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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 AND ANGELA
PARKER, dba HAWK HAVEN
EQUINE, MULTNOMAH COUNTY
RURAL FIRE PROTECTION
DISTRICT NO. 10, OREGON
ASSOCIATION OF NURSERIES,
MULTNOMAH COUNTY FARM
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

GRESHAM-BARLOW SCHOOL DISTRICT 10J's INTERVENOR-
PETITIONER BRIEF

JULY 2024

Exhibit M.3

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1 **I. STATEMENT OF THE CASE**

2 **A. Statement of Petitioner’s Standing**

3 Intervenor-Petitioner Gresham-Barlow School District 10J (“District”)
4 timely filed its motion to intervene and has standing. Rec-3721, 3722, 3731,
5 3732, 5034, 5035.¹ ORS 197.830(2).

6 **B. Nature of the Decision and Relief Sought**

7 The challenged decision is a Hearings Officer’s decision that approved
8 community service conditional use permits for a water filtration plant, pipelines,
9 and communication tower on lands zoned Multiple Use Agriculture – 20 (MUA-
10 20) and Exclusive Farm Use (EFU). LUBA should reverse or remand the
11 challenged approvals.

12 **C. Summary of the Arguments**

13 The Hearings Officer misconstrued the MUA-20 conditional use criteria
14 to exclude the consideration of multi-year construction impacts caused by the
15 use.

16 The Hearings Officer misconstrued Multnomah County Code (“MCC”)
17 39.7515(A) when they adopted inadequate findings that lack substantial evidence
18 to show that the proposed use, particularly when considering construction
19 impacts, is consistent with the character of the area.

20 The Hearings Officer misconstrued MCC 39.7515(F) when they adopted
21 inadequate findings that lack substantial evidence to show that the proposed use,
22

23 ¹ All pages referenced “Rec” are to the County’s Second Amended Record filed
24 on May 23, 2024.

1 particularly when considering construction impacts, will not create hazardous
2 conditions.

3 **D. Summary of Material Facts**

4 The applicant, Portland Water Bureau (“PWB” or “County”), filed a
5 community service conditional use permit application to build a 135 million
6 gallon per day drinking water treatment facility and communications tower on a
7 94-acre site zoned for Multiple Use Agriculture (MUA-20) in Multnomah
8 County. Maps at App-8-9, App-13-14.² The project study area is comprised of
9 land zoned as follows: Exclusive Farm Use (EFU), Residential Exception Areas
10 (“MUA-20, RR, and RRFF-5), and Commercial Forest (CFU and TBR). Rec-
11 7892. The surrounding area consists primarily of rural residential and active farm
12 uses. Based on an analysis of tax assessor records, it is estimated that the study
13 area has 370 dwelling units. Residential development is the predominate rural
14 development land use in the study area. Rec-7904.

15 Conveying 135 million gallons of water per day will require installation of
16 new raw and finished water pipelines as well as a finished water intertie within
17 road right-of-ways and on private farm properties zoned MUA-20. App-8-9.

18 Many rural residents characterize the area as “serene,” “bucolic,” and a
19 place where children can safely ride their bikes and families can walk within the
20 vehicle travel lane while sharing it with farm traffic. Rec-3234, 3239, 3866).

21
22 _____
23 ² The Appendix page number references to the final decision match the
24 Record page numbers.

1 The Gresham-Barlow School District (“District”) has operated schools
2 safely within Multnomah County for more than a century (Ex. D.2, p. 5035). First
3 Student Bus Services serves the District community and has safely transported
4 thousands of students between their homes and District schools, and elsewhere,
5 for over 30 years Rec-2925. As a direct result of construction for the water
6 filtration facility, hundreds of students residing on roads that are under
7 construction or are impassible will be displaced for considerably long periods.
8 Every road where construction will take place for the purpose of establishing the
9 proposed use is one where the District must routinely travel to safely pick up and
10 drop off students. Road closures will make it impossible for students to safely
11 access their bus stop locations. Rec-2925.

