BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

JIM VAN DYKE, JULIE VAN DYKE, BEN VAN DYKE, BEN VAN DYKE FARMS, INC., CASEY VAN DYKE, CORY VAN DYKE, JOHN VAN DYKE, TOM HAMMER, CHRIS MATSON, GREG MCCARTHY, CELINE MCCARTHY, BRYAN SCHMIDT, RUDIS LAC, LLC, LEE SCHREPEL, FRUITHILL, INC., B.J. MATTHEWS, GORDON DROMGOOGLE, ALLEN SITTON, MARYALICE PFEIFFER, and TIM PFEIFFER,
Petitioners,

vs.

YAMHILL COUNTY,
Respondent.

LUBA Nos. 2020-032/033

ORDER

NATURE OF THE DECISIONS

In LUBA No. 2020-033, petitioners appeal an agreement entitled "Agreement for Yamhelas Westsider Trail (Phase 2) Project" (Construction Agreement) between the county and a construction contractor. The Construction Agreement requires the contractor to construct a bridge and related trail approaches on county-owned property zoned exclusive farm use (EFU), in connection with a county proposal to develop a 2.82-mile segment of a recreation trail (Yamhelas Westsider Trail or Trail) between the cities of Yamhill and

Carlton, within a former railroad right of way.[1] Notice of Intent to Appeal (NITA), LUBA No. 2020-033, page 1. The 2.82-mile segment of the proposed Trail crosses three drainages that will require construction of three bridges or culverts.

In LUBA No. 2020-032, petitioners appeal a January 16, 2020 board of county commissioners' order (Order 20-25) authorizing the county to enter into the Construction Agreement.

BACKGROUND

The county's proposal to develop the Trail has been the subject of three prior LUBA decisions: *Van Dyke v. Yamhill County*, 78 Or LUBA 530 (2018) (*Van Dyke I*); *Van Dyke v. Yamhill County*, ___ Or LUBA ___ (LUBA No 2019-047, Oct 11, 2019) (*Van Dyke II*); *Van Dyke v. Yamhill County*, ___ Or LUBA ___ (LUBA Nos 2019-038/040, Oct 11, 2019) (*Van Dyke III*).

In *Van Dyke I*, we remanded a 2018 board of county commissioners' decision to adopt Ordinance 904, which amended the county's comprehensive plan to acknowledge county ownership of a 12.48-mile segment of a former railroad right-of-way, and to authorize construction of a 2.82-mile segment of that right-of-way into the Trail. We concluded that constructing the Trail required

[1] The Construction Agreement requires the contractor, for $564,812, to construct "a prestressed voided slab bridge" as well as "trail approaches, and other items detailed in the plans and specifications," to be completed "no later than May 1, 2020." NITA, LUBA No. 2020-033, Exhibit 1, pages 2, 8.

conditional use permit approval, including application of land use approval standards implementing ORS 215.296 for sections of the Trail within lands zoned EFU.[2] The county instituted remand proceedings, and in March, 2019 the board of county commissioners approved a conditional use permit for the Trail. Petitioners appealed that decision to LUBA and that decision was the subject of *Van Dyke II*.

In *Van Dyke II*, we remanded the county's decision to approve a conditional use permit for the trail for further proceedings. In a related set of appeals resolved in *Van Dyke III*, we dismissed two appeals of a board of county commissioners order authorizing the county to enter into an agreement for the design and consulting services, and the agreement itself, related to the three proposed bridges along the Trail, including the bridge over Stag Hollow Creek that is the subject of the Construction Agreement. That agreement covered what is generally referred to as "Phase 1" of the trail project. Response to Motion for Stay, Exhibit 5, and Exhibit 7. We agreed with the county that the agreement for design and consulting services was not a land use decision because it did not authorize "the use or development of land." *Van Dyke III*, ___ Or LUBA ___ (LUBA Nos 2019-038/040, Oct 11, 2019) (slip op at 15). For that reason, we also

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[2] ORS 215.296 generally requires that the applicant for certain non-farm uses in EFU zones demonstrate that the proposed use will not force a significant change in accepted farm practices on surrounding farm lands or significantly increase the cost of such practices.

concluded that the agreement did not have any significant impacts on land use and therefore did not qualify as a significant impacts land use decision under *City of Pendleton v. Kerns*, 294 Or 126, 653 P2d 992 (1982). *Id.,* ___Or LUBA ___ (slip op at 17-19). The services at issue in the design contract that was appealed in *Van Dyke III*, as well as the construction of the bridge and Trail improvements, are funded at least in part through a grant from the Oregon Department of Transportation (ODOT)'s Connect Oregon grant program and using federal highway funds, and through funds provided by the Oregon Parks and Recreation Department (OPRD).

