



December 12, 2024

City of Eugene Planning Division
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Dear City of Eugene,

Beyond Toxics is a non-profit organization based in Eugene, Oregon, with a long history of working with communities in and around West Eugene to advance environmental justice and protect public health. Beyond Toxics envisions a society where everyone has equitable access to healthy food and clean air and water, and underserved communities are included in decision making processes that affect them.

We ask you to deny the Zone Verification for the USD Eugene Clean Fuels transloading facility proposed to be located at 799 Bethel Drive. The decision to approve Zone Verification is inconsistent with local land use regulations and harmful to the community. The foreseeable harms of the facility, including traffic safety, noise, and hazardous material concerns, will bring further inequities to a community that has been historically overburdened by industry and excluded from meaningful public participation. We appreciate the opportunity to change course presented by the City's withdrawal of Zoning Verification Decision 24-20 on October 15th, 2024, and urge you to take into consideration community concerns and the public health impacts to community members living in nearby neighborhoods.

The Zoning Verification should be denied on reconsideration because its approval for the USD facility is not allowed under Eugene's land use code. While the code leaves railroad rights-of-way unzoned, projects on railroad land must still fall within the permitted uses listed in section 9.1070(3), which restricts use of the right-of-way to "tracks, signals, and other operative devices and the movement of rolling stock." In Zoning Verification Decision 24-20, the City, without including specific findings, determined that the transloading facility met this definition. We think this finding misconstrued the land use code because the project, a fuel transfer facility operated by a private entity that is leasing the land from Union Pacific Railroad, will involve unpermitted uses, such as infrastructure development greater than intended by this provision.

The City's role is to determine whether the USD facility qualifies as "tracks, signals, and other operative devices and the movement of rolling stock." It should find that the USD facility is not one of those narrowly permitted uses for at least three reasons.

First, the first half of section 9.1070(3) expressly states that railroad right-of-way must be used "solely for the purpose of accommodating tracks, signals, and other operative devices." The operational needs of the proposed USD transloading facility far surpass these limited uses, including at a minimum truck parking spots equipped with pump skids, controls, and an above ground manifold system; two new truck driveways; concrete slab pumps for the transloading pump system; lined containment basins; pumps and piping to move fuels from rail cars to trucks; an office trailer with a control center; restroom facilities for truck drivers and staff; lighting and security; and paving. The facility will also require the construction of truck entry and exit driveways and roadways to accommodate trucks. This alone is a reason to deny the zone verification because these structural changes cannot be construed as "tracks, signals, [or] operative devices."

Second, the transloading facility would involve activities that exceed the latter half of section 9.1070(3), which limits activity on the railroad right-of-way to "movement of rolling stock." The phrase "rolling stock" is not defined in the Eugene land use code, nor is there a common definition in Oregon state statutes or regulations. The lack of definition creates the potential for misapplication of the code; because the City does not have an existing interpretation, it should rely on the trade usage of the term by industry and look to federal definitions as guidance. Importantly, the term "rolling stock" here is referenced in the context of the Eugene code's railroad right-of-way provision.¹ Further, the term "rolling stock" is commonly used by the rail industry, and by federal agencies (see additional resources below), to refer only to vehicles on rail wheels that can be moved via tracks. In the Oregon State Rail Plan (see citations in resources below), the term "rolling stock", while undefined, is used only to refer to vehicles transported via track. The City should deny the Zone Verification because USD's transloading facility involves a series of operational activities exceeding the "movement of rolling stock", including an involved transfer process in which fuel cars are decoupled and eventually parked on dead-end spurs where they will serve as stationary aboveground fuel storage tanks before fuel is ultimately transferred, likely by pump, onto trucks meant for the road, not rail tracks. Such activities will involve operational equipment, structures, and vehicles that do not qualify as "rolling stock."