12 Construction of the water treatment facility and associated pipelines on
13 Carpenter Lane alone will change the character of vehicle traffic to the existing
14 farm traffic that currently exists in the transportation network. This change has
15 been described as an increase in hundreds of vehicles making daily trips carrying
16 material import/export, concrete, miscellaneous deliveries, and commuters. Rec-
17 4208. During peak construction, the filtration facility can expect to involve 890
18 daily commuter trips and 590 daily truck trips. For the pipelines construction, at
19 its peak the area can expect 260 daily commuter trips and 552 daily truck trips.
20 Rec-4208. The operation of the facility will add 16 chemical delivery trucks and
21 9 solid haul trucks entering and exiting the site during the 5-day workweek. Rec-
22 7231, 7304. This adds a total of 50 trips to the local transportation network. Rec-
23

1 7231, 7304. The volume of trips generated exceeds 100 trips per day, thereby
2 creating a Transportation Impact. Rec-4103.

3 County Transportation included a condition of approval, which required
4 “TCP(s) must demonstrate consultation/engagement with Agricultural
5 businesses and School Districts, as recommended in the Construction TIA to
6 ensure impacts on the local transportation network are known in advance and/or
7 adequately mitigated.” Rec-4137. This condition was in place from the beginning
8 of the project until September 6, 2023, providing the District with assurances that
9 PWB would meet as required to discuss creating “an actual plan for how [the
10 District] can meet [its] legal obligation to provide safe transportation to all
11 students while roads are closed” and “an actual plan for providing roadways that
12 can accommodate the increased heavy vehicles (during construction and ongoing
13 operation) as well as safe walking paths adjacent to those roads.” Rec-5035. PWB
14 did not satisfy this requirement set upon it by County Transportation.

15 **E. Statement of Board’s Jurisdiction**

16 The decision applies land use regulations and is a final “land use decision.”
17 ORS 197.015(10)(a)(A)(iii). LUBA has jurisdiction. ORS 197.825(1).

18 **II. ASSIGNMENTS OF ERROR**

19 **A. FIRST ASSIGNMENT OF ERROR - The County Misconstrued**
20 **the Conditional Use Obligations of the MUA-20 Zone to Exclude**
21 **Construction Impacts**

22 The District adopts and incorporates by reference the “Second Assignment
23 of Error” made by Petitioners Cottrell Community Planning Organization, Pat
24 Meyer, Mike Cowan, Pat Holt, Ron Roberts, Kristy McKenzie, Mike Kost, Ryan

1 Marjama, Macy and Tanner Davis, and Ian Courter in their Petition for Review,
2 including their statement of preservation and standard of review. The Hearings
3 Officer’s interpretation that construction impacts resulting from a conditional
4 use could not be considered as a matter of law is inconsistent with the language
5 of the standards and their underlying purpose. This requires remand under ORS
6 197.829.

7 **B. SECOND ASSIGNMENT OF ERROR - The County Failed to**
8 **Make Adequate Findings Supported by Substantial Evidence in**
9 **Concluding That the Proposed Use and Construction Impacts**
10 **are Consistent with the Character of the Area**

11 **1. Statement of Preservation**

12 The District argued that construction and use of the proposed water
13 treatment facility would be inconsistent with the current character of the area
14 insofar as it creates—without any articulable mitigation plan—significant traffic
15 risks and obstacles not otherwise currently experienced by District students and
16 families who must access local roadways and adjacent areas to attend District
17 schools and participate in District school life. Rec-1404, 2947-2951, 3721, 3731-
18 3732, 5034 This issue is preserved.

19 **2. Standard of Review**

20 LUBA must reverse or remand a decision involving a land use decision if
21 it finds that the local government below “made a decision not supported by
22 substantial evidence in the whole record.” ORS 197.835(9)(a)(C). Adequate
23 findings supported by substantial evidence must: (1) identify the relevant
24 approval standards; (2) set out the facts which are believed and relied upon; and

1 (3) explain how those facts lead to the decision on compliance with the approval
2 standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

3 **3. Argument**

4 The County's findings in response to MCC 39.7515(A) are not supported
5 by substantial evidence in the whole record. PWB acknowledges that
6 "transportation" is one of the core areas for analysis when evaluating
7 "consistency with the character of the area," but fails to recognize or explain how
8 the undisputed, significant, and unmitigated disruption to District schoolchildren
9 as a consequence of construction and use of the water filtration facility does not
10 amount to a change in the character of the area. Rec-199; App-170.

