

MINUTES
UMATILLA COUNTY BOARD OF COMMISSIONERS

Meeting of October 20, 2021
9:00 a.m., Room 130, Umatilla County Courthouse
Pendleton, Oregon
Public call-in phone number: 541-728-0275

Commissioners Present: Chair George Murdock, Vice-Chair John Shafer, and Commissioner Dan Dorran

County Counsel: Doug Olsen

Guests Present: Robert Pahl, Chief Finance Officer; Robert Waldher, Planning Director; Craig & Anne Munkers, Laura Madison, Vickie Ande, Rocky Church

Video link or Calling in: Megan Green, Planner; Jennifer Blake, HR Director; Tom Fellows, Public Works Director; Capt. Karen Primmer, 911 Manager; Riley Wortman, IT; Dan Lonai, Administrative Services Director; Mark Tanner, Facilities Manager; + *see list of video or call-in, copy on file.*

CALL TO ORDER: Chair Murdock called the meeting to order at 9:00 a.m. He reminded all that the meeting is a public forum and there is a call-in option provided. There is time on the agenda to provide input or for hearings to provide comment. The meeting is being video and audio recorded and minutes will be taken. Also, meetings are now live-streaming. Comments will become part of the meeting record. If persons wish to speak before the Board, please identify yourself and state where you live in order to be heard on the record – also note if you are speaking on behalf of others.

Pledge of Allegiance

Awards/Correspondence/Recognition. None.

Minutes – Commissioner Dorran moved to approve the Board minutes from the meeting of 10/6/21. Seconded by Commissioner Shafer. Carried, 3-0.

Additions to Agenda – none.

Public Comments – none.

Business Items

1. **Meacham East Livestock District – Public Hearing.** Chair Murdock asked for the staff report, presented by Doug Olsen, County Counsel. A petition for the formation of a livestock district was received; the matter is set for a public hearing this date. The main petitioner is Kent Madison. It meets the statutory area requirement of 2000 acres. Notices were sent out as required. Upon conclusion of the hearing, the Board may make a decision on the petition. If in favor, it goes back to petitioner, who then approaches all those in the proposed district for their consent. This must be done within 90 days to officially bring the formation of the district. In response to Commissioner Shafer’s question, Mr. Olsen advised if a property has multiple owners, each property owner will have a voice and any property owner will have to sign in agreement. To also clarify, is representation of landowners based on how much property they own? Mr. Olsen advised, no, whomever is the named property owner; if under one name, would be one vote, based on property ownership. In response to Commissioner Dorran’s question regarding land ownership outside the boundaries, Mr. Olsen advised only those property owners within the district boundaries get a voice; however, notice goes to all properties, plus

those 500 feet outside the boundary -- since they are impacted by the district. If they have livestock, they will have to put a fence up to keep their livestock on their property and outside the district.

Chair Murdock called the public hearing to order at 9:06 a.m. Mr. Olsen advised two people were unable to attend and provided written testimony to be part of the record. (1) Steve McClellan for Hancock Forest Management, with some property within the district and also some outside the district, which complicates the issue. He also oversees other grazing interests. Hancock prefers to be out of district. If it is formed, Hancock will terminate all grazing leases in that area. (2) Charmaine Busler, owns 2 lots at Meacham. She would agree to proposed district. Recently four cattle have damaged her property and she had trouble identifying the owner to get them off her property. She doesn't want cattle on her property.

Commissioner Dorran asked, regarding Hancock, if they remove their property (about 300-400 acres) would that mean the minimum size requirement wouldn't be met? Mr. Olsen: correct.

Chair Murdock asked for those in favor:

Rocky Church, Meacham. He has problems with cows tearing up/damaging his property -- ongoing issues; continually having to repair cattle damage. However, he's in favor of a district, though his property is outside of the area for the proposed district.

Laura Madison, represents Kent Madison, petitioner. The main purpose of proposing a livestock district is for the ability to corral cattle for brand inspector to identify owners -- the legal way to handle the process of getting cattle off their land. They aren't opposed to free range, but need ability to identify cattle and the owner responsible to remove them. They were told that the Brand Inspector would need to see the cattle to determine the owner.

