

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, December 15, 2022, 6:30pm

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Don Wysocki, Vice Chair, Sam Tucker, John Standley, Emery Gentry & Jodi Hinsley

COMMISSIONERS

ABSENT: Tammie Williams & Tami Green

PLANNING STAFF:

Bob Waldher, Planning Director; Megan Davchevski, Planner/ Transit Coordinator & Tierney Cimmiyotti, Administrative Assistant

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE

CALL TO ORDER

Chair Danforth called the meeting to order at 6:30 pm and read the Opening Statement.

CONTINUED HEARING

TEXT AMENDMENT #T-092-22, PLAN AMENDMENT #P-135-22 & ZONE MAP AMENDMENT #Z-322-22; CRAIG COLEMAN, APPLICANT/ GIRTH DOG LLC, OWNER. The applicant requests to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan list of Goal 5 protected Large Significant Sites, and apply the Aggregate Resource (AR) Overlay Zone to the entire quarry site. The proposed site is comprised of several tax lots located south of the Interstate 82/84 interchange. The site is identified on Assessor’s Map as Township 4 North, Range 27 East, Section 36, Tax Lots 900, 1100, 1200, 1300 & 1800. The site is approximately 225 acres and is zoned Exclusive Farm Use (EFU).

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. Commissioner Tucker stated that he represented Carla McLane’s (applicant’s consultant) mother’s estate as an attorney. The Planning Commissioners determined there is no conflict of interest in this matter.

Chair Danforth called for the Staff Report.

STAFF REPORT

Bob Waldher, Planning Director, presented the Staff Report. Mr. Waldher stated that this hearing is a continuation of Girth Dog, LLC’s request to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan list of Goal 5 protected Large Significant Sites, and apply the Aggregate Resource (AR) Overlay Zone to the entire quarry site. The property is comprised of several tax lots located south of the Interstate 82/84 interchange, southwest of the Westland Road Interchange and south of Stafford Hansell Road. The site is approximately 225 acres and is zoned Exclusive Farm Use (EFU).

The proposal, if approved, would add this site as a Large Significant Site onto the County's Goal 5 inventory of significant sites. The applicant requests to excavate aggregate, batch that aggregate for various commercial and industrial projects, stockpile unused aggregate material for current and future use, and process the aggregate into both asphalt and concrete. Both sand and gravel material are available on this site.

Mr. Waldher explained that the Umatilla County Planning Commission held a public hearing regarding this matter on Thursday, October 20, 2022. Testimony was provided by the applicant, the applicant's consultant, project opponents (including neighbors and nearby aggregate operators) and a representative from the Oregon Water Resources Department (OWRD).

Mr. Waldher pointed out that several documents were introduced at the October 20, 2022 hearing which were not included in the Commissioner's hearing packets. Exhibits adopted into the record on October 20, 2022 include:

Exhibit A; October 18, 2022, Email communication between Megan Davchevski (Planner) and Greg Silbernagel, Watermaster, Oregon Water Resources Department

Exhibit B; October 18, 2022, Email communication between Megan Davchevski (Planner) and Amanda Punton, Oregon Department of Land Conservation & Development (DLCD)

Exhibit C; October 18, 2022, Letter to Planning Commission submitted by Carla McLane Consulting, LLC (Consultant for applicant)

Exhibit D; Submitted during October 20, 2022 hearing, additional information provided by Andrew Stamp (Representative for Wade Aylett/ Rock It, LLC)

Exhibit E; Submitted during October 20, 2022 hearing, additional information provided by Wade Aylett, Jr., Rock It, LLC

Mr. Waldher stated that, upon request by the applicant the Planning Commission continued the hearing to Thursday, December 15, 2022. The applicant's request for a continuation was due to issues raised by neighboring landowners and other aggregate producers. On November 15, 2022, the applicant provided to the Planning Department a signed waiver to the "150-day Rule for Planning Review." Under the waiver, the applicant voluntarily agreed to extend the 150-day provisions of Oregon Revised Statute (ORS) 215.427 by a period not to exceed 30 days, or February 6, 2023.

