

1 detailed in the plans and specifications” to be completed “no later than May 1,
2 2020.” Notice of Intent to Appeal, LUBA No. 2020-032, Exhibit 1 page 2, 8.

3 On April 9, 2020, petitioners filed a Motion for Stay of the challenged
4 decisions pursuant to ORS 197.845(1) and OAR 661-010-0068.¹ For the reasons
5 explained below, we grant an interim stay of the decisions.

¹ OAR 661-010-0068 provides, in relevant part:

“(1) A motion for a stay of a land use decision or limited land use decision shall include:

“* * * * *

“(c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable injury if a stay is not granted;

“* * * * *

“(3) Unless otherwise ordered by the Board, a response to a motion for a stay of a land use decision or limited land use decision shall be filed within 14 days after the date of service of the motion and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

“(4) An order granting a stay of a quasi-judicial land use decision or limited land use decision involving a specific development of land shall be conditional upon filing an undertaking or a cashier’s check or bank-certified check in the principal amount of \$5,000. * * * Any objections to the form of undertaking or the surety shall be filed within 14 days after

1 **BACKGROUND**

2 The county’s proposal to develop the YWT has been the subject of three
3 prior LUBA decisions: *Van Dyke et al v. Yamhill County*, 78 Or LUBA 530
4 (2018) (*Van Dyke I*); *Van Dyke v. Yamhill County*, ___ Or LUBA ___ (LUBA
5 No 2019-047, Oct 11, 2019) (*Van Dyke II*); and *Van Dyke v. Yamhill County*, ___
6 Or LUBA ___ (LUBA Nos 2019-038/040, Oct 11, 2019) (*Van Dyke III*).

7 In *Van Dyke II*, we remanded the county’s decision to approve a
8 conditional use permit for the trail for further proceedings. According to
9 petitioners, no further proceedings on the county’s conditional use permit
10 application have been conducted or formally scheduled. Motion for Stay 5.

11 In *Van Dyke III*, we dismissed the appeals of a board of county
12 commissioners order authorizing the county to enter into an agreement for the
13 design of three bridges along the trail, including the bridge over Stag Hollow
14 Creek that is the subject of the Construction Agreement, because we agreed with
15 the county that the agreement for design and consulting services was not a land
16 use decision because it did not authorize “the use or development of land.” *Van*

the date of service of a copy of the undertaking on the
objecting party.

“(5) The Board shall base its decision on the stay, including the
right to a stay, amount of undertaking, or conditions of any
stay order, upon evidence presented. Evidence may be
attached to the motion in the form of affidavits, documents or
other materials, or presented by means of a motion to take
evidence outside the record. See OAR 661-010-0045.”

1 *Dyke III*, ___ Or LUBA ___ (LUBA Nos 2019-038/040, Oct 11, 2019) (slip op
2 at 15). For that reason, we also concluded that the agreement did not have any
3 significant impacts on land use and therefore did not qualify as a significant
4 impacts land use decision under *City of Pendleton v. Kerns*, 294 Or 126, 653 P2d
5 992 (1982). *Van Dyke III*, slip op at 17-19.

6 **MOTION FOR STAY**

7 In relevant part, ORS 197.845(1)(b) and OAR 661-010-0068(1)(c) require
8 the movant to demonstrate that the decision, if not stayed, will cause the movant
9 “irreparable injury.” *See* n 1. The Motion for Stay alleges that if the stay is not
10 granted, irreparable injury from construction authorized by the county in the
11 Order and Construction Agreement will occur to wetlands and/or a riparian area,
12 and a salmonid bearing stream. The Motion for Stay also alleges irreparable
13 injury to petitioner Ben Van Dyke (Van Dyke) due to the presence of construction
14 workers adjacent to the Van Dyke farm and the consequent prohibition on Van
15 Dyke spraying pesticides on certain areas of his farm due to pesticide labeling
16 requirements. Motion for Stay 20. Petitioners also allege that Van Dyke will be
17 harmed by litter and trash from construction activities adjacent to his farm
18 entering his farm, contaminating his hazelnut crop, and jeopardizing USDA food
19 safety certifications. Motion for Stay 21.

20 Based on petitioners’ motion for stay, the Board grants an interim stay of
21 the challenged decision. *See Niederer v. City of Albany*, ___ Or LUBA ___
22 (Order, LUBA No 2018-133, Order, Jan 7, 2019) (slip op at 2) (granting an

1 interim stay of a city decision approving demolition of three historic contributing
2 structures); *Save Amazon Coalition v. City of Eugene*, ___ Or LUBA ___ (LUBA
3 No 1995-042, Mar 27, 1995) (granting an interim stay of a decision to approve a
4 demolition permit for historic buildings).

5 The interim stay shall take effect immediately upon issuance of this Order,
6 conditioned on the Board’s receipt no later than 4:00 p.m. on Monday, April 13,
7 2020 of a cashier’s check or bank-certified check in the principal amount of
8 \$5,000, as specified in OAR 661-010-0068(4). If such undertaking is not received
9 within the time set forth in this order, the interim stay shall automatically expire.

10 The county’s response to the Motion for Stay shall be filed no later than
11 4:00 p.m. on Thursday, April 16, 2020. The county shall also file its response to
12 petitioners’ objections to the record not later than 4:00 p.m. on Thursday, April
13 16, 2020.² The county shall file and serve its response to the Motion for Stay and
14 response to the record objections pursuant to OAR 661-010-0075(2)(a) and (b).
15 In addition, (1) the county shall transmit courtesy copies of its responses by email
16 to LUBASupport@dsl.state.or.us, and to petitioners’ attorney’s email address
17 provided in the Motion for Stay, and (2) all pleadings regarding the Motion for

² LUBA received the record in these appeals on April 2, 2020. The Motion for Stay states that petitioners filed objections to the record transmitted by the county “contemporaneously with” the filing of the Motion for Stay. Motion for Stay 2 n 2. However, as of the date of this Order, LUBA has not received an objection to the record from petitioners.

1 Stay and objections to the record filed by any party from this point forward shall
2 be transmitted by courtesy copy to LUBA and the other party in the same manner.

3 The Board shall endeavor to issue an order not later than 4:00 p.m. on
4 Thursday, April 23, 2020, either granting the Motion for Stay, or denying the
5 motion and vacating this interim stay. If the Board grants the Motion for Stay,
6 the Board's order shall set out an expedited schedule for briefing, oral argument,
7 and a decision. OAR 661-010-0068(1)(d). If the Board denies the Motion for
8 Stay, the Board will return the undertaking, cashier's check, or bank-certified
9 check to petitioners.

10 Dated this 10th day of April, 2020.
11
12
13

14 _____
15 Melissa M. Ryan
16 Board Member