According to petitioners, the county has not taken any action on remand of our decision in *Van Dyke II* to address the remanded issues or approve a conditional use permit for the Trail. Motion for Stay 5. However, in January 2020, the board of county commissioners adopted Order 20-25 authorizing the county to enter into the Construction Agreement, and the commission chair and county administrator subsequently signed the Construction Agreement on behalf of the county. Preparations for construction of the bridge commenced in February 2020 and construction commenced in March 2020.

On April 9, 2020, petitioners filed a Motion for Stay of the challenged decisions pursuant to ORS 197.845(1) and OAR 661-010-0068.[3] In an order

[3] OAR 661-010-0068 provides, in relevant part:

dated April 10, 2020, we granted an interim stay pending the county's response to the motion. The county filed a response to the motion for stay, petitioners filed a reply to the response, the county filed a sur-reply to petitioners' reply, and the parties continued filing responsive and additional pleadings. For the reasons explained below, we now grant a stay of the decisions pending our resolution of the appeals.

MOTION FOR STAY

LUBA is authorized to stay a land use decision pending LUBA's review if a petitioner demonstrates (1) a colorable claim of error in the appealed decision, and (2) that petitioner will suffer irreparable injury if the stay is not granted.

> "(1) A motion for a stay of a land use decision or limited land use decision shall include:
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> "* * * * *
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> "(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; [and]
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> "(d) A suggested expedited briefing schedule;"
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> " * * * * *
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> "(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."

A. Colorable Claim of Error

The requirement to demonstrate a colorable claim of error is not particularly demanding. *Rhodewalt v. Linn County*, 16 Or LUBA 1001, 1004 (1987). A petitioner need not establish that it will prevail on the merits. *Thurston Hills Neigh. Assoc. v. City of Springfield*, 19 Or LUBA 591, 592 (1990). Provided a petitioner's arguments are not devoid of legal merit, it is sufficient that the errors alleged, if sustained, would result in reversal or remand of the challenged decision. *Barr v. City of Portland*, 20 Or LUBA 511 (1990). "In order to establish evidence of a colorable claim of error, it is not necessary to show that the petitioner will prevail on the merits. It is necessary to show the errors alleged are sufficient to result in reversal or remand of the decision if found to be correct." *Dames v. City of Medford*, 9 Or LUBA 433, 438 (1983), *aff'd*, 69 Or App 675, 687 P2d 1111 (1984).

In the present appeals, petitioners intend to argue that in making the challenged decisions, the county failed to follow procedures applicable to land use decisions and that the decisions fail to comply with applicable provisions of Yamhill County Zoning Ordinance (YCZO) 402.04(N), YCZO 702.05 and YCZO 703.05. The county does not really dispute that the colorable claim of error prong is met. The county does, however, argue that the challenged decisions are not "land use decisions" within the meaning of ORS 197.015(10)(a), and filed a preliminary motion to dismiss the appeals along with its response to the motion for stay.

We conclude that petitioners have therefore satisfied the colorable claim of error prong of ORS 197.845(1)(a).

B. Irreparable Injury

In order to satisfy the irreparable injury prong of ORS 197.845(1)(b), the following five requirements must be met:

> (1) the movant must adequately specify the injury that he or she will suffer;
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> (2) the injury must be one that cannot be compensated adequately in money damages;
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> (3) the injury must be substantial and unreasonable;
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> (4) the conduct the movant seeks to bar must be probable rather than merely threatened or feared; and
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> (5) if the conduct is probable, the resulting injury must be probable rather than merely threatened or feared.

Butte Conservancy v. City of Gresham, 47 Or LUBA 604, 609 (2004); *City of Oregon City v. Clackamas County*, 17 Or LUBA 1032, 1042-43 (1988). Generally, a movant may meet these requirements only by demonstrating that the development will "destroy or injure unique historic or natural resources, or other interests that cannot be practicably restored or adequately compensated for once destroyed." *Roberts v. Clatsop County*, 43 Or LUBA 577, 583 (2002).