After the October hearing, additional information was submitted by one opponent of the amendment, as well as the applicant, including:

Exhibit F; November 15, 2022, Waiver of the 150-day Rule for Planning Review Provided by Carla McLane Consulting, LLC (consultant for applicant)

Exhibit G; November 23, 2022, Additional Testimony Provided by Andrew Stamp (Representative for Wade Aylett/ Rock It, LLC)

Exhibit H; November 30, 2022, Additional Testimony Provided by Carla McLane Consulting, LLC (Consultant for applicant)

After December 15, 2022 hearing packets were distributed, additional information was provided, and Mr. Waldher proposed that it be adopted into the record as Exhibits I & J:

Exhibit I; December 12, 2022, Email communication between Bob Waldher (Planning Director) and Greg Silbernagel (Watermaster, OWRD).

Exhibit J; December 14, 2022, Email Response to Mr. Stamps 11/23/22 letter. From Carla McLane to planning staff including; Coleman Response Letter, Hatley Application, Road Vacation Order & two pictures of the rock source locations.

Mr. Waldher read Exhibit I aloud (12/12/22 email from Greg Silbernagel, Watermaster):

“Bob, I spoke with Craig and Bob Coleman this morning. They contacted me on 12/8 regarding the water rights for their proposed mining operation. We discussed a character of use transfer from irrigation to mining/industrial use with existing water rights on the property. To do this, they would need to apply for a water right transfer to initiate the process. As of today, there is approximately a two year back log if there were no public protests or agency concerns. They also would not be able to change the irrigation season of the water right through this process which could leave them short of a year-round water source to operate with.

The Colemans other option is to request water from the County Line Improvement Company. They divert water from the Umatilla River during the winter for aquifer storage and recovery purposes. T.J. Hansell is the current president and has told me they are planning to create a policy for additional water requests outside of the original irrigation intent of the recharge project. They only meet once a year and have not created this policy yet. Recharge water use is generally not identified for more than a year because of the variable nature and amount diverted for storage each year.

To summarize my conversation with the Colemans, there are some options of which none are guaranteed or timely. - Greg Silbernagel, Watermaster, District 5”

Mr. Waldher explained that, in addition to the information provided above, relevant information pertaining to this request can be found in the October 20, 2022 hearing packet available on the County website at <https://www.co.umatilla.or.us/departments/planning/plan-packets>. The criteria

of approval are found in OAR 660-023-0040 – 0050, 660-023-0180(3), (5) & (7) and Umatilla County Development Code (UCDC) Section 152.487 – 488.

Mr. Waldher further explained that the process of approval by the County involves review by the County Planning Commission with a recommendation to the Board of County Commissioners (BCC). The decision includes a set of Precedent and Subsequent Conditions of Approval. The Planning Commission is tasked with determining if the application satisfies the criteria of approval, based on the facts in the record. The BCC must also hold a public hearing and decide whether to adopt the proposed amendments. A public hearing before the BCC will be scheduled upon a recommendation from the Planning Commission.

Mr. Waldher reminded the Planning Commission that each decision that comes before them is unique and must be able to stand on its own. While there may be some precedence of approving other Goal 5 aggregate sites, the Planning Commission's recommendation to the BCC must be based on whether the standards for approval are met. He added that other Goal 5 sites approved in the last year were a bit different than this request. The two Oregon Department of Transportation (ODOT) sites were already established quarry sites requesting Goal 5 protection. Additionally, the Hatley application was a request to expand an existing Goal 5 aggregate site and the Rock-It 2 application was a request to expand a Small Significant Site to a Large Significant Site.

Commissioner Standley asked for more information about the neighboring 1000-acre property with Goal 5 protections located to the west of the subject property. Mr. Waldher stated that planning staff learned that Seven A's, Inc. submitted an application in 2010 requesting to add roughly 1000 acres to an existing site. The request was approved and the site was deemed significant. However, the decision was never incorporated into an ordinance and adopted by the BCC at that time. As a result, the AR Overlay Zone was never applied to the site and planning staff overlooked it when identifying other Goal 5 sites in the area. He added that the site has never been approved for mining activity.

Chair Danforth pointed out that Exhibits A & B are in reverse order in the Commissioner's hearing packets. Mr. Waldher stated that he would make that correction in the BCC hearing packets.

Chair Danforth stated that this is a continued hearing. Therefore, it is important to present new information and to not provide repetitive testimony. She called for the applicant.

Applicant Testimony: Carla McLane, Consultant, 170 Van Buren Drive, Umatilla, Oregon; Sarah Stauffer Curtiss, Land Use Attorney, Stoel Rives, LLP, 760 SW Ninth Avenue, Suite #3000, Portland, Oregon; Craig Coleman, Girth Dog LLC, 71888 Wilson Lane, Boardman, Oregon; Jeff Hines, Site Operator, HNS, Inc. 63830 Industrial Lane La Grande, Oregon.

