

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, October 20, 2022, 6:30pm**

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**COMMISSIONERS**

**PRESENT:** Suni Danforth, Chair, Don Wysocki, Vice Chair, Tammie Williams, Tami Green, Cindy Timmons, John Standley, Emery Gentry & Jodi Hinsley

**COMMISSIONERS**

**PRESENT VIA ZOOM:** Sam Tucker

**STAFF:**

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

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*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.

**NEW HEARING**

**CONDITIONAL USE PERMIT REQUEST #C-1351-22; SILVER CREEK CONTRACTING LLC, APPLICANT, WEST FLYING SERVICE, OWNER.** The applicant seeks a Conditional Use Permit for a “commercial activity in conjunction with farm use” in support of a construction firm. The subject property is zoned Exclusive Farm Use (EFU) with a Private Use Safety Airport (PUSA) Overlay Zone. The property is located at 72837 Highway 207, Echo, Oregon, in Township 2N, Range 27E, Tax Lot 1202. The Land Use Standards applicable to the applicant’s request are found in Umatilla County Development Code (UCDC) Sections 152.060, 152.061, 152.615 and 152.617(I)(B).

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 Commission determined there is no conflict of interest in this matter. Commissioner Hinsley stated that she has done work with Mike Duncan and felt it would be best to abstain from voting on this matter.

Chair Danforth called for the Staff Report.

**STAFF REPORT**

Bob Waldher, Planning Director, presented the Staff Report. Mr. Waldher stated that the applicant, Silver Creek Contracting, LLC, seeks a Conditional Use Permit (CUP) for a commercial activity in conjunction with farm use, in support of a construction firm. The subject property is zoned EFU with a Private Use Safety Airport overlay. The property is located at 72837 Highway 207, Echo, Oregon, in Township 2N, Range 27E, Tax Lot 1202.

Mr. Waldher explained that, in early 2022, Planning Department Staff were contacted by representatives of Silver Creek Contracting inquiring about locating the construction business on the subject property which was listed for sale. Staff shared with the applicant that the activities described by the business owner were better suited for an industrial or commercial zone. Later, in May 2022, the Planning Department was contacted by the applicant's consultant, Carla McLane. Staff reaffirmed their opinion that the contracting business would be best suited in a light industrial zone. However, staff acknowledged that any person is entitled to submit application for a proposed use.

Mr. Waldher stated that the Planning Department received a CUP application for a commercial activity in conjunction with farm use on June 26, 2022. The consultant noted in their email application that "available and affordable industrial land is hard to come by, and that this particular property, which has sat idle for a number of years, is well suited for the use and user." Mr. Waldher explained that it may be true that available and affordable industrial land may be hard to come by and the business owner believes that the subject property is well suited for their use. However, those are not factors to be considered when evaluating a CUP application for commercial activity in conjunction with farm use. Rather than processing the application administratively, the Planning Director elected to forward the application to the County Planning Commission for a decision since it was clear that the applicant does not meet all standards of approval. (Exhibit B; Preliminary Findings & Conclusions.)

Mr. Waldher stated that a landowner authorization from Gary West was included along with the application materials. The application also included a proposed site layout. After receipt of the application, letters of support were received from Tim Rust and John Myers, Myers Farm Company, Inc.

Public Notice of the Land Use Hearing was sent to adjacent landowners and affected agencies on September 30, 2022. A copy of the land use notification map was included with the notice. Notice of the Planning Commission hearing was also published in the October 8, 2022 issue of the *East Oregonian*.

The land use standards applicable to the applicant's request are found in Umatilla County Development Code (UCDC) Section 152.060, 152.061, 152.615 & 152.617(I)(B).

Since the Planning Director has declined to review the Conditional Use Request administratively, the process of approval by the County involves review and a decision by the Planning Commission. Planning Staff have prepared Preliminary Findings and Conclusions. The Planning Commission is tasked with determining if the application satisfies all criteria of approval, based on the facts in the record. The decision of the Planning Commission is final unless timely appealed.

Commissioner Tucker asked if the land is zoned EFU but is not compatible with farming because of its location, figuration, etc., is there a way to make the land productive in another way which is not related to farm use? Mr. Waldher stated that there is an opportunity for the applicant to apply

for an exception to Statewide Planning Goal #3 (which protects farmland) and rezone the property to accommodate a commercial or industrial use.