11 In an area zoned MUA-20, any use that is zoned a Community Service
12 Use, must demonstrate, along with other exacting requirements, that it is
13 "consistent with the character of the area[.]" MCC 39.7175(A). A determination
14 on how to ascertain whether a use is consistent with the character of the area, is
15 an inexact science that "does not compel any particular approach," to be used.
16 *Tarr v. Multnomah Cnty.*, 81 Or LUBA 242, 2020 Or Land Use Bd. App. LEXIS,
17 *27 (2020). Previous decisions related to this issue require that: 1) there is an
18 identification of the area to be considered; 2) a rationale for the area is considered;
19 3) a description of the character of the area; and 4) a discussion of how the use
20 fits into the area. *See Multnomah Cnty. v. City of Fairview*, 18 Or LUBA 8, 12
21 (1989). This is also the analysis that PWB submits in its final written argument
22 Rec-188. This is the relevant "consistent with the character of the area" standard
23 for approval. *See Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

24 With respect to the identification of the area to be considered, the Hearings
Officer adopted PWB's Final Written Argument in its entirety. App-41. PWB's

1 considered area was based on traffic and intersections as the “filtration facility
2 itself will be quiet, odorless, safe, and relatively unobtrusive.” Rec-190; App-
3 161. The Final Written argument then cites the Memorandum from Dana
4 Beckwith, PE, PTOE regarding Bull Run Filtration Project Traffic Impact
5 Analysis. Rec-190; App-161. This study area encompasses a small area of land
6 surrounding the filtration site that is expanded to encompass areas of traffic
7 impacts. This standard—of a study area cabined by the traffic impacts of the
8 Project would be a defensible one—if it addressed all of the impacts of the traffic
9 identified by PWB. However, it fails to accomplish this.

10 The study area based on traffic impacts of the use is not supported by the
11 record. As part of the conditions outlined by the Hearings Officer’s decision,
12 trucks heading towards and leaving from the water filtration site are slated to
13 avoid roads that have direct access to four District schools. App-93. These
14 schools are Sam Barlow High School, East Orient Elementary School, West
15 Orient Middle School, and Kelly Creek Elementary School. *Id.* Yet all of these
16 schools are outside the study area. PWB presented a study area for the character
17 of the area based on traffic impacts, yet excludes certain schools that it admits
18 and recognizes are going to be impacted by the increased traffic to the area. The area
19 surveyed was too small and failed to consider the entirety of traffic impacts that
20 the record describes as certain to materialize. It is clearly inconsistent with the
21 goal that PWB set out for itself. The County does not satisfy the requirements set
22 out in *Heiller* to explain how facts lead to being compliant with the ‘consistent
23 with the character of the area’ standard. *Heiller*, 23 Or LUBA at 556. The
24 Hearings Officer made their decision in a manner not supported by substantial
evidence in the whole record. For this reason, the decision must be remanded.

1 The County also failed to provide an adequate rationale for the area.

2 According to PWB:

3 This study area is designed to be large enough to include the
4 entire project as well as all areas where externalities or
5 sensitivities of the proposed use could potentially have impacts,
6 with the potential transportation and agricultural impact
7 categories driving the study area boundaries. The study area
8 includes the filtration facilities, communications tower, an
9 emergency access road from Bluff Road, the intertie on Lusted
10 Road, and related raw and finished water pipelines. The
11 boundaries of the study area take into consideration roadways
12 and topographical features which clearly divide areas of the
counties. Rec-195; App-166.

13 This is in direct contrast with other evidence in the record. As previously
14 explained, the area was based on traffic impacts, yet the Hearings Officer
15 imposed conditions, proposed by PWB, to mitigate traffic impacts near District
16 schools—itsself an admission and acknowledgement of the traffic impacts beyond
17 the study area. This impact on the District’s schools is clearly an “externalit[y] .
18 . . of the proposed use” that is not encompassed in the study area. Rec-195; App-
166.

19 Additionally, PWB did not adequately describe the character of the area.
20 In its initial application, PWB describes the character of the area briefly as farm
21 or forest land, further defined by “rural residences” that “vary greatly” in “age,
22 size, style, and appearance of homes.” Rec-8035, 8036. This is a brief description,
23 but is consistently, in the application for the project, referred back to as defining

1 the character of the area. Rec-7892. This brief and nondescript definition satisfied
2 the Hearings Officer, who accepted these findings as part of the Staff's
3 recommendations. App-37, 41. This does not capture the entire character of the
4 area.

