

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

3  
4                                   JILL ANDERSON,  
5                                                 *Petitioner,*

6  
7                                                 and

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9                                   LAURA COCHRAN,  
10                                                *Intervenor-Petitioner,*

11  
12                                               vs.

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14                                   YAMHILL COUNTY,  
15                                                *Respondent,*

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17                                               and

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19                                   ORETEX FARMS LLC, JCB FARMS LLC,  
20                                               and CHRISTOPHER BRYAN,  
21                                                *Intervenors-Respondents.*

22  
23                                               LUBA No. 2020-025

24                                               ORDER

25   **BACKGROUND**

26                   Petitioner appeals a county board of commissioners' approval of site  
27 design review for a marijuana and hemp processing facility.

28   **MOTION TO INTERVENE**

29                   Laura Cochran (Cochran) moves to intervene on the side of the  
30 petitioner. Oretex Farms LLC, JCB Farms LLC, and Christopher Bryan, the  
31 applicants below (collectively Oretex), move to intervene on the side of  
32 respondents. The motions are unopposed and they are granted.

1 **RECORD OBJECTIONS**

2 On March 11, 2020, LUBA received the record from the county in this  
3 appeal. Both Cochran and the Oretex filed record objections. On April 13,  
4 2020, LUBA received the county’s response to the objections as well as a  
5 supplemental record and a revised index. On April 27, 2020, LUBA received  
6 Cochran’s reply to the county’s response.

7 **A. Oretex’s Record Objections**

8 Oretex objects that:

9 (1) Exhibit 2 to a November 6, 2019 letter is missing a page;

10 (2) Exhibit 5 of a Pacific Hydro-Geology, Inc. letter dated November 25,  
11 2019 is missing a signature page with professional stamps;

12 (3) pages 1717 and 1718 are transposed and should be corrected;

13 (4) page 791 is a page from petitioner’s comments and erroneously placed  
14 in the record; and

15 (5) the location of a letter from Mr. Brandstetter (Record 1454-57) is  
16 misidentified in the record index.

17 Oretex also objects that a staff report (Record 82-91, 1592-1608) included in the  
18 record is incomplete, and that the land use application should be included in the  
19 section of the record that contains the items before the Planning Commission.

20 Lastly, Oretex objects to the inclusion of material (Record 931-61) identified in

1 the index as “Written Testimony Submitted Outside of Second Open Record  
2 Period.”<sup>1</sup>

3 The county conferred with counsel for Oretex and submitted a  
4 supplemental record. The supplemental record contains one additional document  
5 which resolves the Oretex objection concerning the Pacific Hydro-Geology letter  
6 by including the missing professional stamps.<sup>2</sup> The county proposes that LUBA  
7 and the parties insert that document after Record 984 and that it be numbered  
8 Record 984.5.

9 Oretex’s objections have been resolved.

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<sup>1</sup> The county explained in its response:

“Documents [submitted] too late to be provided to the Planning Commission[] were nevertheless included in the materials ‘placed before’ the Board of Commissioners. Based on that representation, this objection has been resolved through consultation with attorney for intervenor-respondent.” Response 6.

<sup>2</sup> Oretex objected:

“Pages 964-1042 contain a letter and exhibits from Emerge Law Group, dated November 25, 2019. The letter states that it attaches an expert letter from Pacific Hydro-Geology, Inc. as Exhibit 5 (the expert letter starts at page 983). While Exhibit 5 is attached, the signature page with the professional stamps appear to be missing. The signature page should be included in the record.” Oretex Record Objections 2.

1           **B. Cochran’s Record Objections**

2           Cochran objects to the quality of reproduction of certain photos in the  
3 record and asks that the copy of the first page of Ms. Morgan’s letter at page 140  
4 be replaced by a copy attached to her objections. Cochran also objects that “James  
5 Backstrand’s letter of January 7, 2020, set out at pages 420-423, is missing two  
6 pages and its cover sheet.” Cochran’s Objection 3. Cochran explains that the  
7 items on pages 420-25 of the record “are in fact a ‘mishmash’ of portions of two  
8 separate five-page faxes, one from Jenny Backstrand and one from Jim  
9 Backstrand.” Cochran Reply 2. Cochran explains further:

10           “The record contains a complete three-page letter from Ms.  
11 Backstrand at pages 420-22, followed by the signature page of Mr.  
12 Backstrand’s four-page letter at page 423, followed by the  
13 photograph appended to Ms. Backstrand’s letter and her fax cover  
14 sheet at pages 424 and 425, respectively. The balance of Mr.  
15 Backstrand’s letter is missing.

16           “Both complete letters were in fact received by the county on  
17 January 7, 2020, two days before the evidentiary record closed. This  
18 was confirmed by the county’s associate planner, Lance Woods. On  
19 January 8, Mr. Woods emailed Jenny Backstrand and informed her  
20 that both faxes had indeed been received and had been added to the  
21 record. A copy of the email from Mr. Woods is attached hereto as  
22 Exhibit D.” Cochran Reply 2.

23           The email from the county planner states that both Backstrand letters were  
24 included in the record. *See* OAR 661-010-0045(1) (LUBA may consider  
25 evidence outside the record to resolve disputes regarding the content of the  
26 record).

1           The county responds that it has provided all documents to LUBA in their  
2 entirety as it received them, and that the county has endeavored to provide all  
3 documents as legibly as possible. The county is the custodian of the record. We  
4 accept the county’s representation that it has included the most legible copies of  
5 documents it is able to reproduce. *See Curl v. City of Bend*, 55 Or LUBA 719,  
6 725 (2008) (explaining that we generally defer to the custodian of the record’s  
7 representations regarding the record contents).

8           However, we conclude that Cochran has provided compelling evidence  
9 that the copy of James Backstrand’s letter in the record is incomplete, and we  
10 therefore sustain that objection.

11           Cochran’s remaining record objections are denied.

12   **DISPOSITION**

13           Within 21 days of the date of this order, the county shall file with LUBA  
14 and serve on the parties a second supplemental record and revised table of  
15 contents, adding a complete copy of James Backstrand’s letter. LUBA will issue  
16 an order setting the briefing schedule after receipt of the second supplemental  
17 record and revised table of contents.

18           Dated this \_\_\_\_ day of May 2020.

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Michelle Gates Rudd  
Board Chair