1. Injury to Protected Resources

The Motion for Stay alleges that if the stay is not granted, irreparable injury from construction authorized by the county in the Order and Construction Agreement will occur to (1) wetlands; (2) spotted owl habitat protected under the

Endangered Species Act (ESA); and (3) a salmonid bearing stream, Stag Hollow Creek. The county responds that wetlands are not present in the area of construction, and maintains that the bridge is being constructed with oversight by ODOT and consulting engineers hired by the county and that construction is occurring "in compliance with all state and federal environmental laws." Response to Motion for Stay 5-6.

In support of its response, the county cites Exhibit 7 to the response. Exhibit 7 to the response is a November 2019 Document entitled "[Federal Highway Administration] FHWA and Oregon ODOT [Programmatic Categorical Exclusion] PCE Approval Document" for Phase 2 of the Trail (the Approval). The Approval states that no wetlands were found in the project area, although regulated wetlands are located in the vicinity of the project area. Response to Motion for Stay, Exhibit 7, page 1. However, in the section of the Approval addressing the ESA, the Approval states "the FAHP [Federal Aid Highway Program] Completion Report *for Phase 2* will need to address whether a temporary work bridge with footings above *the regulated area* was required." *Id*. at 2 (emphases added). The county provides no assistance on this point and no detailed explanation of Exhibit 7, and we cannot tell whether the ESA section of the Approval refers to the jurisdictional wetlands in the vicinity of the bridge construction, or whether it refers to regulated areas that provide habitat for protected species, or both. Accordingly, we cannot agree with the county that no construction is occurring in regulated wetlands and that no wetlands will be

harmed by the construction of the bridge and associated trail improvements, particularly given the requirement for Phase 2, bridge construction, to address construction near the regulated wetlands or an area containing protected species habitat.[4] The Approval recognizes that wetlands are present in the vicinity of the project area but no detail or exact location is provided. Accordingly, petitioners have established that irreparable injury may occur to regulated wetlands and/or regulated habitat if a stay is not granted.

With regard to protected species, the Approval also states that an ESA determination of no effect for protected species, "except Streaked Horned Lark covered by a separate USFWS Biological Opinion," was prepared in 2015 for Phase I, and that no changes to the determination "are anticipated unless there is a change in species status or additional issues arise." *Id*. Petitioners maintain that Exhibit 7 only provides evidence that approximately five years ago, no environmental assessment under the National Environmental Policy Act was

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[4] We also note that in the Approval's "Land Use" section, the Approval states that the board of county commissioners approved a conditional use permit for the trail in March, 2019. Response to Motion for Stay, Exhibit 7, page 1. In the "Public Outreach" section, the Approval states: "Yamhill County LUBA oral arguments (2019-047) – 8/20/2019." Response to Motion for Stay, Exhibit 7, page 3. However, the Approval does not reference LUBA's subsequent remand of that March 2019 decision on October 11, 2019 in *Van Dyke II*.

After a land use decision is remanded, it is no longer effective. *NWDA v. City of Portland*, 58 Or LUBA 533, 541-42, *aff'd*, 229 Or App 504, 213 P3d 590 (2009); *Western States v. Multnomah County*, 37 Or LUBA 835, 842-43 (2000).

required because no protected species would be affected, but that Exhibit 7 does not provide evidence that there has not been a change in species status or that no "additional issues" have arisen. While we tend to agree with petitioners that the age of the ESA determination has some effect on its evidentiary value, petitioners do not point to any change in species status or additional issues that call into question the findings in the 2015 ESA determination. Petitioners have not established that irreparable injury to any protected species will occur if a stay is not granted.

2. Injury to Petitioner Ben Van Dyke's Interests

The Motion for Stay also alleges irreparable injury to petitioner Ben Van Dyke (Van Dyke) due to the presence of construction workers adjacent to the Van Dyke farm and other areas that Van Dyke farms.

a. Prevention of Spraying

The motion alleges irreparable injury from the presence of construction workers and the consequent prohibition on Van Dyke spraying pesticides on certain areas of his farm due to pesticide labeling requirements. Motion for Stay 20. Petitioners also allege that Van Dyke has already been and will be further harmed by litter and trash from construction activities adjacent to his farmed areas entering those areas, contaminating his hazelnut crop, and jeopardizing USDA food safety certifications. Motion for Stay 21. Petitioners' assertions are supported by a Declaration, a Supplemental Declaration, a Second Supplemental

Declaration, and a Third Supplemental Declaration (together, the Declarations) of Van Dyke.

