

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

3
4 SAVE EWEB FOREST, SAMUEL SCHMIEDING,
5 and SANDRA BISHOP,
6 *Petitioners,*

7
8 vs.

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10 CITY OF EUGENE,
11 *Respondent.*

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13 LUBA No. 2021-076

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15 ORDER

16 On August 2, 2021, LUBA received a notice of intent to appeal (NITA)
17 that challenges an erosion prevention permit, issued by the city on July 30, 2021,
18 for construction of two new 7.5 million gallon round water storage tanks intended
19 to provide drinking water to the city of Eugene. The tanks will each be 212 feet
20 in diameter and will be partially buried with the top 15 feet exposed. The subject
21 property is zoned low-density residential.

22 Petitioners filed with the NITA a motion to stay the city's decision,
23 asserting that the erosion prevention permit authorizes immediate logging of a
24 mature conifer forest and requests that LUBA issue an interim stay of the
25 challenged decision, until the responses to the motion can be filed and the motion

1 for stay can be considered on the merits.¹ Petitioners filed with their motion for
2 stay a cashier's check in the amount of \$5,000, as specified in OAR 661-010-
3 0068(4).

4 Based on petitioners' motion for stay, the Board grants an interim stay of
5 the portion of the city's decision that authorizes the destruction of trees. *See Save*
6 *Amazon Coalition v. City of Eugene*, 29 Or LUBA 565, 566 (1995) (authorizing
7 interim stay during pendency of review of motion for stay); *Butte Conservancy*
8 *v. City of Gresham*, 47 Or LUBA 604 (2004) (destruction of mature trees is a
9 type of activity that can constitute irreparable injury for purposes of a stay).

10 The city and any party that intervenes on the side of the city (collectively,
11 respondents) shall mail or schedule delivery and then hand deliver to LUBA's
12 office responses to the motion for stay such that those responses are actually
13 received by LUBA no later than 4:00 p.m. on Monday, August 9, 2021.
14 Respondents may request that the interim stay be lifted. Respondents shall file
15 and serve their responses to the motion pursuant to OAR 661-010-0075(2)(a) and
16 (b). In addition, (1) respondents shall transmit courtesy copies of their responses
17 by email to LUBASupport@oregon.gov, and to petitioners' attorney's email
18 address provided in the email courtesy copies of petitioners' motion for stay, and
19 (2) all pleadings regarding the motion for stay filed by any party from this point

¹ The certificate of service of the motion for stay shows that petitioners served a copy of that motion by first class mail on the city attorney and the applicant's attorney and that petitioners also sent a courtesy email of the motion to the same.

1 forward shall be transmitted by email courtesy copy to LUBA and the other
2 parties in the same manner.

3 Dated this 2nd day of August 2021.

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H. M. Zamudio
Board Chair