Mr. Olsen advised with open range, cattle can be wherever, and can't be corralled. He didn't know about the brand inspector piece.

Chair Murdock asked for any in favor on the phone? None were heard.

He then asked for those who opposed:

Rick Isackson, tax lot 1400. He has no building, but he owns land immediately adjacent to Meacham and between it and the freeway. Five questions. 1) what is result if passed on cattle or sheep drives through the district? (Chair Murdock advised he's heard concerns about sheep drives as well). Mr. Olsen: if doing a drive, one can legally drive them on a public road. It go onto private property, consent would be needed. There's no violation if driving livestock on public road. 2) What about domestic animals being released due to elk damage to fences? Mr. Olsen: if in a district, any livestock owner is liable for damage caused by them. An owner would have to fix fence to contain them on their property. The burden is on the livestock owner to keep their animals on their property and liable for damage to others' property. 3) What about Wapiti land subdivision constructing its own fencing to keep livestock out of the subdivision? Exclusionary fencing? Mr. Olsen: they have that option now. 4) What agency is responsible for policing a district if passed? Mr. Olsen: it falls within the scope of the Department of Agriculture -- brand inspector. Mr. Isackson, so someone within the district would contact the brand inspector and if the animals are gone, then no crime no foul? Mr. Olsen: the brand inspector would have to follow-up (could look at pictures or other evidence). Mr. Isackson: is their sufficient funding? Mr. Olsen: that would be a question to that agency. He added that notice goes to that agency regarding any proposed livestock district. Mr. Isackson advised he is opposed based on answers to his questions. Point of fact, particularly sheep, his place was a sheep shipping operation at least 80 years ago -- it is a way of life for cattle and sheep in that area. He leaves his range open for elk, deer, and occasional sheep or cows -- it is okay with him. He doesn't believe additional burden should be on stock owners who feel the pinch of many regulations affecting them (i.e. riparian zones, etc.) and the potential of fines goes beyond the pale. He doesn't feel it should be approved.

Chair Murdock asked for others in opposition:

Anne Munkers, Hoskins Ranch, they have own property and also lease property from several landowners including Hancock Management and other owners over years. They have lived there about 70+ years. She agreed with Isackson. They fence their property. CTUIR fences and Cunningham fences. It's an extreme burden for them -- they replace fence in May and then in September with more activity at those times. Another problem is they've been informed by Hancock if the district goes through, they will close everything – put up more cameras and etc. It would be trespassing. Regarding stray livestock, in reviewing statutes, one must try to identify cattle within a short period. Neighbors seek out and do the best they can to notify others when their livestock is out. She is opposed to the district.

Any opposed on the phone?

Robin McFall, owns property at 687 USFS Rd 3030, which is right in the middle of all this. She totally agreed with Munker's and Isackson's comments – they live in a livestock world. The petitioner seems to only want others to fence their property. If somebody accidentally hits livestock on the road, they can be sued. She chooses to fence off her property (she has horses). Neighbors talk to each other. She feels this is nothing more than helping Madisons fence off their property. If they want their property fenced off, do it. Nobody else should be liable.

Chair Murdock read into the record: Mr. McClellan statement (he called from Boise to leave word being unable to attend). Hancock Forest Management objects to the proposed district. (as noted earlier). Also, a Cunningham representative called about sheep drives being terminated; he felt a decision by the commissioners would be premature.

Rebuttal

Ms. Madison reiterated they are not against grazing cattle nor passing animals through. She noted Fish & Game told them it would be better to take down fences for elk and deer habitat. Based on statutes, she commented again about brand inspector contact. She reiterated they weren't talking about stopping or slowing down grazing, it is up to property owners to fence out livestock that isn't their own.

Ms. Munkers: she believed Madisons have enough experience they understand fencing laws of Oregon. She agreed with Ms. McFall, and over years, neighbors are independent folks, but also accountable for themselves and their property. She's been accountable. Neighbors need to communicate – all people in their area need to be responsible and accountable.