Chair Danforth directed the group to page 11 of the Commissioner's Packets under Preliminary Findings and Conclusions; Zoning, which reads, "...the PUSA-S Overlay Zone may be removed by the Planning Commission upon request at any time pursuant to the requirements found in 152.771 (Hearings) of the Umatilla County Development Code." She asked for more information about the Private Use Safety Airport (PUSA) Overlay Zone because she had never seen it before. Mr. Waldher stated that the PUSA Overlay Zone was a result of an FAA decision to encourage Counties to designate protection zones around the airspace at several private use airports throughout the state. Therefore, the County adopted the PUSA Overlay Zone and this property became the only airstrip in Umatilla County where the overlay zone was applied.

Mr. Waldher directed the Planning Commissioners to language on page 11 of the Commissioner's Packets under Preliminary Findings and Conclusions; Land Use, which states, "The use of an airstrip on the subject property pre-dates land use planning laws. A permit has never been issued for the airstrip. Therefore, it is considered a "pre-existing non-conforming use." When a nonconforming use of a structure or property is discontinued for a period in excess of one year, the structure or property shall not thereafter be used except in conformance with the zone in which the property is located. Therefore, future use of the airstrip would require land use approval."

Commissioner Wysocki asked about the size the PUSA Overlay Zone. Mr. Waldher stated that the overlay zone applies to the entire parcel, 11.36 acres. He explained that there is also an approach surface extending beyond the runway on both ends. He passed around Umatilla County Assessor's Map 2N27 (Exhibit B) identifying the location of both approach surfaces.

Chair Danforth adopted the following exhibits into the record;

Exhibit A; Letter from Carla McLane Consulting, Carla McLane (representing applicant), Dated October 18, 2022

Exhibit B; Board Ordinance No. 2002-01 adopted by the County Board of Commissioners on August 14, 2002 amending the UCDC with specific changes to the Airport Overlay Zones with Umatilla County Assessor's Map 2N27.

**Applicant Testimony:** Mike Duncan, Owner, Silver Creek Contracting, LLC, PO Box 994, Heppner, Oregon; Matt Scrivner, Project Manager, Silver Creek Contracting, LLC, PO Box 424, Heppner, Oregon; & Carla McLane, Consultant, 170 Van Buren Drive, Umatilla, Oregon. Mrs. McLane stated that Planning Staff determined the applicant meets several requirements but pointed out a few issues with some criteria of approval. They also identified access issues as pending and she intends to address those issues tonight.

Regarding the pending access issues, Ms. McLane stated that the applicant has been coordinating with Tom Lapp, Permit Specialist with Oregon Department of Transportation (ODOT), to move

forward with finalizing permits. She stated that the property has access and that will not change. Because the airstrip has not been operational for several years and there is an occupied dwelling on the property, ODOT classifies the property as 'residential use', allowing 10 trips per day on average. ODOT has expressed concern about this proposed use, specifically traffic at the site during peak times. The applicant anticipates 40-50 trips per day with staff moving in and out. Additionally, if they need to move heavy machinery in and out, the number could reach 60-80 trips per day. The applicant has agreed to work with ODOT to develop a 'change in use' as part of the permit application to finalize the access point. Ms. McLane stated that ODOT also expressed concern about the radius of the turn at the access point, due to the change in use proposed, and specifically the large heavy equipment being serviced or stored at the property. She ensured the Planning Commission that Silver Creek Contracting has the equipment and experience needed to easily increase the turn radius at the access point.

Ms. McLane addressed the first criterion of approval that Planning Staff identified in the Preliminary Findings and Conclusions as not being met. She stated that the first question is whether the land is suitable for production of farm crops (§152.017(I)(B)(2)). She believes this property is not farmable and a good alternative use for unfarmable EFU Zoned land is a commercial activity in conjunction with farm use. She added that the tract of land is long, thin and less than 12 acres in size. According to Planning Staff's assessment, approximately 60% of the land is occupied by various structures or impervious surface that includes the runway and associated area used for flight operations. She pointed out that the remaining 4 acres are not irrigated, and she feels that a farm use would not be very productive. The 4 available acres are at the southern end of the property with dryland wheat production adjacent to the north. In addition, the property immediately surrounding the subject property is not currently in production which precludes the opportunity to incorporate the available acreage into production.

