



Kevin Kreitman, City Manager  
Janelle Booth, Assistant City Manager/City Engineer  
Scott Cowan, Mayor

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County Planning, Alyssa Boles  
300 SW 4<sup>th</sup> Avenue  
Albany OR 97321

**RE: Applicant Rebuttal to new testimony for March 14 Board Meeting, Linn County Case PLN-2022-00807**

**I. Introduction.**

At the March 7, 2023 Board of Commissioners hearing for PLN-2022-00807, the Commissioners elected to continue the hearing another week and re-open the record for new written testimony for 72 hours. The following is the Applicant's final response to all new issues raised. This rebuttal does not address comments previously addressed in the record.

The Applicant's original written testimony and supplemental documentation continue to support the findings of fact and conclusions of law that the Applicant has satisfied the burden of proving all applicable criteria are satisfied.

**II. The open house by Sofidel has no relationship with the mandatory approval criteria in case PLN-2022-00807.**

On February 16, 2023, a tissue paper manufacturing company (not a paper mill), Sofidel, held an open house at the Linn County Fairgrounds. Sofidel voluntarily met to introduce itself as a possible future neighbor and seek input from interested parties. Notice was provided to all property owners within 750 feet of the property subject to this application and to all property owners within the City of Millersburg. Additionally, the City posted notice of the meeting online on the City's public notice bulletin. Approximately 120 individuals attended the meeting and were provided with an opportunity to ask Sofidel questions regarding their company and proposed use. City staff also provided information regarding the City's development review process and summarized the planned Transition Parkway, which is a planned street identified in the City's Capital Improvement Plan.

Sofidel has expressed interest in placing a facility that makes tissue paper on the property subject to PLN-2022-00807. Specifically, it has interest in developing the property that the City of Millersburg is proposing to be added to the Millersburg Urban Growth Boundary (UGB). However the subject property is not part of the UGB or the City limits, so Sofidel has not and cannot yet submit applications to the City for development.

Many comments in the record have expressed a misunderstanding as to the scope of the current application and procedures for future development review. This information is important because there is no specific development proposal before the County. The only application

before the County is a comprehensive plan map amendment and zone change. Comments from opponents suggest Sofidel's interest in the subject property has caused the City to apply for the UGB swap. These suggestions are inaccurate and baseless. The City's purpose in the UGB swap is to provide economic opportunities for Millersburg and the surrounding communities. The City did not learn about Sofidel's interest in the property until after the UGB swap was well along in its processing.

**III. Potential impacts and compatibility of uses were fully addressed in the previous documents submitted to the record.**

The open house held by Sofidel showed a possible site plan for the site. Their conceptual site plan is not an official document that requires review or analysis by the City or the County. The City does not plan to address that site plan until it is submitted as an actual City application.

Sofidel is an example of a company that could eventually build on the property. However, it is just one example. The City submitted more analysis on February 6, 2023 detailing how the City's Development Code addresses possible future impacts of proposed development. The additional analysis further explained how County Criteria LCC 921.874(A)(2) is satisfied. The City continues to maintain that the record fully supports the conclusion that all criteria are met. The open house held by an interested company does not rise to the level of new evidence for the County Case PLN-2022-00807.

New comments received during the latest open record period repeat concerns regarding compliance with LCC 921.874(A)(2) (whether the "amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area") and (4) (whether the "amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat"). These issues were addressed in the Applicant's initial written statement and supplemental materials dated February 6, 2023. The new comments identify no specific impacts, nor do they respond to the testimony of the City that the State and local permitting process will ensure there are no adverse impacts on the overall land use pattern or any sensitive fish or wildlife habitat. Applicant's testimony and evidence provide substantial evidence demonstrating compliance with these criteria, and the County must approve the application.

To assist the County's review, the Applicant summarizes the evidence in the record as it pertains to the impact issues raised by opponents.

- **Standard of review:** Opponents are mischaracterizing the County's review. The approval criteria do not require the Applicant to show there are no impacts. Rather the criteria require evidence that the "amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area." The County has interpreted these provisions not to require showing the absence of all impacts, but whether the impacts that may be created by a comprehensive plan map amendment and zone change are significant and can be reasonably mitigated. See BC 18-003 (County approval of rezone of 30 acres of EFU zoned land for new military facility); and BC 18-004 (County approval to rezone 15 acres of EFU zoned land to allow expanded industrial uses).