Third, the transloading facility is inconsistent with the section's use of the word "movement" because it would necessarily require parking the fuel railcars at the planned site, and removing the fuel from those on-track railcars using equipment such as pumps to be loaded onto trucks. Rail cars, potentially dozens at a time, will essentially serve as above ground fuel storage tanks

¹ The term "rolling stock" is only used one other time, in the hazardous substance section of the code, to refer to emissions from the "engine exhaust of a motor vehicle, rolling stock, aircraft vessel or pipeline pumping station engine." The separation of "motor vehicle" from "rolling stock" would also suggest that each has an independent meaning under the Eugene code. See Eugene Land Use Code section 6.340.

because they will be parked and stationary during the fuel transfer process. So, even if the phrase “rolling stock” were read broadly to include trucks, the transloading facility involves operations that far exceed the right-of-way’s narrow purpose of facilitating rail movements, as expressly restricted by the land use code. This is further supported by the section’s intent to facilitate the ongoing movement of rolling stock along rail tracks, as evidenced by the limitation of equipment on the right-of-way to “solely . . . tracks, signals, and operative devices.”

For the above reasons, the City should find that the Zone Verification for USD’s planned facility is impermissible under Eugene’s land use code. Moreover, we urge the City to consider the project in the context of the environmental justice concerns facing community members. The facility, as currently planned, will be located on railroad property directly adjacent to the Trainsong neighborhood. Trainsong, along with much of West Eugene, is a Justice40 community, meaning that it is recognized by the federal government as a disadvantaged community based on environmental burdens (e.g., exposure to legacy pollution) and socioeconomic indicators (i.e., low-income). There are already thirty-two industrial sites that produce toxic pollution and report to the Eugene Toxics Right to Know program in the 97402 zip code, where this proposed transloading facility would be located. This number doesn’t include at least six additional industrial sites with Title V air discharge permits in the adjacent Urban Growth Boundary.

The Eugene Clean Fuels facility would introduce new impacts from hazardous industry to surrounding residential areas. Available information states that the proposed facility will operate all hours all days of the year, moving up to 92 million gallons of fuel using at least 40 trucks a day (for a total of 80 truck trips, according to a traffic analysis we were not previously alerted to). Community members still face many unknowns about the proposed facility, including the content of hazardous materials in the biofuel, the risk of spills, explosions and fires (especially considering the nearby locations of Eugene’s emergency response infrastructure), the impact on traffic safety and congestion in residential areas, the lack of an escape route for residents living on dead-end streets in the event of an emergency, and the air quality harms of trucks idling and air toxics leakage from fuel transfer operations.

We also urge the City to remember its recent actions and commitments towards furthering environmental justice in Trainsong and other West Eugene neighborhoods, and consider whether the transloading facility is consistent with those commitments. First, earlier this year, the City of Eugene received over \$1.5 million in federal environmental justice funding to clean up industry-related contaminated soil in Trainsong Park, less than half a mile away from the proposed fuel transloading site. In its application for that funding, the City of Eugene acknowledged the legacy impacts of industry on public health, presence of hazardous substances, walkability, and traffic safety on nearby disadvantaged communities. In fact, the City researched the environmental justice indicators for the Trainsong Neighborhood using federal and state data, and concluded that the data demonstrates, “...that the community in the Target Area is one of the most disadvantaged in the state and country.” Second, Bethel Drive and other parts of West Eugene have also been identified in the City’s Pedestrian and Bicycle Master Plan as areas in need of traffic safety improvement, including sidewalks, railroad

and highway crossings, and bike lanes. Adding to these traffic safety concerns with a transloading facility is counterproductive to that Plan. Finally, the City of Eugene should consider whether this transloading facility would be consistent with the City's existing and prospective environmental policies. The City of Eugene's Environmental Policy commits the City to, among other aspirations ensuring that "each employee understands that they are expected to take personal responsibility for the environmental effects of their actions while performing City work," considering environmental consequences when making planning decisions, and working in partnership with community.²

We ask the City to keep the environmental justice history and those environmental commitments in mind when considering whether the proposed transloading facility is appropriate in the Trainsong neighborhood. We urge the City to deny the Zoning Verification Approval upon reconsideration. Please continue to consider other avenues to ensure that any industrial facility seeking to locate here aligns with the City's environmental justice, public health, and safety goals. Additionally, for the all the reasons stated throughout the letter, we believe considerable caution and creating meaningful community engagement processes should be taken when considering locating this transloading facility, or any heavy industrial facility, anywhere within Eugene's Urban Growth Boundary.