Ms. McLane stated that the second criterion of approval that Planning Staff identified in the Preliminary Findings and Conclusions as not being met, requires that the agricultural and commercial activity must occur together in the local community (§152.017(I)(B)(9)(b)). She believes this proposed activity fits the neighborhood and surrounding community. She explained that Silver Creek Contracting started in the farm community by building agricultural buildings and pumping septic tanks. They have grown over the years into what they are today. She claimed that over 50% of the company's business is related to agriculture and within the farm sector. She believes the activity they are proposing is a dollar away from agriculture and the commercial activity supports farming operations. Therefore, they work together in the same community and meet the criterion of approval.

Ms. McLane stated that the third criterion of approval that Planning Staff identified in the Preliminary Findings and Conclusions as not being met requires that the product or service must be essential to the practice of agriculture. Noting that, additional activity that is incidental to and supportive of the primary purpose does not disqualify the commercial activity (§152.017(I)(B)(9)(c)). She pointed out that Planning Staff cites *City of Sandy v. Clackamas*

*County and Parrott* (Oregon Land Use Board of Appeals (LUBA) No. 94-104, 1994 WL 1726767) in the Preliminary Findings and Conclusions to support the determination that this criterion of approval is not met. She stated that the person who made the decision at Clackamas County was a Hearings Officer and she believes a Hearings Officer is not given deference within the LUBA process. She explained that she believes a County Planning Commission and Board of Commissioners are given deference by LUBA in the way they interpret and apply codes within their jurisdiction, and that's the difference. She stated that the activities proposed in the Clackamas County Hearings Officer's decision were clearly not appropriate to be approved under the allowances of a 'commercial use in conjunction with farm use'. Ms. McLane argued that his request is not seeking approval for a grocery store, gas station or postal service operation in a farm zone. This request is seeking to utilize a currently abandoned facility and convert that facility into office space, equipment storage space and a service area to repair and maintain large equipment.

Ms. McLane stated that Planning Staff also expressed concern that the operation lacks a connection to the essential practice of agriculture. She believes agriculture needs companies like Silver Creek Contracting to perform the work they do. She asked, who would build the milking parlors, corrals, water treatment facilities, etc. without companies like Silver Creek Contracting?

Mr. Duncan stated that he grew up in rural Montana and moved to Heppner over 20 years ago. This community has become home to him and he really enjoys the people he works for. He assured the Planning Commission that the company will continue to serve the agriculture community, as they have for many years.

Mr. Duncan stated that he has gotten to know his neighbors better, as part of this process. He pointed out that a few were in attendance to support his request. Additionally, he received a text message from a neighbor, John Myers, and read it aloud, stating, "Hello Mike, this is John Myers. I'm still baling. Would have had to leave by now to make it to the meeting. I really do apologize for my absence. I really did want to attend and voice my support. If they would let me do a phone support testimony, I would certainly do it. I hope your presentation is approved." Mr. Duncan reiterated that he has received nothing but support from the local community.

Mr. Duncan stated that over 50% of Silver Creek Construction's work is done in the agricultural sector and 90% of their work is done in Morrow and Umatilla County. They do work in rural agricultural based communities, not in big cities. He agreed with Ms. McLane that the work they do is only a dollar away from direct agriculture uses. He explained that working in ag-based communities are different because they involve private wages. As a result, most farms and ranches purchase the construction materials and Silver Creek Contracting provides the labor, equipment and expertise to put the project together.

Mr. Duncan stated that Silver Creek Contracting also works for municipalities and they do a lot of work for the City of Pendleton. They are currently building apartment complexes in the City of Boardman funded by RDO Equipment Company. He explained that working for municipalities is

different because Silver Creek Contracting provides the construction materials, there is a prevailing wage scale and there are a lot more rules in general. The gross dollars are larger than ag-based projects, where farmers do their best to stretch every dollar. He estimates that, although they bring in over 50% of business from the ag community, they likely produce 70% of their actual product for ag-based entities.

Mr. Duncan stated that he would like to keep the runway active because he has his pilot's license and would like to pursue flying more in the future. He added that a spraying service could potentially operate out of there in the future, as well. He acknowledged that there has been very limited use in the last few years and repair is necessary. He stated that he has received quotes for remediation concerning the use of the airstrip on farmland and the cost estimates were between \$50,000 - \$100,000, so the need is real. They are willing to tackle any issues, clean it up and make it useful for the community.