Evaluation of this criteria needs to be made in context of uses allowed currently on the subject property and the surrounding properties. Farming operations are allowed as outright permitted uses on the subject property and adjacent properties. EFU zone allows large cattle, pig, and chicken farming operations that potentially generate significant noise, odor, and traffic with no obligation to mitigate such impacts. Farming allows the use of herbicides and pesticides that can impact fish and wildlife. Additionally, the

proposal in this case is a UGB swap, which exchanges existing industrial land with the substantially same amount of acreage of EFU land.

Unlike EFU development, the evidence in the record shows all future development of the industrial land will be subject to the City's site plan review and possibly conditional use review. These processes, together with State regulations of impacts on water and air quality discharges, ensure future industrial uses will be "compatible with adjacent uses and will not adversely impact the overall land use pattern in the area."

- **Sensitive fish and wildlife habitat:** Opposing party comments questioned whether there will be a significant impact on sensitive fish or wildlife habitat; however, such comments provided no evidence of potential impacts, nor did they identify any sensitive fish or wildlife habitat purportedly to be affected. Applicant's original materials explained that the proposal is a UGB swap, which exchanges industrial zoned lands within the floodway and flood plain and are immediately adjacent to the Willamette River with lands containing less river frontage and minimal flood area. By moving such uses farther from the Willamette River and flood zones, the likelihood of impacts (if any) related to such uses and the Willamette River are lessened – not increased. Generalized concerns regarding environmental impacts of possible future industrial uses are therefore not significantly more at risk because of the proposed exchange than those that currently exist under the current UGB boundary.

The subject property is not within any inventoried sensitive fish or wildlife habitat area. In contrast, significant portions of the property to be removed from the UGB contain Willamette River and waterway frontage. Any future development must comply with all federal, state, and local requirements for water usage, wastewater and stormwater treatment, and air quality. Compliance with these standards will ensure no significant impacts on sensitive fish or wildlife habitat.

- **Water** – Process and potable water for any industrial use on this property may be obtained from the City of Millersburg's municipal water system. An industrial user may also seek to use water from the Willamette River, by obtaining water rights and constructing an intake on the river. Construction of an intake is regulated and permitted by the appropriate state and federal agencies (Oregon DEQ, US Army Corps of Engineers, Oregon Department of State Lands). Use of water resources is regulated through Oregon's water rights program, administered by the Oregon Water Resources Department (OWRD). Using water from the Willamette River would be possible only if all regulatory requirements are satisfied. Any new permit request from OWRD would require evidence and a determination by the OWRD that a new permit has no impact on senior water rights users and instream water rights users.
- **Wastewater** – Oregon DEQ regulates discharge of wastewater from industrial sites to bodies of water, including the Willamette River. Any discharge of wastewater to the river would require treatment and an NPDES permit from DEQ with strict limits on all discharged water. The permit would also include monitoring and sampling requirements. Under Oregon's regulatory framework, DEQ ensures there are no significant adverse impacts on surface water or groundwater by industrial discharges.

The more likely scenario for disposal of wastewater from an industrial development on this property would be to use the City's wastewater system. In this case, the industry would pre-treat their water and it would be sent to the Joint Albany Millersburg Water Reclamation Facility (AM-WRF) for further treatment and discharge. All industrial

wastewater dischargers must meet the requirements of Albany's industrial pretreatment program. Regardless of whether the water is discharged directly or through Albany's facility, all discharged water would meet DEQ discharge permit requirements before returning to the river, which ensures there are no adverse impacts to the Willamette River and related habitat.

