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By [Nicole Montesano](#) • Staff Writer • October 22, 2021

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Mailer seeks to make Berschauer recall a referendum on the trail

A recall effort against Yamhill County Commissioner Lindsay Berschauer continues to heat up, with the Oregon Family Farm Association, based in Tigard, sending out a mailer this week that attempts to turn the recall effort into a referendum on the Yamhelas Westsider Trail.

The association does not reveal who its board of directors is on its website, however, the mailer was signed by prominent trail opponents Greg and Celine McCarthy of Gaston; farmer Ben Vandyke of Ben Vandyke Farms in Yamhill, Scott Bernards of Redwood Farms in Carlton and Allen Sitton of Sitton Brothers Farms in Carlton, some of whom have also contributed to Berschauer's Friends of Lindsay Berschauer committee, to help fight the recall.

Text in the mailer, a 24-page magazine, states that it was sent because "there has been an ill-advised effort to recall a new Yamhill County Commissioner, who has strongly defended Yamhill County family farmers and has followed the legal instructions of the Oregon Land Use Board of Appeals."

Friends of Lindsay Berschauer has collected \$11,624 in cash contributions since the recall effort was started. Of that, \$2,000 came from the "Boquist Leadership Fund" in Dallas, a finance committee of Oregon Senator Brian Boquist, while the remaining \$9,624 has come from 10 farms and trail opponents, including \$2,000 from the McCarthys and \$1,000 from Ben Vandyke Farms, and \$195 in miscellaneous small contributions.

Save Yamhill County, the group gathering recall petitions, has received \$26,159.33 from 35 county residents, and one \$500 contribution from a contributor from out of state, as well as numerous small cash contributions.

Berschauer took out an ad on Facebook this week saying that she had received the mailer, and that trail "unexpectedly defined my campaign for commissioner and pushed the conversation to the front page of the newspaper."

Berschauer's election campaign was heavily funded by trail opponents, who contributed more than \$25,000. Contributors included Ben Vandyke Farms, Sitton Brothers Inc. (the Sitton farm operating name); Scott Bernards and the McCarthys.

Several of the farmers who objected to the trail had been using the railroad right-of-way to graze livestock or otherwise serve as an extension of their own farmland, although some were paying the railroad for access. One challenged the county's right to purchase it from the railroad, but the case was dismissed by the court.

The Oregon Family Farm Association mailer claims that county commissioners who supported the trail "joined special interests and pushed county staff to plan, implement and spend taxpayer resources on a trail project that had no legal land use approval."

In fact, the county was following state land use procedures in attempting to obtain a permit to construct the trail, when Berschauer and County Commissioner Mary Starrett formed a majority on the board and ended the county's efforts. That has resulted in demands from the state to repay thousands in grant funds.

Starrett and Berschauer claimed, incorrectly, that LUBA had made it clear the trail could not succeed. The two commissioners along with trail opponents have also incorrectly claimed that the project violated Oregon land use laws.

The Land Use Board of Appeals remanded the permit authorization to the county for revision several times, and said it had not adequately addressed concerns about how impacts to neighboring farmland would be addressed. However, the board had not overturned the county's approval of the permit, something it pointed out in its last remand in December.

Noting that opponents had asked for a reversal of the county's decision, the board wrote: "We will reverse a decision that we conclude 'violates a provision of applicable law and is prohibited as a matter of law.' ... However, we are not convinced that the Trail is prohibited by the farm impacts standard as a matter of law. Accordingly, the remedy for the county's error is remand."

Opponents have also repeatedly demanded to know why the county purchased the corridor before going through the land use process. County officials have said that is not unusual, since the county would not have jurisdiction to seek grants and permits for developing land it does not own. County commissioners also argued that the corridor was an important asset to the county with or without the trail.

Yamhill County has been discussing the idea of the Yamhelas Westsider Trail in one form or another for more than two decades. In 2012, the county officially added it to its transportation master plan, and began looking at how to purchase the former railroad right-of-way. It obtained a grant for the purchase in 2013.

The Farm Association mailer complains that "In a non-public process, the county acquired the old railroad right-of-way from Union Pacific Railroad" in November of 2017.

In fact, the county had by then spent years discussing the intended purchase, and hearing from county residents, including Scott Bernards, Lester Sitton and several members of the Vandyke family, about their views. It had also held meetings, a series of workshops and two heavily-attended special information sessions about the proposed trail, at which opponents aired their views.

The vote to purchase the property was made in public session in August of 2017, after months of debate over how to proceed.

The mailer contains reprinted segments of articles from the News-Register, used without permission of the newspaper in violation of copyright law, along with e-mails and documents obtained from the county and portions of LUBA rulings to make its case.

TOM HAMMER

CPRD Board meeting October 28, 2021

1 Board Chair and members. I'm here to urge the CPRD Board to formally disengage from the Yamhelas-Westsider Trail project. The board should do so to protect CPRD's limited financial resources, its image with the property tax paying public, to protect CPRD's status with the state and federal bodies that issue grants and to protect its rating and interest schedule for bonds. Protect your sources of funding.

2 Once the County lost a final appeal to LUBA in June of 2020, CPRD was asked to consider continuing this lost cause. The project was recreational with working farms on both sides, outside CPRD boundaries.