Ms. McLane stated that she believes the project opponents are asking the Planning Commission to apply more onerous application requirements and interpret standards more rigidly than the County has for other aggregate operations. She feels they have also raised many issues that are outside the

scope of the County's review. She believes the applicant has submitted detailed responses to the issues raised.

Ms. McLane stated that aggregate facilities are subject to many legal standards, most of which are not relevant to the County's review. She pointed out that the opponent argued that the applicant failed to show how they will comply with ambient air quality and air particulate standards, but that is regulated by the Oregon Department of Environmental Quality (DEQ). The opponent argued that the application does not contain an operations plan, but that is regulated by Oregon Department of Geology and Mineral Industries (DOGAMI). The opponent argued that the application fails to consider and mitigate the dust impact of the haul road on agricultural workers and mining employees on adjacent roads, but that is regulated by Oregon Occupational Safety and Health Division (OSHA). Finally, the opponent argued that the applicant does not provide any evidence of water rights on the property or that the water rights can be transferred from irrigation use, but that is regulated by Oregon Water Resources Department (OWRD). Ms. McLane added that the applicant materials include a letter from Elizabeth Schultz, Water Quality Assistant with the Port of Morrow demonstrating that they do have an available source of water to move forward with.

Ms. Stauffer Curtiss stated that the applicant understands that aggregate facilities are subject to many layers of regulation on county, state and federal levels. She acknowledged that the request before the Planning Commission is one of many permits Girth Dog LLC will be required to obtain along the way. She explained that the applicant is prepared to work with OWRD to convert water rights and has another option to source water through the Port of Morrow, as well. She added that DOGAMI requires detailed operating plans as part of their approval process.

Ms. McLane stated that she believes the applicant has met the standards for approval for a Goal 5 site because they have demonstrated that aggregate exists in sufficient quality, quantity and location. She referenced a map completed by IRZ Engineering & Consulting, LLC (Commissioner's hearing packets, page 182) which shows the location of where they took six additional rock samples and submitted them for testing. After testing samples up to 10 feet in depth, IRZ concluded that this site contains 1.23 tons of gravel. She added that the rock in this area is known to go 60 feet deep, and at that depth, they estimate the site to contain 13 million cubic tons.

Ms. McLane reiterated that she believes the applicants request is compatible with the Comprehensive Plan and there is enough aggregate material at the site to warrant the overlay. She added that the proposed overlay area is located at least 1,000 feet from properties zoned for residential use and adequate screening is available to protect the site from surrounding land uses.

Ms. McLane stated that the applicant has mitigated impacts on existing conflicting land uses and stated that noise at the site can easily be mitigated through best practices. Additionally, dust will be managed using bulk water and chemical abatement measures. The applicant also completed a

traffic study showing no impact, and they are in compliance with ODOT and County standards to develop Center Street for use with the mining activity.

Ms. Stauffer Curtiss clarified that the 1000-acre Goal 5 property located to the west is also owned by the applicant, Mr. Coleman, and he currently has no plan to mine that site.

Commissioner Standley asked for more information about expectations for water usage at the mining site. Mr. Coleman stated that he does not have specific numbers available because they have not reached that part of their plan yet. He explained that there are approximately 1,300 acres of irrigated ground on the farm. They have not started the process of converting the water rights because they do not want to take the farm ground out of production until they have to. They plan to apply for a Limited Water Use License, which is common in the area. They will also use water from the Port of Morrow, as needed. Commissioner Standley asked if they plan to truck in water for the washing process and use settling ponds to recycle the water. Mr. Coleman confirmed that they will transport water to the site and plan to reuse the water as much as possible.

Mr. Standley asked if they plan to start mining in the area currently covered in blueberries (Tax Lot 1800). Mr. Coleman confirmed they plan to start mining there. Mr. Standley asked for more information about where the crushing, batching and washing facilities will be in relation to the dwelling on Tax Lot 1000. Mr. Coleman stated that those activities will take place inside the pit, located as close as possible to the new access point at the end of Center Street. Commissioner Standley asked if the pit will stay in the same location as mining activity progresses. Mr. Coleman stated that, until they get down to the physical nuts and bolts of the operation and know what they're dealing with, he is unable to answer definitively if that will happen. He added that he has been in contact with the Walkers and he would never put a processing facility next to a neighbor because there is nothing worse than a neighbor that is not happy.