Chair Murdock asked for public comments or questions. There were none. He then closed the public hearing at 9:31 a.m.

Deliberations. Commissioner Dorran believed action by the Commissioners is premature. If Hancock is unwilling to consent to being in the district, there is not enough property to form it. What is the next step? Mr. Olsen: once a district is formed, then a property owner can petition to be removed. At this point, it would be a majority to form a district. In response to Commissioner Shafer, if a district is formed how hard would it be for Hancock to pull out? Mr. Olsen: the board has authority on the petition. He reminded that property must be minimum of 2,000 acres. The Board can continue the hearing for petitioner to have more time, or deny for the current proposal. Chair Murdock agreed the action is premature. There are a number of questions i.e. brand inspector comments regarding monitoring. Discussion about action – delay/continue, minimum of 90 days? Considering the time of year – don't want middle of spring to come into play. Also, concern we are impacting livelihood of people who have operated in that area – economic consequences. In addition, if timing is wrong, pasture takes time; a process to find alternate ground. Commissioner Dorran felt the petitioner needs to go back “to the drawing board”. More discussion about when cattle are in /out,

requirements of public lands vs. private lands. Grazing is monitored by BLM and also Hancock (public). Chair Murdock also pointed out regarding date and conditions for grazing, it is also about water.

Commissioner Shafer moved to continue for 90 days to January 19, 2022 at 9:00 a.m., here in Room 130. Seconded by Commissioner Dorran. Chair Murdock added time is needed for due diligence and also to answer questions brought forward today. Before the vote, like the last time there was a livestock district discussion, he would like to view the area. Carried, 3-0.

2. Vinson Canyon Quarry Amendment – Public Hearing. Chair Murdock turned gavel over to Commissioner Shafer to conduct land use hearings. Vice-Chair Shafer opened the public hearing at 9:42 a.m. He gave the opening statement, purpose of the hearing, including location, zoning, the process to be followed, etc. He asked for any ex parte contact, etc. None heard.

The staff report was presented by Robert Waldher, Planning Director. The applicant is ODOT, which has requested to add existing quarry (Vinson Canyon) to the comprehensive plan list of Goal 5 protected Significant Sites and apply Aggregate Resource Overlay Zone to the site. Property is located off the north side of OR Highway 74; property is 14.03 acres and zoned Exclusive Farm Use. After testimony presented to the Planning Commission, unanimous recommendation was made for approval to the Board of Commissioners.

Vice-Chair Shafer asked for public comments or questions. Carla McLane, 170 Van Buren Drive, Umatilla. She represents ODOT (applicant). ODOT acquired the site in 1953; over the years, permits were kept up to date. In the past year, 6 sites were identified, including this one and one more today to consider of those six, to be found a significant site. There's a letter documenting evidence the site meets quantity and quality (more than 525 tons of material) and standards also met. ODOT is asking for protections of the site and some limitations for the impact area. This is basically open range land and space. It is remote with no conflicting uses. Staff has done an excellent job of evaluating and supported a waiver of remonstrance, which says no harm based on activities. It is to protect ODOT from any future claims. She also noted ODOT staff is available (on-line) for any questions regarding operational, quantity, quality.

Vice-Chair Shafer asked for those in opposition? None heard. Any public agencies? Mr. Waldher advised Planning didn't receive any comments for this site. No rebuttal. He closed the public hearing at 9:57 a.m. Deliberations. None.

Commissioner Murdock moved to adopt Ordinance No. 2021-09 (Vinson Quarry). Seconded by Commissioner Dorran. Carried, 3-0.

3. Butter Creek Quarry Amendment – Public Hearing. Vice-Chair Shafer opened the public hearing at 10:00 a.m. He gave an opening statement, purpose of hearing, *(same as the prior hearing)*.