Commissioner Standley asked if there were going to be issues with ODOT and the access approach. Mr. Duncan stated that he has worked with ODOT extensively and does not anticipate any problem meeting ODOTs standards for the access approach.

Commissioner Gentry asked for more information about the airstrip and potential commercial air service. He asked if an aerial applicator company wanted to operate commercially at the site, would it be possible? Mr. Duncan stated that most aerial applicators in the region operate out of the Hermiston or Lexington airports. Mr. Duncan explained that he does not have any company in mind but speculated that having a remote location could be a benefit to some. He stated that he would like to maintain the runway. He feels it is a valuable resource for the area and hopes to utilize it more in the coming years.

Commissioner Timmons asked if Silver Creek Contracting is doing work out at Threemile Canyon Farms in Boardman. Mr. Duncan confirmed that they do a lot of work at Threemile Canyon Farms. They're also currently building apartments in Boardman across from the Port of Morrow office which will be used to house agricultural workers in the community.

Commissioner Timmons pointed out that the Preliminary Findings and Conclusions on page 12 of the Commissioners Packets reads, "The applicant states that a commercial exempt well may be necessary to accommodate the proposed use." She asked if they have been in contact with Greg Silbernagel with Oregon Water Resources Department (OWRD) to discuss those plans. Ms. McLane stated that they have not. Commissioner Timmons asked if the recent OWRD project to update rules for their groundwater allocation process will cause problems for the applicant in achieving a commercial exempt well onsite. Ms. McLane stated that she is not sure. She added that they are not proposing any water-consumptive activity as part of this request. She explained that they plan to have restrooms and hand washing stations onsite and pointed out that there is also a domestic well which serves the dwelling. She stated that there are allowances available under

the law authorizing the applicant to work with OWRD to use the domestic well in a commercial manner to serve the building, and they are happy to have that discussion.

**Support Testimony:** Tim Rust, 77252 Mader Rust Lane, Echo, Oregon. Mr. Rust stated that he is in favor of this request. He is not happy with the state of the property as it is today and believes they will see a big improvement if Silver Creek Contacting is approved to move forward.

**Neutral Testimony:** Terry Clarke, 1325 NW Horn Avenue, Pendleton, Oregon. Mr. Clarke stated that he believes this proposal offers a unique opportunity to take a piece of property that has zero value and turn it into an asset for the community.

**Public Agency:** Greg Silbernagel, Watermaster, Oregon Water Resources Department, 116 SE Dorion Avenue, Pendleton, Oregon. Mr. Silbernagel stated that an exempt use well requires a \$350 recording fee and there are seven possible uses including commercial and industrial uses limited to 5,000 gallons per day.

Commissioner Wysocki asked if there is any difference between commercial exempt and domestic exempt wells. Mr. Silbernagel stated that they are different because commercial operations allow for 5,000 gallons per day and domestic wells allow for 15,000 gallons per day. They estimate each domestic well could serve 20 homes.

Chair Danforth closed the hearing for deliberation.

## **DELIBERATION & DECISION**

Chair Danforth stated that the Planning Commissions decisions are not based on cost or availability of property. She pointed out that the applicants first statement alludes to the fact that they found an affordable piece of property that is available, but it is not the appropriate zoning for the activity being proposed. She wants to reiterate that cost and availability are not factors of their decisions. She explained that she loves the agriculture industry very much. However, she believes the Planning Commission needs to consider the future and what this change could lead to. She stated that, if we grant a conditional use today, down the road a person could potentially argue that it's nonconforming and pursue a zone change under those terms.

Chair Danforth stated that materials provided by the applicant indicate that they only did 25% of their work for ag related industries in the first five years of business. The number gradually increased and reached approximately 50% last year. Taking that into account, she feels they do not meet the standard. Additionally, the LUBA case referenced in the packet demonstrates that the standard requires the work to be done within the agricultural industry, not something that peripherally supports the ag industry.

Chair Danforth reminded the Planning Commission that Silver Creek Construction already has an established location where they have been operating business for several years. The applicants request is to relocate the business and consolidate for convenience.

Commissioner Standley stated that it's a win-win situation for the local community. He added that the shoe doesn't exactly fit, but it kind of does. It's not necessarily a win-win for the paper part of the world, but it is for common sense and the ability to make something happen. He argued that granting a conditional use leaves options open for the site to theoretically return to an agricultural use in the future.

