

**Kurt Mizee, on behalf of Tilla-Bay Farms, Inc.**

**Rebuttal to TPUD response to Staff report testimony**

Credentials:

4<sup>th</sup> Generation Tillamook Dairyman

BS, Agricultural Sciences, Minor Animal Science with Dairy Emphasis – Oregon State University

5 Year Representative of Agriculture, Tillamook County Planning Commission

Certified Farm Management Support Advisor, Lely Industries North America

Netarts home owner

**Gibbens:**

**Staff 100**

Pg 6 18-20 Route utilizes very little existing right of way. With the exception of a short stretch along Goodspeed and Latimer Rd and a crossing of Hwy 101 it travels over private property and Port of Tillamook Bay property where access is granted through a new agreement and fee structure which as of yet has not been approved. This route utilizes a very small amount of right of way compared to other possible solutions.

Pg 7 1-9 The cost effectiveness and budgetary guidelines are not accurately reflected in PUD's testimony. The project has significant expense even before construction has begun. The cost of this is not fully figured into PUD's estimates. Furthermore, the PUD has a cost of procurement for easements at approximately \$150,000. This amount is grossly underestimated for budgetary considerations and assessment of total cost. The current cost of utilizing the Port of Tillamook Bay right of way is \$65,000 per year alone with the adopted fee structure that is in place. Stillwell Drainage District testimony to Tillamook County Planning Commission states that it will be imposing fees as well.

Pg 12 11-14 Staff assumes need based on PUD's testimony that it is needed. This basis of need is false and based on faulty mathematical calculations, assumptions which are beyond fact, and calculations which assume multiple variables. A careful review of the data that PUD has utilized for their assumptions will show that PUD staff's basis of need is ill founded. We will defer to the testimony from Dale and Doris Mast on this matter but ask the PUC to evaluate the data thoroughly. It appears that PUD has been working from a faulty premise for quite some time. While we have attempted to clarify calculations on this project for years now, it wasn't until the PUC process forced the PUD to turn over data that we were able to obtain the data that PUD was working with. I would add that a transparent Public Utility would have had no issue turning over those numbers.

Pg 14 4-11 Cost benefit analysis doesn't take into account the value of farm land to this county. It is the single largest driver of our economy. While the PUD and its Board don't seem to understand the value we don't think this should be ignored. The agricultural community has stated very clearly that we don't feel represented by the Board.

The cost benefit analysis of this project also does not take into account the option of a distribution line from the Trask substation serving the needs of people in the Netarts and Oceanside area, called "Alternative 3" by the PUD. If this line terminated at the intersection of Hwy 131 and Eckloff Rd the distribution line would tie in after the section of line along Hwy 131 that PUD says needs replaced. This also minimizes ongoing maintenance cost associated with a new transmission line with wide easement and more expensive components.

We request a more thorough cost/benefit analysis be done utilizing agriculture experts with relevant experience.

Pg 15-16 Public engagement has been poor and landowner collaboration and on-boarding has been even worse. We will address this with PUD's response later.

Pg 18 We intend to provide legal standing that PUD has not fully met the criteria for obtaining approval through the land use process. We will be making arguments through our land use attorney March 8, 2018 at the Tillamook County Planning Commission meeting showing that the application is not valid or legal based on several points. Both PUD staff and County Community Development Staff have made invalid assumptions on land use process and law.

The PUC previously issued a CPNC based on the assumption that the PUD was submitting a solid land use application in 2013. The result was a certificate that didn't in fact meet the burden of proof of approval of alignment with City, County and State land use guidelines, goals and ordinances. It is our contention that any CPNC decisions should not move ahead without finalizing the land use process including appeals.

Pg 20 14-17 The PUD has been asked to get greater public input on this project many times by us and other landowners and community groups including Oregon Dairy Farmers Association, Tillamook County Farm Bureau and Tillamook County Creamery Association. The PUD has had the opportunity to gather community input by giving notice to affected land owners from the very start of this project. However, the full 750' notice was only given once required through the Community Development process. If the PUD was truly interested in public input, it would have done so by giving notice on potential routes early on rather than passing the buck to the land use process. If the PUD was interested in the desires of the public it serves, it would have invited land owners to every board meeting where the process was being discussed. However, in spite of requests being made to do that at multiple public meetings and board meetings we were not provided notice. If the board wanted to have a finger on the pulse of the community they would have let the CAG discuss need and budget, not just routes. All public input has been done through processes guided by consultants paid for by the PUD. A skewed and directed

process at best. I doubt an outright vote of the rate payers would result in this project going forward.