The staff report was presented by Mr. Waldher. This is for adding a site (Butter Creek Quarry) to the comprehensive plan list of Goal 5 protected Significant Sites and apply Aggregate Resource Overlay Zone to the site. Property is located on the northeast side of Butter Creek Road; the property is 4.75 acres and zoned Exclusive Farm Use. After testimony presented to the Planning Commission, vote was 5-3 to not recommend approval by the Board of Commissioners. However, the Planning Commission made no findings with the split vote. The Board is to make the decision whether to adopt and apply the AR Overlay to the entire quarry. He then asked to include agency comments received (not in packets), but need to be on the record; he read comments into record. Also, a letter of support to ODOT for protection and approval of this quarry site which set out specifics (copies provided to the Board for the record) was prepared by Tom Fellows, Public Works Director. Commissioner Murdock asked about amount of use at this site. Mr. Waldher didn't believe it would

be used frequently; main use is for ODOT planned construction projects – the quarry could sit inactive for several years based on need for those projects. So, safety wouldn't be a problem like a commercial quarry – no daily truck traffic, moving of aggregate, blasting. He believes it would be more mobile equipment not permanent there – but this is a good question for ODOT.

Regarding a waiver of remonstrance for any conflicting use within the 1500 foot area, at the Planning Commission hearing, Mr. Luciani (neighboring property owner) expressed concern about operation and safety (blind corner in the site). Carla McLane, on behalf of ODOT, reminded all that ODOT representatives are also on-line for questions. She noted this site has been owned by ODOT since 1946. Permits and protections meet requirements. As with the first quarry (Vinson), it is similar but there's more pasture and no homes within the 1500 foot buffer zone. A few homes in the area (more in Morrow County) with more activity near this site (than the Vinson Canyon quarry) – i.e. hay cover structures. Dryland farming and also irrigated farming in the area. She commented that Mr. Luciani testified in opposition at the Planning Commission hearing, but cited no specifics. The portion regarding safety for ODOT and contract workers and travelers on Butter Creek Road, she followed up, traffic counts were reviewed – current data is about 5 years old. Also comment about using different aggregate sites – what types of sites are there? How are they used? ODOT quarries are used for their projects. Sites along freeway are probably owned by private individuals, with a lot more regular work – commercial quarries have more active use. ODOT needs to assure they have material available – also cost is a big consideration (farther distance results in more cost).

This was a 5-3 decision of the Planning Commission and they didn't create findings for a clear path for staff about reason for denial. It was unclear at that hearing. ODOT is asking the Board to not accept the Planning Commission decision, and to vote in favor of applicant.

Vice-Chair Shafer asked for public comments or questions. Those in favor? There were none. He then asked for those in opposition.

John Luciani, Butter Creek Road, Echo, Oregon. The Planning Commission voted against this quarry. He hopes the Board votes the same. He suggested visiting the site before voting. It is a blind corner; over the years, road changes have been made; however, he felt there's need to actually see this site. It is right out his back door; also Tom Price's property is to the north, and his daughter's property is there as well. Regarding traffic patterns – there's a lot of traffic all hours of day – school buses, also a trucking business two miles to the south. Cattle trucks are constantly running transporting cows. He hauls wheat (dryland operation), which is 20 loads/day estimate (seasonal). Also a lot of motorcycles use the road. He prays somebody doesn't get hurt on this road. Who would be liable for that? Please address that. This corner is unacceptable. There are also a lot of animals in that area – with blasting, another big concern for animals and also for his home right there.

Commissioner Shafer asked Mr. Olsen to comment regarding potential liability. Mr. Olsen, if a contractor is on site, it would be a potential defendant, also the state of Oregon since it's their property being mined. It is true of any rock pit anywhere. The same applies to blasting – a contracting party has potential liability plus the state.

Mr. Luciani added product is available in that area – all others are remote (for good reason). Rock is available in many other quarries.