5 In *Kine v. City of Bend*, LUBA found that a description of an area as
6 "generally residential" was insufficient to explain the character of the area. 72 Or
7 LUBA 423, 2015 Or Land Use Bd. App. LEXIS 95, at *22, *25 (2015). There,
8 the city was seeking to zone a certain piece of land as medium density in the
9 middle of a low-density residential area without further description of how this
10 was consistent with the character of the area. *Id.* at 25. LUBA held that additional
11 explanation to how this medium density was consistent with the area was needed
12 to uphold the decision. *Id.*

13 Likewise, the offered description of farm and forest land with rural
14 residences offered by PWB fails to capture a description of the character of the
15 area that explains why a large water filtration facility is appropriate for the area.
16 There are references to other utility projects in the area, specifically the Lusted
17 Hill Treatment Facility. Rec-7730. This facility is nowhere near the size and
18 scope of PWB's proposed facility and does not create the same traffic impacts
19 that the proposed facility will bring.

20 The description of the area accepted by the Hearings Officer fails to
21 capture the breadth of the character of the area. As noted in testimony offered on
22 the record, the area has been described as a place with "minimal traffic, which
23 moved at a safe pace and the area was safe for kids & critters, tractors, and farm
24 workers." Rec-3220. Further described by two retired teachers for the District
who live in the area as "a Mecca for walkers, runners and bicyclists[,]" where the

1 Sam Barlow High School track and cross county teams use the roads for
2 practice.” Rec-3286. The roads offer a place where families use the roads for
3 walking, biking, and jogging. Rec-3286. The area has also been described as
4 “quiet, bucolic, and visually energizing . . .” Rec-3239. Several residents testified
5 that the quiet and safe streets are an integral part of the character of the area. Rec-
6 3282, 3311, 3313. It is also an area where people walk directly on the street due
7 to the lack sidewalks and walkable shoulders. Rec-3866. PWB’s definition cuts
8 this characteristic of the area out of its narrative completely.

9 PWB’s description of the character of the area is significantly limited. The
10 description fails to note the lack of traffic as part of the character of the area,
11 while also stating that traffic is a core part of the character of the area. Rec-199;
12 App-170. The description does not capture the serenity or quiet of the area. In
13 limiting its definition, PWB fails to offer a sufficient description of the character
14 of the area.

15 Finally, PWB must describe how the project fits into the character of the
16 neighborhood. *Multnomah Cnty. v. City of Fairview*, 18 Or LUBA 8, 12 (1989).
17 PWB returns to this element in its final written argument stating that, under *Tarr*,
18 81 Or LUBA slip. op. at 37, that the MCC “does not compel any particular
19 approach” to how a consistency analysis should be undertaken. Rec-199; App-
20 170. PWB then suggests it has taken a multi-factor approach in its analysis. Rec-
21 199; App-170. This multifactor analysis considers noise impacts, dark sky
22 impacts, vibration, odor, dust, wildlife, and consistency with the neighborhood.
23 Rec-189-228; App-160-199. Despite this, it does not adequately describe how the
24 amount of increased traffic and construction associated with the use will change,
and not fit in, with the character of the area.

1 PWB's analysis considers roadway and traffic improvements but fails to
2 adequately describe how the extensive, multi-year construction and traffic will
3 change the character of the area. Rec-221; App-192. PWB spends less than a page
4 in its final argument stating that because the increased traffic is consistent with
5 the roadway capacity, it is therefore, consistent with the character of the area.
6 Rec-221; App-192.

7 PWB is well aware of the dramatic changes that will occur, and itself cites
8 to the many studies of the traffic impacts. (Rec-617, 1959, 1967, 6951, 7294).
9 These studies do not explain how the increased traffic is consistent with the area.
10 Nevertheless, PWB concludes, and the Hearing Officer accepts, that there would
11 not be a transportation impact. Rec-37, 41. This essentially ends the Hearings
12 Officer's inquiry into how traffic would be described as consistent with the area.
13

14 The Hearings Officer's decision does not provide a basis for the consistent
15 with the character of the area standard. Rather, the Hearings Officer provides an
16 expansive description of the consistency criteria:

17 To further narrow this criterion, the test of comparing
18 "consistency" with the character of the area is not with how it
19 would compare if the property is left as bare land but comparing
20 it to the proposed use with the surrounding uses. The area already
21 has pipelines and water facilities. The area also has large scale
22 nurseries that create more impact on the surrounding area than
23

1 will the proposed facility or the underground pipelines. I
2 recognize these are outright allowed farm uses and they get
3 separate treatment in other parts of the code but here, this
4 criterion is merely comparing uses. Many of the videos in the
5 record show a very nice area of farms and farm fields. If such
6 proposed community service uses were just compared to farm
7 land, they would never be permitted which would be contrary to
8 the code which allows them. App-41.