In the Declarations, Van Dyke asserts under penalty of perjury that he farms the property adjacent to the construction site, that due to construction activities and the presence of construction workers, his farm employees are prevented from spraying fungicides and pesticides with construction workers present, and that during the week of April 1, 2020 he was forced to spray at night and hire a spotter to watch for trespassers. Van Dyke asserts that if he is unable to spray, his hazelnut trees may die due to Eastern Filbert blight, or that at a minimum lack of ability to spray will result in reduced yields.

In its response, the county disputes that Van Dyke farms close enough to the construction site to be prohibited by fungicide and pesticide labeling laws from applying those products to his hazelnut trees. The county maintains that the location of the bridge is at the mid-point of the county's right of way, which we understand the county to maintain is 80 feet wide at that location, and, relying on aerial photos, alleges that Van Dyke's hazelnut trees are at least 150 feet from the construction site.[5] Response to Motion for Stay 2, Exhibit 2 and Exhibit 3. The county also disputes that the labels prevent him from applying the products even assuming that construction is occurring within 100 feet of the trees. The

[5] The county-owned property is generally 60 feet wide. *Van Dyke II*, slip op 4.

county then submitted a declaration from a county parks employee that, as we understand it, declares that he measured the distance from what he determined to be the southern end of the construction site to the nearest hazelnut trees to the southeast and the southwest and the distance does not exceed 63 feet. Petitioners then submitted a Third Supplemental Declaration from Van Dyke that takes the position that Van Dyke does not spray only the trees but sprays to his property boundary, which is closer to the construction site where workers are present than the closest trees that were measured.

Although it is a reasonably close question, we conclude that petitioners have established for purposes of the motion for stay only, through the Declarations, that Van Dyke's farm is close enough to the construction site that the presence of construction workers prevents him from applying certain pesticides and fungicides to his trees when construction workers are engaging in construction of the bridge. The county's response concedes that the bridge is located at the mid-point of the county's 80-foot wide right-of-way, or approximately 40 feet from the property line of the county's right-of-way, and the aerial photographs do not conclusively establish that Van Dyke's trees or farmed areas are located at a distance that is far enough from construction

activities that are obvious from photographs submitted by petitioners that label requirements or the federal application exclusion zone are not triggered.[6]

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[6] We note here that in *Van Dyke II*, we sustained petitioners' subassignments of error that argued that county's findings regarding setbacks required by pesticide and herbicide labels were inadequate, and failed to demonstrate compliance with the farm impacts test:

> "We conclude that remand is necessary for the county to adopt more adequate findings regarding any setback or buffer required by pesticide or herbicide labeling. In doing so, the county will likely have to make specific factual findings about specific setbacks required by particular chemicals on particular farming operations on surrounding farmlands, and whether operation of each setback would force a significant change in farm practices. Specifically, the county must adopt findings addressing application of Gramoxone, Lorsban, Yuma 4E and any other pesticide, herbicide, etc., identified in the record that may require a setback of some kind from the Trail. The setback for Gramoxone appears to be most problematic, as it does not provide a numeric setback, but instead prohibits application 'around' recreational areas, which the county understood to mean in 'close proximity to.' The county will likely need to conduct further fact-finding to determine what is an appropriate setback for those farms using Gramoxone.
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> "Based on the labels cited in the record, the appropriate width of setbacks for those pesticides and herbicides with numeric setbacks depends on several variables, including application rates and method of delivery. Some of the farms adjoining the Trail apparently use aerial application, which generally requires a larger setback, while others use ground sprays from booms, or other methods, which require smaller setbacks. As we acknowledged above, applying pesticides in a manner that causes overspray or drift onto adjoining properties is not an accepted farming practice for purposes of ORS 215.296(1). The setback from sensitive uses that is required on individual farms, based on pesticide label restrictions,