Chair Danforth stated that she has concerns about the statement made by Mr. Coleman about 'not knowing yet what they're dealing with'. She believes that he ought to know what he is dealing with, and that statement does not set well with her. She stated that information was presented about certain things being within the County's purview and other things that are not. However, she reminded the applicant that the process starts with the County.

Chair Danforth asked Mr. Coleman if he completed a geology report as part of his application. Mr. Coleman replied that he did not get a geology report. He stated that he reviewed applications which were previously approved by the County and used them as an example of what was required to apply. Chair Danforth pointed out that this request is a different application and unique from others approved in the past.

Mr. Hines, Site Operator, explained that they will start crushing on top of the ground until a hole is made. Then, all equipment will remain inside the pit and stay there year-round. As they continue to mine toward the north of the site they will keep the equipment where it started and truck the

material over to where the equipment is. They do not plan to move the equipment once it is set inside the hole.

Commissioner Wysocki asked for more information about the results of the IRZ tests. He asked the applicant to explain how they came up with the numbers. Ms. McLane stated that 6 recent test holes were dug to a depth of 10 feet and they discovered sand in the topsoil. At 3 feet deep, they reached aggregate material. Commissioner Wysocki asked if they measured the volume of aggregate material excavated from each test hole. Ms. McLane stated that IRZ used information including the location of the test pits and presence of cobbles between 3-10 feet and made a calculation which concluded that the site has approximately 1.23 million tons of material. She explained that they only went 10 feet down and based on well logs and other aggregate sites in the area they believe rock goes down to at least 60 feet. Commissioner Wysocki asked again if IRZ measured the aggregate material excavated from the volume of material removed from the test pit. Ms. McLane referenced the map provided by IRZ on page 182 of the Commissioner's hearing packets. She explained that the map demonstrates that they found 3 feet of top soil and 7 feet of gravel in a ten-foot-deep test pit. They multiplied 7 feet of gravel spread over 99 acres of land and concluded that there is 1,233,100 tons at the site (using 1.1 ton per cubic yard). She added that the applicant will likely mine to between 40-60 feet in depth at the site.

Commissioner Wysocki asked for information about the quality of rock at the site. Ms. McLane stated that Atlas has performed testing on samples from the site (Commissioner's hearing packets, page 185-187) which show that it meets the various ODOT standards for abrasion, sulfate soundness and air degradation.

Chair Danforth referred the group to an October 17, 2022 letter provided by Lynne D Green, Ph. D., Consulting Engineering Geologist, Evren Northwest, Inc. (page 23 & 24 of the Commissioner's hearing packets). She pointed out that Mr. Green stated that, "[b]ased on USDA soil classification data, the gravel and sand resources in the area of the above-referenced sites are fair to poor quality." Chair Danforth stated the Planning Commission is looking for evidence that the aggregate at the site meets the Goal 5 significant resource standards for quality and that is one of the reasons she asked about a geologist report. She added that the geologist went on to state that, "[w]ithout performing a site-specific investigation into the nature and extent of these deposits on the subject site, there is no way to confirm that the quality and extent of these materials meet the definition of significant, as defined by OAR 660-023-0180." Ms. McLane stated that the geologist uses the term 'significance' to describe quantity and quality. Chair Danforth asked for more evidence of quality, not quantity. Ms. Stauffer Curtiss explained that the OARs specifically define 'quality' with reference to the standards set in place related to air degradation, abrasion, and sodium sulfate soundness. Ms. McLane stated that the Atlas reports demonstrate that they meet the ODOT standards for quality.

Chair Danforth stated that this hearing should be based on new evidence. She asked if there were individual results for each of the 6 samples submitted for evaluation. Mr. Coleman stated that they delivered all 6 samples and received collective lab results.

Chair Danforth asked for detailed plans on how they intend to get water to the site. Mr. Coleman acknowledged that it would be costly to haul water to the site. He stated that he believes there is no reason to make detailed plans until they receive all the necessary approvals to move forward. He is using the water rights on site for irrigation purposes at this time. However, once they receive all approvals they will immediately submit applications for limited licenses to OWRD to secure water for use in the mining operation. Mr. Hines stated that they will not be washing rock right away, so they won't need much water to get started.