Pg 22 4-7 We take issue with the fact that PUD and staff assert no significant impact to the agricultural lands. Changing the use, adding easements and construction are significantly different than farming on a piece of land where an easement already exists. Please see the following testimony excerpt being submitted to Tillamook County Planning Commission:

*It is our contention that the statewide planning goals specifically spell out protection for agricultural lands via Goal 3 and Goal 11. The purpose of this is make sure that land use decisions and the subsequent development don't interfere with the very important task of keeping the production of food and fiber in Oregon sustainable.*

*Our goal is to provide information to the County Planning Commission regarding the true economic costs associated with placing a transmission line across high value farm land that surrounds an estuary system. We feel that this information will help the Commission make a more informed decision than what could have been obtained through the applicant's testimony or the staff report. While I am writing this testimony surrounding issues on our farm land, it is safe to say that most of these issues will be confronted at some or all F-1 zoned property along the route.*

*There are four action points where the PUD has the ability to affect the economic viability of our operation. The first is in the exploration/planning/geo-testing/engineering phase. Second is during the actual construction. Third is the on-going maintenance and fourth the eventual replacement of these lines. Because this is a perpetual easement all of these factors and the eventual impacts should be considered.*

*While many of the issues of the first two stages of the project are similar. They cannot fully be joined together because of the very fact that they will take place at separate times and as a result have the opportunity to impact the farming operations twice. Both the planning and construction phases have the ability to negatively impact operations in the following ways:*

*1) Soil compaction. Given the nature of these low-land soils and the high water table present soil compaction is a real concern. We feel it is important to point out the difference between the soils present on the farmlands in question compared to even other parts of the county. These soils utilize micro percolation points to move water away from the surface. These channels are created by remnant grass roots, small pieces of woody debris, old tree roots and the like. These channels are easily damaged, or compacted by mechanical means and cause significant loss of productivity when this happens. In prairie or forest type soils it is common practice to deep plow or chisel rip the ground to aid in deeper root growth for crops. We have learned through farming this land for generations that if you employ these types of agricultural practices on this soil you will damage its ability to drain for a minimum of 10 years. That's 10 years that you will have reduced crop volume, nutrient application ability, equipment access and even the ability to graze. We combat this by utilizing high flotation tires on equipment, not grazing, running equipment or applying nutrients on saturated ground, encouraging tith through biodynamic land management principles and aerating the land in late summer.*

*While our equipment is specially equipped to combat compaction, utility construction vehicles are not. The applicant has stated that they will make efforts to avoid compaction during construction, but not precisely how, or provide any assurances that could be quantified.*

*2) Drainage. All of the land at Tilla-Bay Farms, Inc. has been cross tiled with clay tile lines. These lines are fragile because of the type of material they are made out of and could be subject to damage through the construction process. Even if not damaged, simply moving them out of alignment by heavy equipment driving over them can cause the system to fail.*

*3) Crop loss. A significant portion of the feed utilized by our cows is grass grown for silage on our farm. The value of the grass ensiled at Tilla-Bay Farms exceeds \$60,000.00 per year. The fields surrounding the project area are considered some of the best pieces of ground which we harvest that from. Access to those fields in a timely matter is critical. Varying the days for harvest around the construction process could lead to a lost opportunity to harvest in a window of weather that keeps the feed from getting rained on. Also, varying the harvest from the ideal point of harvest even a few days can significantly impact the value of the feed in terms of animal nutrition.*

*Because the easement requested for this project is very wide there is potential for crop loss just by driving on a crop and ruining or at the very least damaging yields on approximately 5 acres. Should this ground be planted in corn it wouldn't be a stretch to have damages in excess of \$10,000 in a single season. Since our cattle require feed to sustain them through the winter, any feed lost, not able to be grown or not able to be harvested in a way that is high enough quality means that we are forced to buy feed on the open market at a higher cost with more effort.*

*4) Grazing ability. The proposed work area cuts across the entire farm east to west. Construction has the potential to impact the traffic flow of cows to and from the barns. Because of our 24-hour milking process cows move back and forth to the barn all hours of the day (and night). This is critical to the function of efficient grazing and to maintain capacity on the equipment. This equipment represents an investment of \$750,000.00 and it is critical to the cash flow of the operation that it stay optimized. Currently we run less than 5% free time on the equipment so every minute counts. Additionally, not being able to effectively graze impacts our manure handling costs, labor costs, bedding costs and cow health. Not being able to graze in the system we have developed comes at a very high cost.*