Commissioner Shafer asked for rebuttal from the Applicant. Mr. McLane, regarding the blind corner – she referred to a map (page 30 in packet) -- felt "blind corner" is overstated. Noise and dust have been addressed. Traffic counts have grown, but still felt trips/day are still 35-40. Regarding accidents, she also inquired about crash data/history, and found no crashes or fatalities identified on that road. It is not a residential area – uses

are EFU. ODOT purchased this quarry in 1946 and needs it in the near future rather than using other materials from other sites

Paul Howland, Assistant District Manager, ODOT, 1327 SE 3rd St, Pendleton. He knows location and area and traffic comments – he’s driven it. Regarding rock production, this pit is ODOT owned. He includes rock sources in contract submission, which is the best price for taxpayers. Example: specifically, to Highway 207 project, only contractor who bid was Anderson who used their own material source – with no ODOT material available closer, it was more expensive and added up to taxpayers. This pit wouldn’t be a stockpile site and not used frequently. It could be 8-12 years for using it. Still not active, regular use. To Mr. Luciani, the pits he mentioned are private, not ODOT owned.

Scott Billings, 63055 N Hwy 97, Bend. ODOT. Adding to Mr. Howland’s comments regarding material sources, the shorter the distance, the less fuel, the cheaper the rock is, and more miles they can pave. Also, “insurance policy” material is available 24 hours/day for emergency uses. There is misconception rock is available (a lot of quarries), but ODOT cannot use just any commercial sources. It needs best product, price, proximity. Also regarding traffic, all road aspects, flagging, etc. plus permit with county road is considered with all aspects (signage or flagging etc. required based on need).

Teresa Penniger, ODOT. Regarding quarry location, it’s been there since 1946. Today’s action is to identify this quarry as a significant site. ODOT is also willing to protect the site and the folks who may want to use surrounding land including a letter of remonstrance to be aware of future use. Notifications would be made accordingly.

Vice-Chair Shafer, then asked for ex parte contact. Commissioner Dorrان disclosed his wife works for ODOT along with Mr. Howland, but this does not impact his ability to make a decision. Mr. Olsen advised this doesn’t affect his participation, but disclosure is needed.

No other questions. No comments after rebuttal (per Mr. Waldher). And, no more comments were made by Mr. Luciani.

Vice-Chair Shafer closed the public hearing at 10:47 a.m. Deliberations. Commissioner Dorrان empathized with Mr. Luciani, but also recognizes ODOT’s position. He also understands this quarry is not a full-time commercial pit and the request is only to identify it in the Goal 5 process; other processes and permits still to be needed for actually using the pit. Mr. Waldher responded: if decision is to approve the quarry site as a Goal 5 protected resource, it gives ODOT the ability to mine the site as long as zoning permits are acquired prior to doing that. A conditional use wouldn’t meet criteria in this case (it’s a large site vs. small site). Goal 5 takes the place of a conditional use permit. Commissioner Dorrان also appreciated the Planning Commission recommendation without actual findings, he can’t go against the requests, at this point.

Mr. Waldher clarified the Planning Commission concerns of Mr. Luciani, but if substantive criteria are met under rule and planning requirements, no other findings can be made by the Board. The staff report shows the applicant met substantive requirements for approval. Commissioner Shafer added, then, on the face of matter with input from staff, the Board can take action.

Mr. Waldher: the decision should be based on whether or not criteria are met.

Commissioner Dorrان, after considering all, feels all criteria has been met and he moved to adopt Ordinance 2021-10. Seconded by Commissioner Murdock. Carried, 3-0.

[10-minute break @ 11]