Opposition Testimony: Wade Aylett Jr., 75134 W Oregon Lane, Irrigon, Oregon; Wade Aylett Sr., 74854 Washington Lane, Irrigon, Oregon & Andrew Stamp, Attorney representing the Aylett's and Rock It, LLC, 4248 Galewood Street, Suite #9, Lake Oswego, Oregon.

Mr. Stamp stated that he believes the biggest issue with this application is water. He argued that the statement made by the applicant that there is no approval standard that relates to water usage, is incorrect. He referenced OAR 660-023-0180(5)(b)(A) which regulates conflicts due to noise, dust, or other discharges. He pointed out that the applicant acknowledges that the mining and processing operation can create dust and they plan to manage dust onsite through the application of water. He believes this is conflicting information because water is not available right now. Mr. Stamp does not believe a Condition of Approval that the applicant must have water would be appropriate because the Planning Commission must first have a feasibility finding showing that it's possible to meet the criteria. He argued that there is no evidence in the record showing that the applicant can get water and many unanswered questions remain.

Mr. Stamp stated that he still has questions about the aggregate samples. He believes there is a conflict between experts when it comes to the quality and quantity of rock at the site. Additionally, he and his client did not get a chance to review the new information provided by the applicant before the hearing today. He believes all parties should have adequate time to review new evidence. When evidence is presented the day of the hearing, he does not have time to consult with experts and he believes this creates a procedural problem. He stated that his substantial right to a full and fair hearing involves the right to rebut evidence. He believes the new evidence should have been provided to him sufficiently in advance of the hearing to allow for experts to analyze the material, but that did not happen. Mr. Stamp stated that he objects to any evidence that was not submitted before the Thanksgiving break because he understood that was the established deadline.

Mr. Stamp stated that the applicants use of examples of previously approved aggregate applications when compiling their request is not a valid excuse for their application being incomplete. He stated that, when the Ayletts submitted their application they included reports from licensed geologists who came to the site and transported the rock through a chain of custody to the

testing facility. He believes this is very different from the way Mr. Coleman & Mr. Hines submitted their samples. He stated that they have not demonstrated that the rock samples tested by Atlas were taken from the subject 225-acre site. He added that, his clients have reason to believe that the rock submitted to Atlas originated on the property to the east (owned by Rock It, LLC) and not from the subject site.

Mr. Stamp stated that he has concerns that the impact area analysis is inadequate. He explained that OAR 660-023-0180(5)(a) requires the local government to identify conflicts with existing and approved uses located within 1,500 feet of the boundaries of the mining area. He believes it's imperative that he applicant tell the County what the operation will consist of because the decision-makers are unable to evaluate impacts if the County does not know the details of the operation. He believes Girth Dog LLC's application fails to disclose what the operation will be, making it impossible to evaluate impacts. Additionally, the applicant fails to consider the proposed haul road as part of the impact area. He pointed out that the new haul road will border agricultural pivots and crops that are located north and south of the road as well as the Rock It 2 mining site. He believes this will subject agricultural workers and mining employees to dust, causing Oregon Occupational Safety and Health Administration (OSHA) issues. He added that the neighboring aggregate operation to the east should be identified as a conflicting use as well. He feels the Kittelson & Associates traffic study fails to address the effect of traffic generated by the proposed operation, or how these two uses can coexist without conflict.

Mr. Stamp stated that there are enough rock pits in the area and Umatilla County does not need another. He believes the Planning Commission must deny this request because Rock It 2 has already been granted Goal 5 protections and should be mined first if more rock is needed.

Mr. Stamp asked Mr. Aylett Jr. how many gallons of water is needed to wash rock. Mr. Aylett Jr. stated they use between 200-250 gallons of water per minute. More water is needed when there are clay deposits in the area because they have to triple-wash the rock to remove all the clay balls. Mr. Stamp noted that the applicant provided testimony stating that they have a well which could provide up to 75 gallons per minute and another source could give them more. Mr. Aylett Jr. stated that when it comes to washing material the most important thing is water pressure, not volume. He believes the applicants plan to truck water in and recycle it is not feasible.

Commissioner Standley asked for more information on where it states that a site must have water to qualify as a Goal 5 significant site. He added that some crushing sites do not use water. Mr. Stamp asked how they plan to suppress dust without water. Commissioner Standley stated that water for dust abatement could easily be trucked to the site. He asked again where it states that water is a requirement to deem a site significant. Mr. Stamp stated that it is not part of the significant site analysis, it's part of the Goal 5 rules to determine if they can mine the site. He believes expert testimony is required at this stage to determine that it is or is not feasible to obtain subsequent permits.