10 The Hearings Officer decision never articulates the actual comparison or
11 test for consistent with the area. The Hearings Officer's decision states that the
12 area cannot just be compared to farmland, but does not actually include what the
13 Hearings Officer compared the facility to for this consistency analysis. Then, the
14 Hearings Officer once again adopts the PWB's determinations that there is no
15 traffic impact. App-41. Neither PWB nor the Hearings Officer adequately
16 describe why this increased traffic is consistent with the area nor the
17 inconsistency of the decision of the traffic impacts.

19 The traffic analyses done by PWB do not further explain their omissions
20 in the traffic considered. During the development of the record, several impacts
21 of increased traffic, specifically impacts upon schoolchildren were raised, and
22 then went both unaddressed and unmitigated. Rec-1404. There is no clarity in the
23

1 record that any mitigation has been decided upon besides a plan for trucks to
2 avoid driving by schools around pick-up and drop-off times. Such an attempt at
3 mitigation is inadequate for numerous reasons, the most obvious being that it
4 does not take into account the safety considerations of schoolchildren in the study
5 area who walk to and from school, or walk to and from a bus stop in the study
6 area. The record is clear that this will impact hundreds of students. Rec-2925. It
7 remains to be seen how a project that will displace and jeopardize the safety of
8 hundreds of schoolchildren because of its construction-related traffic impacts is
9 consistent with the character of the area which depends on—and is accustomed
10 to—quiet, safe, and walkable streets.

11
12 To be certain, mitigations may make a Community Service Use consistent
13 with the character of the area. MCC 39.7510. There is not, in this case, a nexus
14 between the mitigations and the consistency with the character of the area. The
15 area's character is inextricably linked to its safe and quiet streets. PWB recognizes
16 that the use will create construction impacts for the bikers, pedestrians and
17 schoolchildren in the area and all it does to mitigate these impacts is provide a
18 narrow limitation on trucks being near school sites during specific timeframes.
19 This purported mitigation strategy was attacked as unenforceable during its
20 development and more concrete enforcement strategies did not come to fruition,
21 explaining their absence from the record. Rec-2947.
22
23

1 In short, PWB sets out an approval standard, and then fails to describe how
2 the facts support that decision by omitting, ignoring or waiving away evidence
3 on the record that undermines its position related to the traffic impacts on the
4 character of the area. By setting out incomplete facts, the decision does not meet
5 the *Heiller* standards. The facts relied on by the Hearings Officer accepting
6 PWB's narrative disregard significant portions of the record. Because of this, the
7 Hearings Officer decision fails to be supported by substantial evidence in the
8 record.
9

10 PWB failed to make adequate finding supported by substantial evidence in
11 the record to show that the proposed use and its construction-related impacts are
12 consistent with the character of the area. Reverse and remand is appropriate.
13

14 **C. THIRD ASSIGNMENT OF ERROR The County Failed to**
15 **Make Adequate Findings Supported by Substantial Evidence in**
16 **Concluding that the Proposed Use and Construction Impacts**
17 **Will Not Create Hazardous Conditions**

18 **1. Statement of Preservation**

19 During the proceedings below, the District argued that construction and
20 use of the proposed water treatment facility would create hazardous conditions
21 for District students and families who must access local roadways and adjacent
22 areas to attend District schools and participate in District-sponsored activities.
23 Rec-1404-1414, 3721-3722, 3731-3732, 2947-2951, 5034. This issue is
24 preserved.