Beyond Toxics
12/12/2024

Additional Sources:

Active ACDP Holders in Lane County, Lane Regional Air Protection Agency (LRAPA), <https://www.lrapa.org/air-quality-protection/permitting-lane-county-sources/active-acdp-holders/>.

City of Eugene Environmental Policy, <https://www.eugene-or.gov/DocumentCenter/View/1083/City-of-Eugene-Environmental-Policy?bidId=>.

City of Eugene Trainsong Park Cleanup, EPA Brownfield Cleanup Grant Application, <https://eugene->

² We find the precise language of the following parts of the policy to be further instructive of the City's commitments: "2. Provide the leadership, training and resources needed to enable all City employees to implement this policy, and to continue to build the capacity of the organization to achieve continual environmental improvement. 3. Meet or exceed compliance with all applicable environmental statutes, regulations, and standards."

[or.gov/DocumentCenter/View/71700/Trainsong Park EPA Grant Application 20231109?bid=d](https://www.eugene-or.gov/DocumentCenter/View/71700/Trainsong_Park_EPA_Grant_Application_20231109?bid=d).

Climate and Economic Justice Screening Tool, Council on Environmental Quality, available at: <https://screeningtool.geoplatform.gov/en/#10.19/44.1197/-123.1901>.

Environmental Justice in West Eugene: Families, Health and Air Pollution, Beyond Toxics (2012), https://www.beyondtoxics.org/wp-content/uploads/2013/07/EnvJusticeWestEugene-FamiliesHealthAirPollution_FULLreport_FINALwebres.pdf.

Emergency Planning and Community Right-to-Know Act (EPCRA): What items are covered by the term “rolling stock”?, Environmental Protection Agency, <https://www.epa.gov/epcra/what-items-are-covered-term-rolling-stock> (May 8, 2024).

Eugene Pedestrian and Bicycle Master Plan, City of Eugene (2012), <https://bicycleinfrastructuremanuals.com/manuals6/City-of-Eugene-Eugene-Pedestrian-and-Bicycle-Master-Plan-2012.pdf>.

Oregon State Rail Plan, Oregon Department of Transportation, (revised Aug. 13, 2020), https://www.oregon.gov/odot/Planning/Documents/Oregon_State_Rail_Plan.pdf. See pages 23, 43, 45, and 161 for references to rolling stock.

Public Health Standards Project, City of Eugene, [https://www.eugene-or.gov/5359/Public-Health-Standards#:~:text=The%20Public%20Health%20Standards%20\(PHS,within%20the%20City%20of%20Eugene](https://www.eugene-or.gov/5359/Public-Health-Standards#:~:text=The%20Public%20Health%20Standards%20(PHS,within%20the%20City%20of%20Eugene) (accessed December 2024).

Rolling Stock: Locomotives and Rail Cars, Industry & Trade Summary, United States International Trade Commission (March 2011), <https://www.usitc.gov/publications/332/ITS-08.pdf>.

Toxics Right-to-Know, City of Eugene, https://ceapps.eugene-or.gov/toxics/facility_list.aspx.

Traffic Memorandum, Eugene Transloading Facility Project #29759, Kittelson & Associates (Aug. 14, 2024).

Trainsong Park Remediation to Receive \$1.526 Million EPA Grant, Engage Eugene, In <https://engage.eugene-or.gov/trainsong-park> (May 22, 2024).

Trainsong Neighbors, available at: <https://trainsong.org/> (neighborhood website).