannot reasonably accommodate the identified transportation need based on one or more thresholds other than cost, it is unnecessary to speculate as to what

the cost comparisons would be for these alternatives. The Board does not believe that the TPR requires ODOT or other local governments to engage in time consuming and expensive “make-work”, such as estimating costs of potential alternatives, when those alternatives cannot otherwise reasonably accommodate the identified need. This is particularly so when the costs would be so rough as to have questionable probative value.

## **H. Conclusions**

For all of the reasons stated above, the Board concludes that the proposed Newberg Dundee Bypass and East Dundee Interchange comply with all applicable land use review standards. Accordingly, the Board approves those applications.

## **I. Decision**

Based on its determination that the Bypass Project complies with all applicable standards, the Board hereby:

1. Amends the Yamhill County Comprehensive Plan to include the exceptions to Goals 3, 11 and 14 for the Bypass corridor and the East Dundee Interchange. The Board also amends the Yamhill County Comprehensive Plan to include the analysis of ESEE consequences for the Bypass and East Dundee Interchange set out in Paragraph D.3 of these findings. However, this amendment shall take effect only in the event that the Board’s decision is appealed and a reviewing body, on appeal, concludes that the Goal 5 rule applies and requires Yamhill County to adopt an ESEE analysis authorizing the Bypass and East Dundee Interchange.
2. Amends the Yamhill County Transportation System Plan to (1) identify the Bypass corridor and the East Dundee Interchange on the transportation facility plan map; (2) identify the Bypass corridor and the East Dundee Interchange as long-term projects on the project list; (3) identify approximately \$300 million as the estimated total project cost, including the cost of improvements in Newberg and Dundee; and (4) identify federal and state dollars as the primary source of funding for the Bypass Project.

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