Commissioner Gentry stated that he believes it is important to do what they can to help the ag community and preserve infrastructure for aerial applicators in any way they can.

Commissioner Timmons reiterated that the work being done at Threemile Canyon Farms is very important. She believes Silver Creek Contracting's work building apartments for farm workers should be considered agricultural work. She is aware that they have had a hard time finding housing for farmworkers and to keep the huge operation going they needed additional housing.

Commissioner Williams stated that she believes the Planning Commission can approve requests which sometimes sit outside of the perspective. She believes the Planning Commissioners are there to make decisions that are sometimes outside of what would be considered the normal thing to do. She believes this request is common sense. She would like to see the chemicals cleaned up and the airport restored to support spraying in the local area. She agrees with Commissioner Standley that this is a win-win and stated that her role as Planning Commissioner allows her to decide to approve this request.

Commissioner Williams stated that even though the request is out of track from the ordinances put in place, she believes they were put into place by only a few people and the general population did not get a vote at the time. She believes the LUBA decision was made by one person and the Planning Commission is a whole team. Therefore, the Planning Commission has a right to approve this request and she supports it.

Commissioner Wysocki stated that the goal of EFU is to preserve farmland. This property is zoned EFU but it's not being farmed and will not likely be farmed soon, so he perceives this to be gray area. He can't think of another business that is closer to agriculture, but not agriculture. He believes what they do for the community is as close to ag as you can get, but they're not.

Commissioner Standley stated he would like to make a motion to approve the request but was not sure how to word it. Director Waldher reminded the Planning Commission that example motions are provided in the Commissioner's Packets. He added that Planning Staff's Preliminary Findings identify three standards of approval which are not met. Therefore, if the Planning Commission chooses to approve the request they must provide new Findings to show why they believe Staff's interpretations are not correct and provide facts to demonstrate that the conditions are being met.

Commissioner Williams made a motion to approve Conditional Use Permit Request #C-1351-22, Silver Creek Contracting LLC, Applicant/ West Flying Service, Owner for a commercial activity in conjunction with farm use with the following Planning Commission Findings:

**Standard:**

§152.017(I)(B)(2): The activity is situated upon generally unsuitable land for production of farm crops considering, but not limited to, vegetation, location, terrain, adverse soil or land conditions, drainage and flooding, and size of the tract.

**Planning Commission Findings:**

Umatilla County finds that the subject property is 11.36 acres. 65% of the site is occupied by various structures or impervious surface that includes the runway and associated area used for past flight operations. Umatilla County finds that it would be difficult for commercial sized farming equipment to maneuver on the remaining 35% of undeveloped property. In addition, years of compaction on the undeveloped portion of the property and suspected soil contamination from decades of loading and storing chemicals for aerial application limits the viability of the soils for growing crops. Therefore, the activity is situated upon generally unsuitable land for production of farm crops. This criterion is met.

**Standard:**

§152.017(I)(B)(9): Explain how the proposed commercial activity complies with the following standards: (b) The agricultural and commercial activity must occur together in the local community and (c) The product or service must be essential to the practice of agriculture. Additional activity that is incidental to and supportive of the primary purpose does not disqualify the commercial activity.

**Planning Commission Findings:**

Umatilla County finds that the applicant provides, over the past five years agriculturally-related work completed by Silver Creek Contracting, LLC includes but is not limited to construction and clean-out of digesters, piping and pumping projects, construction of livestock facilities, grain and hay hauling, and construction of grain-related facilities. Approximately 53% of Silver Creek’s revenue over the past five years has been what the applicant calls “agriculturally-based” revenue and 2022 projected revenue in the agricultural sector is expected to be at or above 70%.

While the applicant didn’t provide specific details on all of the farms where this work has been completed, this work has occurred on farms in Morrow and Umatilla Counties. Umatilla County finds that farms in the local community are dependent on facilities used for processing, storing, and transporting farm crops and livestock. Therefore, the activity can be found to enhance the farming activities of the local community, the agricultural and commercial activity occur together on farms in Morrow and Umatilla Counties (the local agricultural community) and that the work completed by Silver Creek is essential to the practice of agriculture. Therefore criteria (a), (b) and (c) are met.