- **Stormwater** – Similar to wastewater, all stormwater runoff from an industrial site must be controlled and treated before leaving the site. Industrial use on this property must meet the applicable requirements of the City of Millersburg's stormwater program and DEQ's industrial stormwater program. Millersburg's program requires stormwater quality facilities to capture and treat runoff from all impervious surfaces. DEQ's program may include treatment, sampling, monitoring, and reporting, depending on the specifics of the industrial development. Collectively, these regulations ensure there are no adverse impacts to the Willamette River and related habitat.
- **Air Quality** - Oregon DEQ requires permitting before the construction of any new industrial facility that may emit more than de minimis emissions. OAR 340-216. The evidence in the record shows that future development must first obtain site plan review permits and applicable state permits. Local and state DEQ's regulations collectively ensure there are no adverse impacts caused by industrial uses to the air quality.
- **Odor:** City of Millersburg Site Development Review criterion 5.05.060(2) requires all new uses to demonstrate that they will not "create negative impacts on the surrounding area resulting from traffic flow, noise, dust, glare, **odor**, potential incompatible adjacent uses such as parking lots, or other impacts identified in the public hearing process." Many comments and concerns from opponents relate to concerns regarding odor. The City's site plan development process will make sure no building permits are issued until the applicant can show there will not be a negative impact on the surrounding area due to odor concerns. Compliance with this criterion can be made through conditions of approval and through the City's code enforcement regulations.
- **Noise:** The City's land use development code 5.05.060(2) addresses any noise concerns during the land use approval process and allows conditions to address any concerns. No building permits will be issued until the applicant can show there will not be a negative impact on the surrounding area due to noise concerns. Compliance with this criterion can be made through conditions of approval and through the City's code enforcement regulations. Approving the intermodal center is a prime example of the capability to address noise concerns. One condition of approval for the intermodal center requires the completion of a noise study within 6 months of the start of operations. The study must show that noise level measurements emitting from the standard operations of the facility, at the nearest residential properties both inside the City, and outside the City (across I-5), are acceptable under the City's noise ordinance.
- **Traffic:** The exchange of the EFU zoned lands with the approximately same amount of Industrial zoned land does not itself increase traffic; it merely changes the location slightly. As with the other potential impacts, City development code 5.05.060(2) will require all future industrial uses to provide evidence related to trip generation and traffic to mitigate traffic impacts. The City's site plan review process further includes 5.05.060(3), which provides the City the authority to require conditions of approval to ensure traffic safety. Together these criteria make sure future development mitigate their traffic impacts and provide for safe traffic patterns.

Additionally, it is inaccurate to assume EFU lands do not generate traffic. An EFU designation does not ensure traffic counts remain low and/or EFU zoned lands are not impacted. The County's previous approvals of the hazelnut processing facility (with zone change from EFU to Agriculture Business) and the commercial dairy, both located on Groshong Road west of Millersburg, have resulted in a significant increase in truck traffic. Other uses currently allowed outright in the EFU zone could also result in significant traffic impacts.

For example, Gilmore Pacific Trading is a commercial hay and straw baling operation located on EFU land off Walnut Drive west of Albany. As stated on their website, they shipped 140,000 tons of straw and hay from their facility in 2020. Considering the unladen weight of a semi-truck and trailer of approximately 35,000 pounds and assuming a maximum weight of standard truck and trailer of 80,000 pounds, each truck would have a capacity of 45,000 pounds or 22.5 tons of material. Based on these assumptions, the 140,000 tons shipped in 2020 produced approximately 6200 trips that year. If the operation was 365 days a year, 17 truck trips a day would be associated with the export of material. Accounting for an equal weight of imported material to the site for processing, traffic would at a minimum be doubled to 34 truck trips per day. A similar, or larger, operation could take place on the property currently being considered for the UGB swap, or on any of the EFU property west of the city.

Unlike EFU development, the City's site plan review criteria will ensure the allowed future uses in the City are adequately mitigated to avoid significant impacts on the surrounding uses and habitat. The Applicant has provided substantial evidence demonstrating compliance with LCC 921.874(A)(2) and LCC 921.874(A)(4) is feasible through application of the City's urban development code and applicable state regulations.

#### **IV. Comments in the record regarding Sofidel contain misstatements of fact.**

Comments regarding the former paper mill and Sofidel's possible use are not related to the approval criteria before the County; however, a response is provided to address misinformation provided in the record.