*5) Fencing. Isolating livestock from the construction area so that we can continue to utilize the rest of the farming operations will require the construction of new fences and the removal of them once the work is complete*

*6) Manure application. As an Oregon dairy farm we are required to have a Confined Animal Feeding Operation permit. This permit requires us to have a certain amount of land available for the number of cows that we have. We declare our land base so we can guarantee that we have the ability to apply manure at agronomic rates. By taking land out of production for construction we may be required to export some of those nutrients.*

*7) Road damage. While Fenk Rd is considered a county road, maintenance of the road is spotty at best. The rest of the access for the construction and ongoing maintenance of this project*

is via private roads and cow lanes. These roads were not necessarily built to carry construction traffic and additional traffic will cause road conditions to degrade.

8) *Levee integrity.* The Stillwell Drainage District maintains the levee around us and several other property owners. Any damage to the levee including compaction of the top, reduction of the overall grade, removal of vegetation or sloughing of the edges risks our farm, the property of other landowners and the ability of residents of the coastal villages of Netarts, Oceanside and Cape Meares to get to Tillamook in a flood event.

9) *Hazards to cattle.* Tilla-Bay Farms is located on a dead end road. There is very little traffic or noise. However, the cows are housed right alongside the road and the cow travel lanes are alongside the road. Increased traffic can make cows nervous and high strung. When cows become agitated several things happen. There is a good chance that they will flee the area. That leads to damage of fences, injured animals and increased somatic cell counts. All of which are costly. Additionally, nervous cows suffer in terms of production. Outside of the increased traffic, vibration and noise from the construction process or it's equipment could have a significant impact on cows as they are more sensitive to these things than we as people are. Our cows represent generations of herd specific genetic progress, a significant investment, and something we hold very dear as a dairy family. The impact to our herd just in the construction phase could be catastrophic with the value of the animals on the farm conservatively valued at \$350,000.00.

10) *Damaged underground infrastructure.* There are both existing underground water and irrigation lines in addition to insulated electric fence power supply lines. The water lines supply water to the cows in the fields and irrigation runs 24/7 in the summer time. The fence power is necessary to keep cows out of the river.

11) *Technology interference.* Part of our investment in technology includes neck collars that the cows wear that help monitor their health. These collars are tied back to an antenna in the barn which allows us to monitor health through rumination counts and activity even at a distance. This technology helps us identify cows that are in the early stages of a health issue so that we can treat them using probiotics and vitamin supplements so that we can avoid the use of costly antibiotics, extended illness of the cow leading to long recovery and lost production and having to discard treated milk. Also, this technology helps us monitor cows coming into heat so that they can be bred in a timely manner. Discarding milk, sick cows and cows not being bred in a timely manner can easily add up to tens of thousands of dollars. The cost of this system is \$40,000.00.

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Following the completion of the project there are ongoing concerns with impacts to the farming operations. Many issues stated above will continue to be a problem and we ask that damages above such as the following:

1) *Interference with crop management.* In previous seasons it became necessary to spray corn that was grown in this exact project area with a helicopter. The corn had already grown too high to spray with standard ground equipment and had we not been able to apply a treatment with a helicopter we would have lost the entire crop to a worm infestation.

*2) Maintenance of the pole area. Area's around the poles are notoriously hard to maintain because equipment can only get so close before they are a hazard to the pole. Furthermore, chemical applications used to maintain utility easements are not necessarily approved for use in and around grazing cattle, open ditches and other agricultural activities.*

The above statements regarding production costs, losses and remediation can all be verified by Oregon State University Dairy Extension Agent Troy Downing 503-842-3433.

Pg 23 1-7 Goal 3 states that the line shall not divide farm land. This can only be met in two ways, moving the project to the edge of the farm land or going underground. PUD has offered to underground for one land owner but said it isn't practical for another because they don't have the training or equipment. This points to PUD's divide and conquer deal making which is shockingly lacking in fairness.

Pg 24 1-7 A distribution line or a transmission line following Hwy 131 would minimize a significant loss of trees and lower the environmental impact significantly. This right of way has recently been logged and is maintained with a wide path already to keep the roadway clear and keep ice minimal through sun exposure. It has also been identified as the preference of the forest land owner since it minimizes impacts on logging operations. Additionally, the choice of "Alternative 3" minimizes removal of trees as well and utilizes existing road routes through forest land.