Regarding the first three factors in *City of Oregon City*, we conclude petitioner Van Dyke has adequately specified the injury he might suffer -- the loss of a valuable crop -- if he is forced to stop spraying his crop located adjacent to the construction area due to the presence of construction workers. We also conclude it is not an injury that could be compensated adequately in money damages. *See Cossins v. Josephine County*, 77 Or LUBA 564 (2018) (petitioners adequately specify injury that cannot be compensated in money damages if they are forced to cease farming marijuana and lose their Oregon Liquor Control Commission licenses to farm when a county ordinance prohibiting marijuana farming in the rural residential zone takes effect); *Meyer v. Jackson County*, 72 Or LUBA 462 (2015) (petitioners adequately specify injury that cannot be compensated in money damages if they are forced to relocate or close asphalt batch plant operation, or pay fines for remaining open, due to loss of revenue and

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> therefore must be determined based upon application methods which avoid overspray and drift. The county will likely need to conduct further fact-finding on these points to determine the appropriate setbacks for different farm operations, and to gather the information needed to determine whether the appropriate setback forces a significant change in farm operations." *Van Dyke II*, *Id*. at slip op 31-32.

As noted, the county has not taken action on remand. However, we note here that the construction site is significantly wider than the 12 foot wide trail that the county proposes for the 60 (or 80) foot right of way, and our conclusion that petitioners have established that the presence of construction workers prevents Van Dyke from spraying his trees and property is dependent on the significantly wider construction area than the proposed 12-foot wide trail.

loss of customer base); *Barr*, 20 Or LUBA at 511 (harm to business reputation and loss of business goodwill not losses which can be adequately compensated by money damages).

In addition, we understand the county to respond that it intends to proceed with construction if LUBA does not grant a permanent stay because the county believes that construction of the bridge in the EFU zone does not require any land use approval. Given that response, we agree with petitioners that the conduct is probable, and the resulting injury is also probable.

b. Food Safety Certifications

Van Dyke also asserts that irreparable injury to his food safety certifications will occur due to the presence of litter from the construction site that has entered his farm.[7] The county disputes Van Dyke's assertion that litter from the construction site that blows onto his farm fields will jeopardize the farm's food safety certifications, and additionally faults Van Dyke for not addressing the litter problem directly with the contractor or construction workers, or with the county. Response to Motion for Stay 4-5. We agree with petitioners that the evidence provided by petitioners supports a conclusion that Van Dyke will suffer injury if litter is allowed to enter his farm fields. That evidence

[7] Our decision in *Van Dyke II* also sustained petitioners' assignments of error that argued that the county had failed to adequately consider the impacts from litter and debris entering adjacent farms and jeopardizing food safety certifications. *Van Dyke II*, slip op 50-51.

includes the Declarations, and a letter from a local hazelnut packer that states that under its quality control system standards, the product must be

> "free from foreign material. Trash in field and/or in delivered product poses a food safety liability issue. Trash can carry vectors that can cause food borne pathogens." Petitioners' Reply to Response to Motion For Stay, Exhibit 14, Supplemental Declaration of Ben Van Dyke, Exhibit F, page 2.

Based on that evidence, we conclude that petitioners have established that the first three *City of Oregon City* factors are met. In addition, in its response the county offers that the solution to unmonitored litter is "simple – the county instructs the contractor to be more careful disposing of lunch bags and construction 'detritus." Response at 5. However, we do not understand that response to be an offer by the county to assume responsibility for ensuring that litter will not travel onto Van Dyke's farm (as would be the case if fencing or some other barrier was already installed, for example). Absent any promise or offer by the county to address litter, we conclude that the conduct is probable and the resulting injury is also probable.

3. Future Removal of Improvements

Finally, petitioners address LUBA's case law generally holding that an injury is not "irreparable" if the offending construction could be removed and the property being developed returned to its former state if LUBA concludes that development was not properly authorized. *See Von Lubken v. Hood River County*, 17 Or LUBA 1150, 1153 (1989) (no irreparable injury to the petitioner when the

property being developed as a golf course could be returned to farm use if the petitioner prevails); *Roberts*, 43 Or LUBA at 583. However, petitioners argue that the circumstances surrounding the board of commissioners' order authorizing the county to enter into a contract to begin construction of the bridge on county-owned property require a different analysis than if the developer was a private individual or corporation. At the heart of those circumstances is the undisputed fact that funding for the construction of the Stag Hollow Creek bridge, the costliest of the three bridges included as part of the Trail, has been provided almost entirely by other public money from ODOT, OPRD, and federal highway funds. In that circumstance, petitioners argue, an assumption that the improvements can be removed if LUBA concludes that the construction was not properly authorized is not warranted, because the county will be required to repay the public funds, and because other public entities that funded the project may object to its removal.