The former paper mill in Millersburg was built in the mid 1950's predating the City's site plan review ordinance. The former mill was a "Kraft" **pulp manufacturing facility** that produced brown paper rolls for the use in manufacturing paper sacks and boxes. The processing of wood chips for the pulp using the "Kraft" process which used caustic soda (sodium hydroxide) and sodium sulfite in the "cooking process" of the chips to break down lignin in the wood fibers to produce the pulp for the paper production. The cooking process often produced sulfur compounds referred to as "total reduced sulfur" (TRS) compounds. The human nose is sensitive to TRS compounds and can detect them at concentrations as low as 0.1 parts per million (ppm) in air. This was the odor often smelled by those familiar with the former paper mill until major renovations occurred in the mid 2000's, which included the installation of new equipment to meet then applicable DEQ air quality requirements. These improvements ultimately reduced and substantially eliminated the odors emitted from the paper mill.

Many responses express concerns regarding odors and chemicals associated with Sofidel's potential facility; some of these concerns, including the petition on [change.org](https://change.org), may be based on experiences from the former paper mill. The documentation for support of the petition contains many falsehoods and inaccuracies regarding Sofidel's potential facility and operations. The stated facts in the petition are not only inaccurate, of the over 1,200 signatures, only 140

signatures are from the Albany or Millersburg area; the vast majority of signers are from out of state or even out of the country.

As Sofidel stated at their open house, the facility they are interested in considering in Millersburg would not have pulping facilities or operations that produce odors typically associated with paper facilities. The pulping process involves the use of chemicals for breaking down the wood fibers and bleaching the paper. According to representations made by Sofidel, none of this is included in Sofidel's proposed facility. As they stated, they will receive pulp already bleached by other producers; no processing or bleaching of pulp will occur at this facility; and the pulp is dry and odor free when they receive it. Attached Exhibit A describes the process of making tissue paper, which follows the representations of Sofidel. Sofidel has represented onsite pulping would not occur at the subject property, and the City's site plan review process can enforce these representations through conditions of approval if an application were made.

Sofidel has proposed a facility that would produce end products of toilet paper, nose and facial tissues, napkins, and paper towels, all of which come in direct contact with our skin daily. There are no hazardous chemicals used in tissue production and the products involved are biodegradable. If such development occurs, the proposed facility would not be a large polluter or emitter of toxic or hazardous chemicals as some have portrayed.

Sofidel has shared their raw materials (pulp) are primarily shipped in via rail, thus the requirement for rail access. Much of their outgoing finished product may also be shipped by rail, reducing traffic impacts.

#### **IV. Generalized concerns regarding environmental impacts are not a basis for denial.**

Opponents have expressed generalized concerns regarding environmental impacts of the possible new industrial uses on the subject property and some have stated additional environmental studies are needed. No such comments identify any mandatory approval criterion requiring such studies with adequate specificity, nor do any criteria require such studies. Opponents have mischaracterized the land in the City subject to the exchange as contaminated – no such designation exists and there is no evidence of contamination. Applicant's written comments and evidence from February 14, 2023 explain that the existing Teledyne Wah Chang Superfund site is unrelated to the property to be designated agriculture and zoned EFU and there is no evidence of contamination of record on the property to be exchanged. As demonstrated above and on February 6, 2023, the City's process will require all future users to obtain necessary permits from DEQ regulating air, wastewater, and stormwater discharge.

This property, as with all EFU zoned lands abutting the City, is permitted to have a commercial dairy, poultry, pig, cattle, or similar operation. Because of the Right-to-Farm law, neighbors and residents would have no say, and the County could not condition such a development to address these impacts; Marijuana operations subject to compliance with LCC 940.400 are also allowed within the EFU zone.

A large commercial dairy approved approximately eight years ago, located approximately 0.6 miles west of Millersburg produces the majority of the odor complaints received by the City throughout the year, especially during the warm summer months.

Additionally, with a Conditional Use Permit (CUP) many other activities can also occur on EFU land, including food processing and the producing of biofuels (both of which exist at Stahlbush Island Farms in western Linn County, immediately adjacent to the Willamette River); mining,

crushing, or stock piling of rock; processing of aggregate into asphalt or Portland cement; and operations for the extraction and bottling of water.