Pg 25 4-16 The area around our farm and the neighboring ones are habitat for several bald eagle pairs. The PUD asserts "raptor friendly" construction will be used, however to my best knowledge that is a pole design and does not take into account the line hazard. Additionally, USFW recognizes this area as the flyway for protected Canada Goose species. Given the "significant collision hazard" that has been noted in Bandon Marsh (See original testimony submitted 2-6-18) and the proximity to the Southern Flow Corridor restoration project it would seem that the impact to bio resources has not been fully considered. We have lost power roughly 5 times in the last 10 years on portions of our distribution line at our farm on Fenk Rd due to heron, seagull, owl or goose collision with the line.

Pg 26 4-10 Maintenance of the easement for this transmission line introduces chemical pest management, vegetation removal and soil disturbance in a long and wide path. This includes areas around the water shed for Netarts and Oceanside. To assume there is little impact hardly seems possible.

Pg 27 7-14 The placement of poles on our farm and the neighbor to the East are not in compliance with setbacks set by the Army Corps of Engineers. The Stillwell Drainage district has submitted testimony to the County Planning Commission requesting that the proposal meet these guidelines and be signed off by the special district. Failure to do so puts our farm, our neighbor's farms, several commercial properties including the local radio station at risk. Furthermore, should the Corps certified levee be damaged or compromised the communities of

Oceanside and Netarts could be cut off from basic services and medical care in a high water event.

Pg 28 13-15 The major economic engines of Tillamook County (forestry and farming) have opposed this project. It takes lands out of production forestry and impacts agricultural lands. These are the major rate payers for the county as well and they are located in central county, not at the beach. Additionally, the county has invested significant time and money into affordable housing studies. There are no plans to add this affordable housing in the Netarts and Oceanside area. They plan to do so in central county close to services. The project itself adding to the economic viability of the county will be minimal. The work will be contracted to an outside contractor, the materials equipment and labor will likely be brought in from elsewhere as it was on the last local transmission line project. "Alternative 3" would actually provide benefit to both farm and forest industries in real ways along with Netarts and Oceanside customers. It would upgrade single phase power to three phase which would be available to farm operations along the route. It would underground a significant portion of the route which would protect it from the car and tree vulnerability along with minimizing impact on forest harvest activities and increase values of nearby residential properties.

Pg 28 17-19 The reliability of service in Netarts and Oceanside is largely a function of vehicle and tree damage coupled with lines that are past due for replacement. This project does nothing to change that fact as this work will have to be done in addition to a distribution line upgrade project. A new distribution line from the Trask Substation (currently at 29% capacity) that already has most easements in place would solve this problem at a lower cost to the rate payer by giving redundancy to the highest affected portion and allow for re-build of the section along 131.

Pg 29 16-18 The sewer plant in Oceanside was built with the current electrical service in mind. The noted issues are a result of a poorly maintained distribution line which needs upgrading.

Pg 32 7-27 This overlay zone has been laid out since planning areas were designated. The purpose of this was to single out areas that were significant in Tillamook County. This route causes impact visually in terms of lines crossing where there currently are none, the removal of a vast area of trees and potential impacts to the many bird species that utilize this habitat.

## **Staff 102**

### **Gibbens 1 and 2**

Netarts and Oceanside have a full time occupancy rate of roughly 50% with the remaining customers being second home owner's/vacation rental owners. If this work was being done at the right time of year, with the right notice the impact would be minimal. Any additional cost to upgrade the distribution line would be temporary vs a permanent easement on private property to add a transmission line. This much more cost effective project would add 35 years of dependable service to the coastal communities based on the need projected by PUD and

properly computed. The need for power has dropped dramatically across the US in recent years as technology has increased efficiencies and the viability of small scale green power. In 35 years, even with load growth the transmission line may never be needed.

**Staff 104****Gibbens 2-4**

Land owners have not signed on and do not trust PUD because they have not demonstrated good faith thus far. They have offered pennies on the dollar for easements, no consideration for costs related to construction impacts, failed to attempt to understand the challenges that construction imposes, failed to respond to requests to provide monitoring measures/protocols for lines once installed and pass blame onto the farmer for electrical issues occurring on farm. We have first-hand experienced loss of electrical motors, lights, as a result of PUD even with an electrical system in our farm that was re-done 6 years ago at a cost of \$50,000.00. We have been shocked by fences that weren't electrified because of issues with PUD's lines. While the "professional" opinion of PUD is that there is no issue, farmers who have been here for generations, and ALL local and state farming organizations oppose adding these lines where there are none now and no easements allowing for them. Additionally, PUD has not indicated that they are willing to put in writing the sentiment that they will not damage crops. Also, it seems that they don't recognize grass as a crop. However, based on my previous testimony, this is obviously not the case.