We agree with petitioners. Indeed, the county's response appears to validate petitioners' concern that once the bridge is constructed, it will not be easily removed and the property returned to its former state. In its response, the county argues:

> "The county is the only party to this proceeding harmed by the stay. Half of the bridge construction funds have been spent ($283,678.60 as of March 31, 2020). If the bridge is not completed the county will need to discuss with ODOT how to proceed, but someone will have paid nearly $1,000,000 for an incomplete bridge. The costs to demobilize, protect the site during a stay and remobilize to complete

> the bridge are unknown at this time. Those costs are potentially substantial and unfair to impose on the county, which can now cross the bridge, but cannot use it for fire maintenance and control in its current condition. The competing equities in this matter are that the county faces substantial potential damages and costs, while the petitioners have made no reasonable claim of any sort of injury from allowing the bridge to be completed and used by the county solely for access from one part of its property to another part of its property." Response to Motion for Stay at 8-9.

At a minimum, the county's position demonstrates that improvements already constructed will not easily be removed without protest from the county.

In sum, petitioners have established a colorable claim of error and that at least one petitioner will suffer irreparable injury if a stay is not granted. Petitioners' motion for stay is granted.[8]

RECORD OBJECTION

The record transmitted by the county includes the Construction Agreement. Record 1-7. Petitioners object that the record fails to include materials that are incorporated by reference into the Construction Agreement. Record 1. The county responds that none of the items identified by petitioners are "relevant" and none of the materials were "placed before" the decision maker.

OAR 661-010-0025(1)(b) provides that the record shall include:

> "All written testimony and all exhibits, maps, documents or other materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of

[8] Petitioners have previously filed an undertaking, in the amount of $5,000, as required by ORS 197.845(2) and OAR 661-010-0068(4).

the proceedings before the final decision maker."

The Construction Agreement provides:

> "This Agreement includes by reference the following Contract Documents that are part of the Project: [list of documents omitted]." Record 1.

It is clear that the Construction Agreement "specifically incorporated" the Contract Documents. Therefore, the county's response that the Contract Documents were not "placed before" the decision maker does not answer the question. Petitioners' objection is sustained.

Not later than Wednesday, April 29, 2020, the county shall transmit to the Board and petitioners a paginated supplemental record that includes documents (A) through (Q) described on page 1 of the Construction Agreement.

EXPEDITED BRIEFING

Petitioners' motion for stay proposed an expedited briefing schedule, in accordance with OAR 661-010-0068(1)(d). *See* n 3. In its response to petitioners' motion for stay, the county filed a preliminary motion to dismiss the appeals on the basis that the challenged decisions are not "land use decisions" within the meaning of ORS 197.015(10)(a). The county requests "additional briefing, on a normal schedule," regarding the jurisdictional question. Response to Motion for Stay at 19.

Petitioners have filed a preliminary response to the county's preliminary motion to dismiss and a combined response to the county's preliminary motion to dismiss. However, the parties' pleadings up to this point in these appeals

address the motion for stay, jurisdictional issues and, to some extent, the merits of the appeal, and are presented in an unfocused manner. We conclude that focused briefing that addresses both the jurisdictional issues and the merits of the appeals, which are intertwined in this case, will assist the Board in resolving the jurisdictional question and, if we conclude we have jurisdiction, the merits of the appeal in an expedited manner consistent with our issuance of the stay.

Accordingly, the petition for review shall be due 14 days from the date of this order, and the response brief due 28 days from the date of this order. Any reply brief filed by petitioners shall be due not later than May 26, 2020. In addition, on the date of filing both parties shall also transmit a courtesy copy of their briefs by email to LUBA at LUBASupport@dsl.state.or.us, and to the other parties' email address.

Oral argument in these appeals is hereby scheduled for May 27, 2020 at 11:00 a.m. by telephonic conference. The Board shall issue its final opinion and order as soon as possible thereafter.

Dated this 24th day of April, 2020.

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Melissa M. Ryan
Board Member