Unlike development within the County's EFU zone, development on all lands within the City of Millersburg must complete a Site Development review, and in some cases obtain a Conditional Use permit, which is a Type III review. The Millersburg Development Code states:

"Authorization for Conditions. Approvals of any Type III action may be granted subject to conditions. Conditions shall be designed to protect public health, safety, and general welfare from potential adverse impacts caused by a proposed land use described in an application. Conditions shall either ensure compliance with the standards of the development code or fulfill the need for public service demands created by the proposed use. (5.19.020)"

The City can address concerns and impacts by placing requirements on development that the Oregon Right-to-Farm Law prohibits addressing on County EFU zoned lands.

## **V. Industrial need**

Applicant previously responded to comments regarding whether the City "needs" more industrial land. Applicant's comments dated February 28, 2023 explained as a matter of law, the City does not have to demonstrate a "need" for industrial use in a UGB exchange so long as the amount of acreage exchanged is approximately the same. The reason for this policy is that LCDC and the County previously approved the amount of needed industrial land when approving the original UGB. An exchange of the boundary location therefore does not require further proof of the original amount of industrial lands approved for the UGB.

As a practical matter, the City needs the proposed UGB exchange. The City Manager provided oral and written testimony dated January 23 and 24 of 2023 and February 14, 2023. This testimony explains in great detail how the City's industrial sector has changed, and future development of the land to be removed is constrained. The City's industrial land has decreased by 232 acres via rezones from industrial lands to public lands for Talking Water Gardens, Simpson Park, and a conservation easement, which represents approximately 19% of the total available industrial land since 1984. Therefore, the most effective means of addressing the City's original Goal 9 mandate to provide adequate employment lands is to request this UGB exchange. Furthermore, rezoning this land will provide greater continuity and access to preexisting industrial zoned property west of the railroad tracks with current approved development plans.

Many opponent comments have suggested that Oregon has suffered a significant loss of farmland or that this approval will beget significant losses to the farming economy. There is no evidence to support these assertions. DLCD recently completed a study of farmland zone changes that have occurred since the UGBs were acknowledged in 1987. 16,112,212 acres of land were zoned EFU in 1987. As of 2021, less than 43,000 acres have been. This means approximately 99.74 percent of the original EFU zoned land has remained zoned EFU. While concern about rezoning any land is expected, it is inaccurate to suggest Oregon's land use system has not adequately protected the farming economy or that this approval will result in significant impacts on farming in Linn County.

## **VI. Transition Parkway will mitigate traffic impacts.**

The new street is being designed to address traffic from industrial property south of Conser Road. A copy of the most current design is attached as Exhibit B. The proposed parkway will divert traffic south of existing Conser Road onto the new road and include a linear park/buffer adjacent to residential areas. Based upon this design, traffic within residential areas is not expected to increase due to new industrial uses. It will also accommodate traffic from any future user on the property west of the railroad tracks, should PLN-2022-00807 be approved. The information presented about Transition Parkway was not new information, the City Council has been discussing this street for years, and part of the street has already been constructed. While this street would be used by traffic from the UGB swap property, it was planned long before the UGB swap was proposed and will be built with or without the swap. The City is processing an update to the Transportation System Plan (TSP) to reflect the addition of Transition Parkway to the City.

## **VII. Comprehensive Plan consistency.**

One of the submitted letters tries to argue that the proposed UGB exchange contradicts the City's own Comprehensive Plan. The City's Comprehensive Plan is not an applicable approval criterion in this matter before the County. Such comments provide no basis for denial of this matter. However, the City provides the following response to address misstatements of fact in the record.