Commissioner Standley seconded the motion. Motion passed with a vote of 6:2.

### **NEW 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**

Megan Davchevski, Planner, presented the Staff Report. Mrs. Davchevski stated that the applicant requests a Post-Acknowledgement Plan Amendment (PAPA) to add their property to the County's inventory of Goal 5 protected large significant sites. The request includes a County Comprehensive Plan Text Amendment to list the site on the inventory and map amendments to apply the aggregate resource overlay zone. She explained that the property is comprised of several tax lots approximately 225 acres in size and zoned Exclusive Farm Use (EFU). The subject property is located south of the Interstates 82 and 84 Interchange, southwest of the Westland Road Interchange and south of Stafford Hansell Road.

Mrs. Davchevski stated that applicant desires 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. The applicant provides both sand and gravel materials are available on this site.

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

Mrs. Davchevski 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 is scheduled for November 30, 2022 at 9am.

Mrs. Davchevski pointed out that Planning Staff received two comments from public agencies; Oregon Water Resources Department (OWRD) and Department of Land Conservation and Development (DLCD). Due to the nature and length of the comments, they were provided to the applicant and Planning Commissioners in preparation of the hearing. She explained that these public agency comments must be addressed. If they cannot be addressed due to a lack of information provided by the applicant tonight, Planning Staff recommends that the hearing be continued to provide time for the applicant to supply additional information.

The decision made by the Planning Commission is final unless timely appealed to the County Board of Commissioners.

**Applicant Testimony:** Carla McLane, Consultant, 170 Van Buren Drive, Umatilla, Oregon; Jeff Hines, Site Operator, 63830 Industrial Lane, La Grande, Oregon; Matt Hughart, Kittleson & Associates, 851 SW 6th Avenue, Suite #600, Portland, Oregon (via Zoom); Sarah Stauffer Curtiss, Land Use Attorney, Stoel Rives, LLP, 760 SW Ninth Avenue, Suite #3000, Portland, Oregon (via Zoom); Craig Coleman, 71888 Wilson Lane, Boardman, Oregon.

Ms. McLane explained that this is a Goal 5 request to add 225 acres to the County's list of protected large significant sites. Additionally, the applicant is asking for the County to amend the Comprehensive Plan Map to designate the site as significant and to apply the impact area to limit conflicting uses. Finally, this request includes an amendment to the County's Zoning Map to apply the Aggregate Resource (AR) Overlay Zone to the entirety of the site.

Ms. McLane stated that the property is located directly to the west of the Aylett Rock It, LLC site, which was approved by the Planning Commission a few months ago. The subject properties include tax lots 900, 1100, 1200, 1300 & 1800 on Assessor's Map 4N2736. The properties are immediately south of the Interstate 82/84 Interchange, southwest of the Westland Road Interchange and south of Stafford Hansell Road.

Ms. McLane stated that the property currently supports a large circle, a small circle and about 40 acres of blueberries under drip irrigation. There are industrial activities occurring north of the interstate and commercial uses at the Westland Road interchange including a truck stop and other various businesses on the east side of Colonel Jordan Road. She pointed out that on this stretch of Interstate 84, from 3 miles to the west of the property to approximately 2 miles to the east, there are no fewer than 6 aggregate sites. She added that many of the nearby sites are mined-out or approaching their end.

Ms. McLane stated that the applicant is requesting for the site to be identified as significant and pointed out the Atlas Lab Reports included in the Commissioner's Packets (pages 40-42) to

demonstrate that the site meets ODOT specifications. She explained that laboratory reports for 2 samples indicate that tests were completed for abrasion, soundness and specific gravity showing the material tested is estimated to exceed both the quantity and quality criteria for a significant aggregate site. Additionally, she emphasized that approximately 75% of the site is covered with a Quincy loamy fine sand with gravelly substratum. She believes the whole vicinity is covered with the gravelly substratum and that is why there is so much aggregate activity in the area.

Ms. McLane stated that there are 2 homes within the 1,500 ft. impact area. One of the homes (immediately to the east) is owned by Wade Aylett and was identified in a recently approved mining request to be used as a residence in support of mining activity with a focus on security associated with the mining operation. When mining on the property reaches the homesite the dwelling will be removed. The second home located northwest of the subject property owned by Wesley and Shelley Walker (Tax Lot 1000) is not associated with the mining operation. She explained that mining will begin in the area currently planted in blueberries (Tax Lot 1800), about a half-mile from the Walker's home and the applicant plans to mine the southernmost 80 acres first.

