

LEGAL MEMORANDUM

TO: Jeff Stone

FROM: Ezra L. Hammer

CC: Steve Shropshire

DATE: July 10, 2024

RE: Oregon Association of Nurseries LUBA Brief Update

Hello Jeff,

At your direction, we filed a Joint Petition for Review with LUBA on behalf of the Oregon Association of Nurseries and Multnomah County Farm Bureau. The Petition challenged Multnomah County's approval of the City of Portland's proposed water filtration plant and associated pipeline infrastructure located in unincorporated Multnomah County. The Petition focused on four policy items that, if left as unopposed, could pose challenges to nursery operators across the state. Specifically, the Petition raised the following issues:

- 1) The City failed to conduct an appropriate alternatives analysis in order to justify the citing of its pipeline infrastructure on land zoned for exclusive farm use.
- 2) The County's Hearings Officer erroneously concluded that the County's farm impact test in the multiple use agriculture zone was less strict than the state farm impact test on land zoned for exclusive farm use.

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- 3) The County failed to properly consider and analyze identified farm impacts on a farm-by-farm basis as it was required to do under the farm impact test.

- 4) The County incorrectly accepted a narrow study area as part of the Project review process and should have relied on a broader study area that properly accounted for the nature of the surrounding farm practices.

Parties in opposition to the County's approval submitted a total of six briefs as part of the LUBA appeal. Following that, the City of Portland submitted a motion to extend the deadline for filing their response brief. The City is asking for an additional forty-two days to file their response, which would give them a total of sixty-three days from July 5, 2024. In conversation with the parties who are appealing the County's approvals, it was agreed that the Cottrell CPO would file a joint response to the City's motion both opposing this significant extension and requesting additional time for the appellants to file their replies to the City's response. We expect that LUBA will make a decision on these items in short order and set a final briefing and oral argument schedule. It is anticipated that this schedule will accommodate all major holidays.

In addition to their response brief, the City may move to strike various arguments that the appealing parties have raised, including our own. Following that, or the filing of their response, we will review the matter with you and seek your direction on how – if at all – you wish us to respond. Additionally, prior to oral argument on the matter, we will review our proposed oral testimony with you and ensure that it fully aligns with your direction.

Please let us know if you have any additional questions regarding the underlying LUBA proceeding and we will keep you apprised of any updates.