1 **2. Standard of Review**

2 LUBA must reverse or remand a decision involving a land use decision if
3 it finds that the local government below “made a decision not supported by
4 substantial evidence in the whole record.” ORS 197.835(9)(a)(C). Adequate
5 findings supported by substantial evidence must: (1) identify the relevant
6 approval standards; (2) set out the facts which are believed and relied upon; and
7 (3) explain how those facts lead to the decision on compliance with the approval
8 standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

9 **3. Argument**

10 **a. The Hearings Officer did not identify the relevant approval**
11 **standards when they inserted nonexistent qualifying terms into**
12 **MCC 39.7515(F)’s approval criteria**

13 LUBA must reverse or remand a land use decision under its review if it
14 finds that the local government improperly construed the applicable law. ORS
15 197.835(9)(a)(D). Here, the Hearings Officer improperly adds the qualifying
16 adjectives “significant” or “continuous” to evaluate the “hazardous conditions”
17 prong of the community service use approval criteria. Neither of these terms
18 appear in the community service use approval criteria. Curiously, in their same
19 analysis, the Hearings Officer references ORS 174.010, a statutory construction
20 provision that prescribes judges to not “insert what has been omitted.” App-107.
21
22
23
24

1 The term “significant” is used elsewhere in the MCC nearly 100 times. The
2 term “continuous” is used 19 times. Had the drafters of MCC 39.7515 wanted to
3 add “significant” or “continuous” to MCC 39.7515(F), they would have done so.
4 The plain language of MCC 39.7515(F) is that a community service use must not
5 create hazardous conditions. LUBA should reverse or remand with a directive
6 that the plain language of the code be applied.
7

8 **b. The County failed to establish facts to be believed and relied**
9 **upon to show that construction-related activities will not create**
 hazardous conditions for District students and families

10 The Hearings Officer concluded that a “hazardous condition” means
11 “something that is continuously being in a hazardous state not something that
12 could remotely potentially happen.” App-56. The Hearings Officer went on to
13 conclude that for a hazardous condition to be present, it “cannot be mitigated to
14 a point where it is no longer a serious hazard.” App-56.
15

16 The County’s findings in the record demonstrate that construction-related
17 activities will create unmitigated hazardous conditions for years, particularly
18 road hazards that create safety risks for District students and families. The
19 County’s response to MCC 39.7515(F) is inadequate because it fails to respond
20 to the concerns repeatedly raised by the District that construction and use of the
21 water treatment facility: (1) do not include specific plans to ensure student and
22 community safety; (2) do not articulate specific plans to mitigate traffic concerns;
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1 and (3) do not include specific plans for running school buses while roads are
2 torn open to lay pipe. Rec-1431, 5035.

3 Under Oregon law, the District is obligated to provide transportation to
4 elementary school students who reside more than one mile from school, and must
5 provide transportation to any secondary student who resides more than 1.5 miles
6 from school. ORS 327.043. Rec-5035. In the case of students with disabilities
7 who have an individualized education program (“IEP”) where they receive
8 transportation as a related service, the District is obligated under federal and state
9 law to provide transportation to its enrolled students. 34 C.F.R. § 300.39; 34
10 C.F.R. § 300.34. The Hearings Officer wrote a scant 172 words in their Final
11 Order before concluding that traffic associated with the use will not create
12 hazardous conditions. Meanwhile, substantial evidence in the record does not
13 support a decision that the use, including construction-related activities, does not
14 create hazardous conditions.
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17 The record indicates the following road closures will occur during
18 construction of the project:

- 19 • Dodge Park Blvd. (Altman Road to 1,500 feet east of Cottrell Rd.),
20 between September 2024 and November 2025 (approximately 14
21 months in duration);
22

- 1 • Alman Rd. (Lusted Rd. to Oxbow Dr.), between September 2024 and
2 November 2025 (approximately 14 months in duration);
- 3 • Lusted Rd., Upper, C2 & C4 (Altman Rd. to 2,000 feet east of Altman
4 Rd.), between November 2025 and September 2026 (approximately 10
5 months in duration);
- 6 • Cottrell Rd. (Dodge Park Blvd. to Lusted Rd.), between November
7 2025 and July 2026 (approximately 8 months in duration);
- 8 • Lusted Rd. Lower, Multnomah Connection C2 & C4 (just NW of
9 county line), between October 2025 and March 2026 (approximately 5
10 months in duration);
- 11 • Lusted Rd. Lower, Multnomah Connection C3 (just NW of county
12 line), between October 2027 and January 2028 (approximately 2
13 months in duration); and
- 14 • Lusted Rd. Upper, C3 (just west of Altman Rd. to 2,000 feet east of
15 Altman Rd.) between October 2027 and May 2028 (approximately 7
16 months in duration). Rec-4515.