- The Comprehensive Plan explains that the Planning Area surrounding the City is intended for future expansion. Site B, the area proposed to be included in the City's UGB, is within that Planning Area, as fully explained in the County Staff Report and the Applicant's narrative.
- The City analyzed property to the east and west of the City in the Alternatives Analysis.
- While the Comprehensive Plan includes statements that speak to the preservation of agricultural land, it also includes statements that require the City to manage its resources, including land. The City's decision process required balancing all the Comprehensive Plan Policies, and no one policy is more important than another. The City is not expanding, the City is not growing. The City is exchanging land, all on the west side of the City and west of the railroad tracks. The purpose of the UGB exchange is to manage the City's land resources responsibly and efficiently. These purposes are best served by the proposed exchange of industrially zoned property for property that is more viable for industrial development. The two concepts of conservation and land management need to be balanced and analyzed. Such detail is included in the City's findings of fact and conclusions of law.
- The proposed UGB exchange is not sprawl; it is not an example of a City growing unchecked. The proposal keeps the City the same size but allows more effective use of acreage designated for industrial uses.
- A Comprehensive Plan amendment need not comply with every provision and policy of the adopted Plan to be considered 'consistent' with the Plan. The evaluation of Comprehensive Plan consistency may apply some weighting and balancing of competing policy directions embodied in the Plan.<sup>1</sup> The City considered all policies of the Comprehensive Plan. The City's balancing of factors included, but was not limited to, the following factors: preservation of agricultural lands west of the City weighed with and

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<sup>1</sup> See Siporen v. City of Medford. Yamhill Creek Solar, LLC v. Yamhill County. Bothman v. City of Eugene. Doob v. Josephine County



against other provisions of the Plan; the swap areas are both within the planning area, which is identified as future growth areas; both swap areas are on the west side of the City; the alternative site analysis; policies that require industrial areas to be larger parcels; identification in the Plan of Millersburg continuing its role as the industrial center of the region; vacant industrial land within the City is rapidly being developed; the requirement in the Plan that industrial development be confined to those areas that offer assets for industrial growth; and the Plan explains that the County will maintain adjacent lands in farm use until the City needs those lands to expand the City.

#### **VIII. Conclusion.**

The City has responded to all questions and concerns related to the applicable criteria, and it has provided substantial evidence in the record. The City requests the County approve the proposed comprehensive plan map amendment and zone map changes.

## Exhibit A

### Tissue Paper Processing – Overview<sup>1</sup>

**Pulping** – Process **would not** occur at the Millersburg facility. This portion of the process is not conducted by Sofidel, they purchase pulp which is already manufactured and bleached to their specifications for use in their process. Sofidel would only be conducting pressing (making paper for rolls for converting operations) and converting that paper to tissue products for consumers.

1. Trees are logged, cut into chips, and ground into fine flakes, which are then soaked and pulled-apart (retted). Paper pulp is generated from wood fiber or recycled materials.
2. These fine retted flakes are stirred together in a mixer tank with a large quantity of water and other chemicals.
3. The manufacturer adds chemicals such as sodium sulfide, limestone, and others while the wood pulp is still in the mixing tank, to soften, strengthen or color the paper, if bleaching is required, it also occurs in this phase.

**Pressing** – Process that **would** occur at Millersburg facility.

1. The prepared pulp is poured over fast-moving belts made from highly porous materials that are driven over huge drums heated by steam. The pulp is poured uniformly and consistently across the width of the belt/drum. All the water escapes through the pores, leaving just the fibers on the belt in the form of a delicate fabric.
2. The tissue is then transferred on to a massive, heated roller called a Yankee. The heat of the Yankee makes the fabric dry almost instantly.
3. The tissue paper is then transferred on to a core to form a large diameter roll.
4. Adjusting the draw speed of the roll produces thicker or thinner tissue.
5. The rolls are then put onto the converting machine.

**Converting** – Process that **would** occur at Millersburg facility.

1. The tissue's plies are split and passed through an embossing roller.
2. Embossing softens the toilet tissue and can be used to create decorative patterns.
3. The plies are removed and held together with glue. The tissue is then perforated by doctor blades, enabling the sheets to be easily pulled apart.
4. The tissue can then be made into either flat surfaces or wound around a cardboard tube to create cylindrical rolls.
5. Many different roll sizes and sheet counts are produced on the winding machines.
6. The large roll is fed into a doctoring system and cut by a large rotating doctor blade into individual rolls.

<sup>1</sup>Source of information <http://blog.pulpandpaper-technology.com/how-tissue-paper-manufacturing-is-done/>

# Exhibit B – Transition Parkway