4. Boardman Connector Report Presentation. Presented by Megan Green, Planner. Umatilla County, Morrow County, and CTUIR Transit Coordinators worked with Kittelson & Associates to develop a strategic report for planning and developing the Hermiston to Boardman connector transit route, and the Port of Morrow circular route. The effort was led by CTUIR, Kayak Public Transit, and Morrow County's transit service with Umatilla County serving as a project partner. She explained the stakeholder group make-up noting public outreach was conducted at meetings in February, March, and June. Monthly meetings were held for the purpose of planning the new transit service. This project has received STIF funding in the 22/23 biennium. In order to continue to receive funding and grants, the county should formally adopt the strategic report. In response to Commissioner Dorrnan, regarding flexibility of routes, Ms. Green advised Kayak would decide that. She noted committee meetings are held quarterly to discuss how funding comes in, as well as routes. But, since Kayak is providing the service, they are main decision-maker on the route. Commissioner Murdock asked about a periodic review process to determine how the program is working, Ms. Green advised STIF funds are reviewed every two years. At that point, part of process is the plan is submitted and projects are identified then the Board makes that decision. **Commissioner Shafer moved to approve and adopt the Hermiston to Boardman Connector Strategic Report. Seconded by Commissioner Dorrnan. Carried, 3-0.**
5. Solid Waste Franchise. Presented by Gina Miller, Planning and staff liaison to Solid Waste Committee. This is to request for Desert Wind Sanitary Disposal who sold the business to Waste Connections to essentially transfer the franchise. Unanimous vote was made by the committee to approve and forward to the Board for consideration. Waste Connections has submitted the appropriate application and paid fees. Mr. Olsen advised, as it is written, Waste Connections takes over as a brand new franchise for the county. Ms. Miller advised the service area does not change – everything remains the same. Mr. Olsen added, rates are the same until changed by the Board; this company would take over existing rates. Ms. Miller also noted this application is for a 10-year period, with rolling review every 1 year – all franchise holders do this annually. **Commissioner Dorrnan moved to adopt Order No. BCC2021-075 (Collection Franchise). Seconded by Commissioner Shafer. Carried, 3-0. Commissioner Shafer moved to adopt Order No. BCC2021-076 (Disposal Franchise). Seconded by Commissioner Dorrnan. Carried.**
6. Maintenance Purchase. Presented by Mark Tanner, Facilities Manager. Approval is sought for purchase of a storage container to be placed at the Stafford Hansell Government Center in Hermiston to store snow removal equipment. He looked at different options (i.e. shed, metal building structures – both were twice as much as this cost). At Commissioner Dorrnan's request, he talked to BMCC about possibly using their storage shed; they don't have any room for the county. He also spoke to the City of Hermiston about any requirements; nothing, except basically it needs to be only one color. The used container would be purchased from NW Container Services (in Boardman) for \$5,733. It could be available by the end of October or November. The other option is a unit from La Grande at a cost of \$6,670. Commissioner Dorrnan is concerned with appearance of containers. He wants the facility there to be in keeping with a better appearance. He noted there is power available if the container is placed in a spot behind the building. **Commissioner Shafer moved to approve purchase of a used container from NW Container Services in the amount of \$5,733. Seconded by Commissioner Dorrnan. Carried, 3-0.**
7. Creation of Position. Presented by Dan Lonai, Administrative Services Director. With a recent retirement, there are only two in the records office, which is state mandated requirement to be open, as well as need for backup. There's been a big increase in recording and the office is very busy. The position would be part-time, non-benefitted (19 hours/week) and schedule would be set up accordingly, primary to records, but for administrative services and other things from time to time - e.g. elections, BOPTA. There was discussion about office set up, supervision, other duties. Mr. Lonai noted IT set up is still there and available. **Commissioner Shafer moved to approve the Records Specialist position to fall under Administrative Services, 19 hours/week. Seconded by Commissioner Dorrnan. Carried, 3-0.**

8. Gate Permit. Presented by Tom Fellows, Public Works Director. The county received a request from the City of Pendleton to install a gate on county right of way. The road isn't in use at this time; it's an old road by the Airport. The city wants to gate off the property on this spot with a connection to current airport road at the top of the hill to be used for the new tank/water facility to secure it. **Commissioner Shafer moved to approve the application for a gate. Seconded by Commissioner Dorran. Carried, 3-0.**
9. Jail Remodel Permits Payable. Approval is sought for payment to the City of Pendleton for permits for the jail remodel in the amount of \$11,224.06. **Commissioner Dorran moved to approve the payable as outlined. Seconded by Commissioner Shafer. Carried, 3-0.**
10. Board Meeting Schedule. Presented by Chair Murdock. Due to the absence of a commissioner, the first meeting is proposed to be moved back a week, from November 3 to November 10. **Commissioner Shafer moved to approve. Seconded by Commissioner Dorran. Carried, 3-0.**

Executive Session – none.

Commissioner Reports – none.

The meeting adjourned at 11:27 a.m.

Respectfully submitted,

Melinda Slatt

Executive Secretary, Umatilla County Board of Commissioners