**Staff 105****Gibbens 1**

This table clearly points out that residential users are the lesser users compared with the commercial users. The commercial users have already given a vote of no support for this proposed line. Furthermore, the commercial use is non-existent in the area of proposed expansion. Once again a wise course of action is to keep transformers closer to commercial power uses and upgrade distribution to Netarts and Oceanside.

**Staff 106****Gibbens 1**

The Board and staff were asked directly, by myself, to notify us if anything regarding the project was being presented and contrary to PUD staff testimony we were not. I challenge the PUD to provide documentation that notice was provided for these. The board acknowledged on record that they didn't need to provide notice even though it was asked for. The board and staff proceeded to use power point slides and public notice sections of the newspaper to notify affected parties when there was a full staff of publicly supported staff members who could have called each of the land owners in less than half an hour total. This points again to the desire of PUD to push the process through without the desire to have public input. They have tried to do

this before when they were trying to go through the city. This may be a much quicker and easier way to get a project done, but that doesn't allow for a process that landowners and the public can trust.

**Staff 107****Gibbens 1-2**

These comments were made in regards to the community input study held at the Community College. The process was done under the premise of community input. However, the process was asking community members how they preferred to see the route run even though it was deciding how it would go across private property. My comments were directed at the broken process because if they wanted to approach land owners it would make more sense to take, for example, our family and the neighboring farm families and talk through the route. Then I could see how it impact his farm and he mine. That is a process that could lead to a workable solution. A far better chance than a homeowner across town giving input. Never once did PUD attempt to bring neighbors together to discuss a solution with them. Instead they approached us one on one offering deals of differing value, construction methods and more in an effort to divide us and conquer.

All input from landowners was done after the fact. We were first notified that we were potentially going to be affected once the CAG had narrowed down its routes to three. All of which crossed our farm. Previous to this the last we had talked to anyone was when we had met with engineers about the route that ran in the right of way along Hwy 131 at the south end of the property. The CAG selected a general route without any public input through their process. The first step in arriving at a workable solution should have been to bring all potential land owners affected to the table.

**Staff 108****Gibbens 1-3**

The PUD fails to address the question directly of "how does the concentration of lines impact the Mizee property." Instead talking about why they are putting it in the location they selected. The answer is that this is a significant amount of lines to be crossing a relatively small piece of farm ground. The reasons have already been listed above. The fact that PUD is minimizing it just shows once again that they don't understand the value of farm land and don't respect the value that farmers provide to the community. While the easement through our area is 100' the PUD states in documents circulated to the public that it will need 200-500' for stretching lines and construction. That's a potential to impact around 20% of my farmable acres.

**Staff 200****Hannah:**

Pg 8 5-12 The data, once properly evaluated changes the need calculations dramatically. Given proper calculations a distribution line upgrade only would provide substantial growth opportunity for an extended period of time. While it may require bringing in additional resources to complete the upgrade the long term effects of a transmission project could be avoided. This would be at a lower cost to the rate-payers via "Alternative 3" outlined by PUD. We fully support the testimony of David and Doris Mast in this matter.

Pg 9 17-20 The PUD does have a plan to repair this line without extended power loss to customers utilizing a generator though they aren't telling this part of the story to residents of Netarts and Oceanside. Instead telling residents they will be forced to endure extended outages for months at a time. In fact, the section PUD refers to where there are 4 conductor wires stacked on single poles is a section that extends less than .38 miles from Whiskey Creek Drive/Hwy 131 East towards Tillamook. More difficult and impossible are two different scenarios and PUD hasn't been transparent with the public about this.

Pg 11 17-21 "Alternative 3" when utilizing proper data and calculations becomes the most viable option.

Pg 12 18-21 Load growth numbers are not consistent with population growth trends reported by Portland State University growth charts, with estimates by Bonneville power, with estimates PUD reported to Bonneville power or with national trends on power usage. We believe the data assumed and provided isn't correct and therefore doesn't justify the project.

#### **Staff 204**

##### **Hannah 1-3**

The CAG process was guided under the guise of need. Cost and need were not able to be discussed because they were to be assumed as true. The PUD holds up the CAG as the reason for the route that was chosen. However, the PUD staff at their discretion after the CAG process moved the line into a longer route that also impacted more houses and commercial properties in the process. If the CAG process is to be up-held then an arbitrary decision afterwards to go against those ideals set forth shouldn't be considered. This invalidates the process.

We also contend that utilities in exclusive farm use zone is for the purpose of distributing power to the farm operations contained within, not to allow for utilities to cut through at their discretion.

/s/ Kurt Mizee

