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COUNTY ATTORNEY FOR  
MULTNOMAH COUNTY, OR

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

COTTRELL COMMUNITY PLANNING ORGANIZATION, PAT  
MEYER, MIKE COWAN, PAT HOLT, RON ROBERTS, KRISTY  
MCKENZIE, MIKE KOST, RYAN MARJAMA, MACY AND TANNER  
DAVIS, AND LAUREN AND IAN COURTER,  
Petitioners,

and

PLEASANT HOME COMMUNITY ASSOCIATION, ANGELA  
PARKER, dba HAWK HAVEN EQUINE, MULTNOMAH COUNTY  
RURAL FIRE PROTECTION DISTRICT NO. 10, OREGON  
ASSOCIATION OF NURSERIES, MULTNOMAH COUNTY FAR  
BUREAU, GRESHAM-BARLOW SCHOOL DISTRICT 10J, and  
1000 FRIENDS OF OREGON  
Intervenor-Petitioners,

v.

MULTNOMAH COUNTY,  
Respondent,

and

PORTLAND WATER BUREAU,  
Intervenor-Respondent.

LUBA No. 2023-086

Intervenor-Petitioner 1000 Friends of Oregon's  
Reply to Intervenor-Respondent PWB's Response

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1 **Preservation, Friends' Third AOE**

2 Intervenor-respondent ("PWB") is wrong that the issue of compliance  
3 with a farm-specific impact test described in *Stop the Dump* was not  
4 adequately preserved. PWB Resp 15:6-17:11. PWB's response  
5 improperly conflates the requirement to raise "issues" with a  
6 requirement—that does not exist—to raise specific "arguments." *DLCD*  
7 *v. Tillamook*, 34 Or LUBA 586, 590 (1998); see *Boldt v. Clackamas*  
8 *County*, 107 Or App 619, 623 (1991) (ORS 197.797 "requires no more  
9 than fair notice to adjudicators and opponents, rather than the  
10 particularity [such as that required by ORAP] that inheres in judicial  
11 preservation concepts"). PWB relies on cases that did not apply ORS  
12 197.797(1), 197.835(3), or *Boldt*. PWB cites *Willamette Oaks*, 295 Or  
13 App 757, which quotes *dicta* from *Willamette Oaks*, 248 Or App 212, 225  
14 (2012) and *VanSpeybroeck*, 221 Or App at 690-91, n5. PWB Resp. 16:1-  
15 16:11. The two *Willamette* cases and *VanSpeybroeck* are irrelevant  
16 because they involved ORAP 5.45, only, not ORS 197.797(1). See *The*  
17 *Confederated Tribes v. Deschutes*, 332 Or App 361, 385 (2024) (quoting  
18 and applying *Boldt*, not *Willamette Oaks*). For the benefit of the bar,

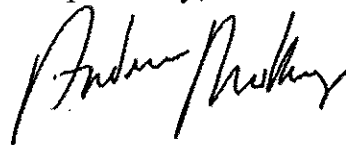
1 LUBA should recognize PWB's quoted language as dicta only. PWB  
2 Resp. 16:1-16:11.

3 The HO and all parties had fair notice of the issue. *Reagan v. Oregon*  
4 *City*, 39 Or LUBA 672, 690 (2001). PWB has no basis to claim  
5 otherwise; its argument is simply trolling. Friends' Pet 25:13-25:15  
6 (citing App-47, Rec-47) (Full quote: "As cited by the applicant and as I  
7 have adopted, the farm impact test requires farm specific analysis").  
8 The record is suffuse with references to *Stop the Dump* and  
9 explanations of the farm-specific impacts test. See e.g. Friends Pet  
10 12:18-13:4, Rec-3558-59 (quoting "granular" test in full). Opponents  
11 presented arguments based on the operative requirements from *Stop*  
12 *the Dump*, describing in detail the farm and practice specific impacts on  
13 their operations; they also commented on Prenguber's analysis. See  
14 Friends Pet 27:5-28:6, 29:10-30:18, 31:14-32:13, etc. The HO's findings  
15 also identified the applicable standard. Friends Pet 25:13-25:15, 22:7-  
16 23:2; *Nehmzow v. Deschutes County*, (LUBA 2019-110, Aug 10, 2020)  
17 (Slip-op 14); *Riverview Abby v. Portland*, 79 Or LUBA 38, 42-43 (2019).  
18 PWB even claims later in its brief that it *did* perform a farm specific  
19 impacts test. PWB Resp 37:13-37:17.

1 The applicant has the burden of proof, and was fully aware of the  
2 applicable legal standard. *Rochlin v. Multnomah County*, 35 Or LUBA  
3 333, 348 (1998). The fact that PWB ignored opponent's farm-specific  
4 comments or incorrectly applied *Stop the Dump* does not have any  
5 bearing on whether the issue was adequately raised. *Lucier v. Medford*,  
6 26 Or LUBA 213, 216 (1993) (specific evidence need not be anticipated  
7 and specifically challenged). PWB had fair notice that the granular test  
8 in *Stop the Dump* applied. App-47, Friends Pet 25:13-25:15, 12:18-13:4.  
9 PWBs failure to provide evidence sufficient to meet its burden of proof  
10 does not mean that the issue of farm-specific impacts was not  
11 adequately raised. ORS 197.797(1); PWB Resp. 15:10-15:17. ORS  
12 197.797(1) does not hold petitioners responsible for an opponent's  
13 ignorance, foolishness, or missteps.

14 DATED: September 6, 2023.<sup>1</sup>

15 Respectfully,



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<sup>1</sup> I certify that the foregoing Reply brief contains 504 words and is written in 14-point font.

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*On behalf of petitioner-intervenor  
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1                                   **CERTIFICATE OF FILING AND SERVICE**

2           I certify that on the date indicated below, I filed the foregoing Reply  
3 with one copy by first class mail with the Land Use Board of Appeals:

4 Land Use Board of Appeals  
5 DSL Building  
6 775 Summer Street NE, Suite 330  
7 Salem, OR 97301-1283

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9           I also certify that I served a copy of the foregoing document on the  
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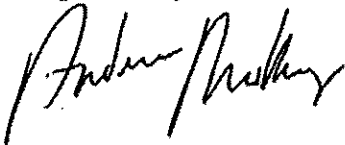
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28  
29 DATED: September 6, 2023

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31 Respectfully,



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