Ms. McLane explained that the home unrelated to the neighboring mining operation (on Tax Lot 1000) was originally part of Tax Lot 1100. Mr. Coleman divided the land to create a smaller piece with the dwelling and sold it to the Walkers. She reiterated that the applicant will do everything they can to protect the home from impacts of the mining activities. It's why they chose to begin mining in the middle of the site and move to the south. They will eventually mine the northern parts of the property as well, but she believes by that time the property owners will have had a chance to become accustomed to the activity. She reiterated that mining activities are already occurring on properties to the east and west of the Tax Lot 1000.

Ms. McLane stated that the haul route to move the aggregate resource offsite will occur along Center Street which is a platted, undeveloped road that bisects the subject property. She explained that the applicant plans to develop Center Street (to be renamed Noble Road) from the project site to the intersection with Colonel Jordan Road, creating a crossroad intersection.

Ms. McLane stated that the applicant was asked to complete a Traffic Impact Analysis (TIA) as part of this request. The TIA was completed by Matt Hughart with Kittleson & Associates and is included in the Commissioner's Packets (pages 45-62). Mr. Hughart is in attendance (via Zoom) and available to answer any questions the Planning Commissioner's may have concerning the TIA.

Ms. McLane stated that the applicant or contractors will collect and hold stormwater onsite. The applicant will implement best management practices and obtain all necessary permits to ensure management of dust and stormwater discharges. She explained that the applicant is currently considering the installation of a photovoltaic solar energy generation facility as a post-mining use. The subject property is predominately not composed of Class I, II, Prime, or Unique farmland and would therefore allow a use allowed under ORS 215.283(2). She added that, other post-mining

uses allowed under ORS 215.283 and the Umatilla County Development Code could also be considered.

Ms. McLane directed the group to, “Table 1 – Potential Conflicting Uses” on page 19 of the Planning Commissioner’s packet. She explained that the applicant identified potential conflicting uses including Replacement Dwellings, Winery, Farm Stand, Home Occupations and other uses which allow for people to gather. The applicant requests that the County limit future residential uses and other uses that would place people within the impact area, such as gathering spaces, to protect the mining area from encroachment and provide protections to residents and landowners near the proposed quarry. She reiterated that mining has operated in this area without any significant conflicts for many years. She believes it is appropriate that the County impose a condition of approval on discretionary approvals of assembly or residential uses in the 1500 ft. impact area, waiving any rights to object to mining and mining related activity at the significant site.

Mr. Hughart stated that he analyzed the before and after impacts of the proposed activity at the site and found that the amount of traffic generated would not cause any operational degradation to the County owned or ODOT owned intersections along Colonel Jordan Road.

Ms. McLane stated that there was a comment provided by DLCD requesting additional information in support of the quantity and quality of the available sand and gravel at the mining site. As a result, the applicant provided 3 well logs from the subject property. She explained that the well logs identify the material retrieved consists of sand and gravels found throughout this area of Umatilla County, to a depth of between 65 - 90 ft. The anticipated depth of the resource is to at least 50 ft., with mining not anticipated once the water table is reached.

Ms. McLane stated that Greg Silbernagel, Watermaster with OWRD, indicated that the necessary water right for a mining operation would be an industrial right. He also stated that the only industrial right in the area belongs to Wade Aylett on property located to the east. The applicant has been working with Bill Porfily, Water Rights Examiner, to identify the necessary steps to obtain an industrial water right for the proposed mining operation. She explained that, once the land use approvals are in place, the applicant intends to submit the necessary applications to OWRD to achieve those changes in water use on the subject property.

**Opposition Testimony:** Andrew Stamp, Attorney, 4248 Galewood Street, Suite #9, Lake Oswego, Oregon. Mr. Stamp stated that he is testifying on behalf of Wade Aylett Sr., Wade Aylett Jr. and Rock It, LLC.

Mr. Stamp stated that he would like to request a continuance or a 30-day open record period. He believes there are many people who were not aware of the hearing and would like the opportunity to provide comments. Additionally, he believes the large volume of materials that have been submitted require additional time to review.