Commissioner Standley asked for more information about Mr. Aylett's pit and why he is not mining the site. Mr. Stamp stated the property was deemed significant over 30 years ago, but mining was not approved as part of the review and decision process in the 1990's. He explained that Mr. Aylett Sr. is the holder of the mineral rights to the site, but another party owns the surface rights. The property was in agricultural production at the time and the owner of the surface rights was opposed to mining activity occurring on property, and the BCC ultimately ruled in their favor. Mr. Stamp added that 3 years later, LUBA decided in another case that a farm on top of a subject mine cannot be considered a conflicting use for purposes of Goal 5 analysis. Mr. Stamp believes the County wrongfully denied the 1997 request for a mining permit because when mineral rights are sold, the seller loses any surface rights that interfere with the mining activity. Therefore, he believes if Mr. Aylett wants to mine the site he can, and there is nothing anyone can do about it. He stated that he doesn't care that there is a law that the surface owner needs to sign off on mining because he doesn't believe that would hold up if challenged in court. He concluded that when it comes down to surface rights versus mineral rights, mineral rights predominate.

Mr. Stamp stated that the applicant failed to provide the required adequate information regarding the quantity, quality, and location of the resource as required by OAR 660-023-0180(3). Before a site can qualify as being 'significant', there must be adequate information regarding quantity, quality and location of the resource, and that information must be supported by substantial evidence in the record. He explained that Girth Dog, LLC asserts that the site contains 13 million cubic yards of sand and gravel material but there is no evidence in the record to support that estimate. He believes the applicant must provide test results from a series of test bores to substantiate this claim. He added that the applicant does not carry its burden of proof by merely assuming the sand and gravel on the subject property is the same as another, or that sand and gravel is evenly distributed throughout an entire site. The aggregate may be concentrated on a portion of a site and not distributed throughout. He insisted that this is an important factor because only the portion of a proposed mining site that qualifies as 'significant' can lawfully be included on the County's Comprehensive Plan Inventory of Significant Aggregate Resource Sites under Statewide Planning Goal 5. He believes the applicant provides no evidence that the sand and gravel layer is uniform and has not documented the depth of the sand and gravel resource.

Neutral Testimony: Terry Clarke, 1325 NW Horn Avenue, Pendleton, Oregon. Mr. Clarke represents JTJ Enterprises, LLC which operates a mining site to the east of the subject property (Assessor's Map 4N2830, Tax Lots 2200, 2202 & 2203).

Mr. Clarke expressed concern about the lack of water at the site. He explained that he doesn't think there is enough information for the Planning Commission to make a decision at this time.

Discussion continued about the approval process for a Large Significant Site versus a Small Significant Site. Mr. Waldher explained that a request for a Small Significant Site is processed as

a Conditional Use Permit (CUP) request. Additionally, a Plan Amendment is required when establishing a Small Significant Site within EFU or Grazing/Farm (GF) Zones unless the property is already on the inventory of significant sites. The process for establishing a Large Significant Site is different. Mr. Waldher stated that Umatilla County has not codified OAR 660, Division 23 rules for complying with Goal 5. Therefore, planning staff applies the procedures and requirements directly from the Administrative Rules. As a result, the CUP standards in the UCDC do not apply to requests for Large Significant Sites.

Public Agency: Greg Silbernagel, Watermaster, Oregon Water Resources Department, 116 SE Dorion Avenue, Pendleton, Oregon. Mr. Silbernagel provided an email comment on December 12, 2022 to be entered into the record.

Applicant Rebuttal: Carla McLane, Consultant, 170 Van Buren Drive, Umatilla, Oregon & Sarah Stauffer Curtiss, Land Use Attorney, Stoel Rives, LLP, 760 SW Ninth Avenue, Suite #3000, Portland, Oregon.

Ms. McLane stated that OAR 660, Division 23 contains the Goal 5 rules for approval of a Large Significant Site and provides a process for local review of an application for a new or expanding aggregate mine located on farmland (EFU or GF Zone). She reiterated that the standards are different from the CUP process for approving a Small Significant Site on farmland. She added that the County could adopt Division 23 and include the CUP standards in the Goal 5 process, if they choose to. She reiterated that planning staff is required to apply the procedures and requirements directly from the Administrative Rules written by DLCD until new standards are adopted.