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20 These significant road closures to accommodate the Bull Run Filtration
21 Pipelines Project are scheduled to span from September 2024 through May 2028,
22 roughly the entire high school experience of a Sam Barlow High School ninth
23 grader entering in the fall of 2024. Despite this multi-year disruption replete with

1 dangerous construction-driven changes to the area, the record does not contain
2 adequate findings supported by sufficient evidence to show how these significant
3 road closures do not create hazardous conditions for students attempting to travel
4 to and from school.

5 For over 30 years, First Student has been the District's bus transportation
6 provider. After comparing current school bus routes and proposed construction
7 maps, First Student identified "hundreds of displaced students located down
8 roads under construction" or "impassible for considerably long periods." Rec-
9 2925. First Student's Transportation Manager reported without equivocation that
10 "EVERY road where construction will take place is a road that we must travel to
11 pick up/drop off students" and that due to road closures, "PWB will make it
12 impossible for students to access their bus stop locations safely." Rec-2925.
13 Meanwhile, neither the record nor the Hearing Officer's decision contains any
14 sufficient evidence in the form of a plan by PWB to mitigate the hazardous
15 conditions created for District bus riders by the road closures associated with the
16 use's construction. This is reinforced by the District pointing out in the record
17 that: (1) PWB did not seek District input "about any portion of this project and
18 the impact it would have on our ability to get students . . . to and from school on
19 time and in a safe manner;" and (2) "there has been zero analysis of our bus
20 routes." Rec-2948.
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1 Seemingly acknowledging the hazardous conditions created by road
2 closures associated with the pipeline project to District students, in June 2023
3 Multnomah County Transportation Planning and Development itself provided
4 the following comments aimed at mitigating hazardous conditions: Traffic
5 Control Plan(s) “must demonstrate consultation/engagement with . . . Gresham-
6 Barlow School Districts, as recommended in the Construction TIA to ensure
7 impacts on the local transportation network are known in advance.” Rec-4094.
8 The record shows that this directive was not fulfilled.

10 Using the Hearings Officer’s adopted standard of “hazardous condition”
11 to mean “something that is continuously being in a hazardous state,” and which
12 “cannot be mitigated to a point where it is no longer a serious hazard,” it is clear
13 that the County failed to establish facts to be believed and relied upon showing
14 that construction-related activities will not create hazardous conditions for
15 District students and families. School district transportation experts
16 communicated the hazards for District children associated with the project’s
17 construction activities, the County’s Transportation Planning and Development
18 department mandated engagement with the District to examine impacts on the
19 local transportation network—presumably to mitigate the serious hazard—and
20 no such mitigation occurred.
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1 The use, including construction-related activities, creates hazardous
2 conditions, in particular for many of the District's thousands of students. The
3 Hearings Officer arrived at inadequate findings that lacked substantial evidence.
4 For this reason, the decision must be remanded.

5
6 **III. CONCLUSION**

7 For over a century, the District has consistently prioritized and championed
8 the success and safety of its students. Its efforts here are no different. The County
9 failed to make adequate findings supported by substantial evidence to show that
10 the proposed use and its construction-related impacts will not change the
11 consistency of the character of the area, nor that it will not create hazardous
12 conditions for the community in general, and for District students and families in
13 particular.

14 For these reasons, this decision must be reversed and remanded.

15 Dated this 3rd day of July, 2024

16 GARRETT HEMANN ROBERTSON P.C.

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CERTIFICATE OF COMPLIANCE

I certify that (1) this brief complies with the word count limitation in OAR 661-010-0030(2) and (2) the word-count of this brief as described in OAR 661-010-0030(2) is 4,928 words. I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and the footnotes as required by OAR 661-010-0030(2).

Dated this 3rd day of July, 2024

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CERTIFICATE OF FILING AND SERVICE

I certify that on July 3, 2024, I caused to be delivered by first class mail an original and one copy of the enclosed **INTERVENOR-PETITIONER'S BRIEF** with the:

Land Use Board of Appeals
775 Summer Street, Suite 330
Salem, OR 97301-1283

and, on the same date, I caused to be delivered by first class U.S. mail, a true and correct copy of the foregoing document on

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