3 A non-conforming recreational use in Exclusive Farm Use Zoning requires a Conditional Use Permit given only after passing an Agriculture Impact Study defined by ORS 215.296. The project can't pass the Ag Test because farms can't spray weeds and insects in a zone of given distance from the Trail. That limitation would reduce crop yields, harm annual income and reduce property values. Oregon land use law is different and more stringent than in any other state. Also, Oregon can't get around Federal restrictions prohibiting spraying of entire fields that are adjacent to recreation use. No DMZ style double fencing, no limit on hours of operation; nothing removes that prohibition under federal law.

The public would have unsupervised access to the Trail round the clock. Trespass would threaten food safety. Any number of disputes with farms could arise. The County refused to indemnify farms from these potentials. A dispute would fall to companies insuring farms. Regardless of outcome, one dispute would raise insurance rates for all. Cancellation by insurers would close farms.

4 At the March 25, 2021 CPRD Board meeting this Board passed a motion 3-1 to have Don Clements meet with Ken Huffer, County Administrator to learn the cost to purchase, build and operate the Trail and ask ODOT & Oregon Parks for opinions on grant outcomes. In April 2021 twenty plaintiffs who successfully opposed the County sent an attorney written letter to CPRD via email advising CPRD of the legal impossibility of a Trail on the abandon rail right of way. There has been ample time and opportunity for you, the decision makers to study legal, cost and funding information and now come to a conclusion.

Copies of the booklet "The Truth About The Trail" are hand delivered here tonight. The booklet recalls the history of numerous LUBA decisions, all protecting farm use and finding against the County. After LUBA issued a permanent Stay on Construction the County was ordered to pay opponents attorney fees. Any hope County officials had of depleting plaintiffs legal funds was gone. Officials, in rebellion, then decided the only option was staging Public Relations events and a shameful campaign against the new commissioner who created a Board majority that made a business decision to stop spending taxpayer dollars on a project permanently stayed by a LUBA decision eight months earlier in June 2020.

5 County Counsel Sadlo had acted as 'applicant' for the Trail. His judgement in advising the County to continue pursuit of the Trail while the County was in LUBA remand became the subject of a Bar Complaint. In August 2021 the Oregon Bar found he had errored sufficient for the Bar Complaint to become what is now an ongoing investigation. Sadlo took early retirement the next month.

FYT paid for a 'Trail' survey that drew emotional responses from people ignorant of legal, financial or economic Trail matters. CPRD lent their good name to the survey. Some County officials and FYT now ask CPRD to sacrifice themselves on the same hill other Trail warriors have died on. Your fiduciary duty to protect CPRD is your only priority in this situation. Do not damage your brand. Move decisively to disengage from considering involvement in the Yamhelas-Westsider Trail project. Questions?

respondents not knowledgeable
2012 Commission "mislead"

indemnify?

denial is not LUBA's job - they are not a court
~~built illegal bridge~~

started in 1991 2012 TSP 64% likes

LUBA didn't deny Trail
will help on maintenance

are willing to cooperate

still thinking about it | ample time

CPRD Board needs to disengage from YWT

Guard your Credibility with Funding Sources

- Property Tax Paying Public
- State and Federal Grant Issuing Bodies
- Bond Credit Rating Services

Land Use Law which LUBA followed consistently

A non-conforming use (recreation),

In an exclusive farm use (EFU) zone,

Requires a Conditional Use Permit (CUP)

CUP, given only after an agriculture impact study
specified by ORS 215.296 shows no harm to farms

An agriculture impact study of the YWWT won't pass the test

- Economic harm to farm business, no spray zones
- Trespass & Squatters Jeopardize Food Safety
- Disputes between conflicting uses not indemnified
- Potential for expensive or cancelled insurance

CPRD Board and staff are decision makers with access to information and ample time for deliberation

March 25, 2021 Board vote 3-1 for Don Clements to query Ken Huffer, ODOT & Parks

April 2021 letter to Board & staff from plaintiffs' attorney explaining the legal situation

Booklet now presented showing improprieties characterized the process since 2012

Summary

- Legally, the Yamhelas-Westsider Trail has no way forward
- Trail Applicants' legal advice is under Oregon Bar Investigation
- ODOT expressed concern over grant management June 2020
- ODOT demanded and received grant reimbursement from YamCo. in 2021 after LUBA permanently stayed bridge construction June 2020.
- With a fiduciary responsibility to protect cash reserves and funding sources does the Board or staff have questions?

In case I cannot get connection to talk again 😊

Business as usual.

I am SUPER excited the Auditors are here this week for the 2021 Audit. A lot of paperwork, notebooks and reviewing. I was thrilled in the process to find a coding error in our payroll software. No change bottom line in dollars, but it did affect posting into some line items. All the information has been corrected for the audit period and will be updated over the next few weeks for the current fiscal year. I seriously love that they are here!!!

We still have tomorrow and I should have a better feel for completion time, although they do know we want it completed prior to the end of the year. They have been invited to a future Board meeting to present, and I am in discussion and agreement with them to get us back on a normal audit schedule (that involves a few days in the spring followed by the final portion early fall).

HEIDI SMITH