Ms. McLane stated that the applicant has provided proof that they meet the standards for quality and quantity of material at the site. She believes the aggregate testing was adequate and pointed out that Mr. Aylett's 1,000-acre Rock It 2 site contained a comparable amount of test pits as Mr. Coleman's site. She believes 33 test holes on approximately 1,000 acres versus 6 test holes on a 200-acre site shows that, acre-for-acre it's consistent with previous applications.

Ms. McLane stated that she does not believe mining this site will negatively impact other Goal 5 sites located to the east and west of the subject property. She added that competition, market and equity are not standards to apply when considering this request, they are political issues. She added that the opponents can raise those types of issues at the subsequent BCC hearing, if they want.

Ms. McLane stated that the applicant has proven that they do have access to a source of water through the Port of Morrow which meets their needs for dust abatement, along with chemical application. Additionally, Mr. Coleman has significant available water rights and has indicated that he is prepared to complete the process with OWRD as soon as the BCC approves his request.

With regard to surface rights versus mineral rights, Ms. Stauffer Curtiss stated that operating permits are required for surface mining. She added that ORS 517.790(3)(a) states that DOGAMI, "...may not issue an operating permit to an operator other than the owner or owners of the surface

and mineral interests of the lands included within the surface mining area unless the operator has written approval from the owner or owners of all surface and mineral interests of the lands included within the surface mining area.”

Discussion continued about other agencies involved in the process of approval for mining. After a request is approved by the County, state agencies regulate the development and operation of aggregate mining and processing in the State of Oregon. Oregon Department of Environmental Quality (DEQ) regulates air quality, stormwater runoff, and wastewater. DOGAMI oversees site reclamation and mine safety standards. Oregon Department of State Lands (DSL) oversees earth removal and fill permits. Finally, OWRD regulates water rights for onsite use and processing activities. Ms. McLane asked if the Planning Commission has confidence in state agencies to regulate the activities they are responsible for.

Commissioner Tucker asked for clarification about Mr. Stamp’s statement objecting to evidence that was not submitted before the Thanksgiving break. He asked for explanation about the deadline for submitting evidence. Megan Davchevski, Umatilla County Planner, explained that she announced at the October hearing that materials to be included in the December Planning Commission hearing packets must be submitted to planning staff before the November 24, 2022 Thanksgiving holiday break. She added that the deadline was specifically for including materials in the December Hearing Packet, and not an all-inclusive deadline to provide evidence or testimony to the Planning Commission.

Chair Danforth asked if there are any requests for the hearing to be continued or for the record to remain open. Mr. Stamp stated that he would like the record to remain open. Chair Danforth asked on what grounds Mr. Stamp would like the hearing to remain open. Mr. Stamp stated that he and his clients have not had time to review the new evidence presented at this hearing. It was noted that ORS 197.763 outlines hearing procedures for how to conduct local quasi-judicial land use hearings and ORS 197.763(4)(b) specifically states that, “...[i]f additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond.”

Mr. Stamp pointed out that ORS 197.797(6)(b) states that, “...[i]f new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.”

Mrs. Davchevski stated that the Planning Commission can leave the record open without continuing the hearing. She outlined next steps as follows; the record will remain open for 7 days to allow for all parties to submit new evidence (deadline 12/22/22); then, 7 additional days for rebuttal (deadline 12/29/22); and finally, 7 additional days for the applicant to submit final legal arguments only – no new evidence (deadline 1/5/23). She added that new evidence can also be presented at the subsequent BCC hearing.

Chair Danforth announced that the record will remain open for 21 days under the schedule of deadlines outlined by Mrs. Davchevski. Deliberation and decision will be made on a recommendation to the Board of County Commissioners at the next Planning Commission hearing scheduled for Thursday, January 26, 2023 at 6:30PM.

Chair Danforth adopted the following exhibits into the record;

Exhibit I; December 12, 2022, Email communication between Bob Waldher (Planning Director) and Greg Silbernagel (Watermaster, OWRD).

Exhibit J; December 14, 2022, Email Response to Mr. Stamps 11/23/22 letter. From Carla McLane to Planning Staff including; Coleman Response Letter, Hatley Application, Road Vacation Order & two pictures of the rock source locations.

ADJOURNMENT

Chair Danforth adjourned the meeting at 9:41pm.

Respectfully submitted,

Tierney Cimmiyotti, Administrative Assistant

Minutes adopted by the Planning Commission on January 26, 2023.