Mr. Stamp addressed a comment provided by Ms. McLane during her earlier testimony stating that the Planning Commission gets deference in its interpretations. He clarified that governing bodies do get deference if the Planning Commission's findings are adopted by the Board of Commissioners. He stated that, if the Planning Commission is the final decision-making body, they do not get deference. He added that most criteria for this applicant's request falls under state law, therefore deference does not apply.

Mr. Stamp pointed out that there are 6 aggregate sites in the area and asked if another pit is needed. He believes having too many pits in one spot is unnecessary and could cause problems. He agreed with DLCD's assessment that there is not enough information on record to determine if the site meets criteria required under OAR 660-023-0180(3)(a) which states that, "A representative set of samples of aggregate material in the deposit on the site meets applicable ODOT specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley."

Mr. Stamp pointed out that the applicant only provided test results from samples taken in one corner of the proposed site and did not include supporting documentation to indicate that the sample is representative of the entire site. Mr. Stamp believes the applicant is trying save money by providing water logs from 1958 as evidence to prove this criterion is met. He argues that water logs do not qualify as substantial evidence as to the quantity and quality of rock at the site, particularly since the applicant has not indicated where the wells are located. He added that rock layers are highly variable at aggregate sites and suggested that the applicant needs to hire a geologist, dig test pits, take photos and analyze samples to accurately determine quality of the rock.

Mr. Stamp stated that he believes the applicant has not made a serious attempt to do a complete impact analysis. He believes the information provided is deficient because the applicant fails to adequately describe the mining operation. Until they are more transparent about the activities taking place onsite (i.e. concrete processing and batching, aggregate batching, rock crushing, asphalt production, etc.), the impacts cannot be fully identified.

Mr. Stamp pointed out an inconsistency in the materials provided by the applicant. In the application they indicate they plan to use Stafford Hansell Road as an access point. However, the TIA identifies the designated haul route will be along the dedicated and currently unimproved Center Street, to be renamed Noble Road. He believes this difference is important because the access point off Stafford Hansell Road does not meet ODOT's Interchange Area Management Plan (IAMP) access spacing requirements. He believes the applicant should remove this information if they do not intend to use Stafford Hansell road for access. Conversely, if they do intend to use Stafford Hansell Road to access the property they will need to make improvements to ensure the standards are met.

Mr. Stamp stated that the haul road, topsoil removal, stockpiling, aggregate extraction and reclamation activities proposed at the site are all sources of dust. The applicant states that they will use best management practices and voluntary measures to control dust but did not explain exactly what that entails or prove that it is feasible to provide those measures. He believes the applicant failed to demonstrate any practical way to provide dust suppression using water, as they provide no evidence of a water right.

Mr. Stamp pointed out that the applicant has not submitted any evidence to show they meet the standards for nighttime noise emissions required under ORS 467.120(2) for agricultural operations, mining or rock processing activities. He believes they will have a difficult time meeting the standard and a more rigorous analysis should be applied to this matter before a decision is made.

Mr. Stamp argued that the Planning Commission must consider whether future operations at the subject site will generate impacts or conflicts with agricultural practices in the area. The County is required to follow ORS 215.296 when conducting the analysis rather than the requirements of the Goal 5 rule. ORS 215.296(1) requires that a use will not: “(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.”

Mr. Stamp stated that he believes the applicant failed to provide the required analysis and evidentiary support to demonstrate compliance with the above criteria with regard to accepted farm practices in the immediate area. Also, the haul road is problematic for Rock It’s agricultural operations and the ag operation to the southeast. He argued that to comply with ORS 215.296(1), the applicant carries the burden to identify farm uses occurring on lands surrounding the subject parcel and examine the practices necessary to continue those uses. He believes the applicant needs to identify and discuss each farm use by describing the operations on each of the surrounding properties devoted to farm or forest use. To date, he believes they have failed to make any serious effort to comply with these standards.

Mr. Stamp asked that the applicant address rumors in the community suggesting that they are lining up contracts using rock from the site, even though they have not received the required land use permits or water rights. He contended that if the rumors are true he is concerned, and he views this as aggressive action. Additionally, he saw that they are already working on preparations for the proposed haul road at the site. Mr. Stamp believes the applicant is presuming this request will be approved, but with all the issues raised, approval is not looking good for them. He added that it is a little arrogant to begin working on a project before getting all the approvals and he would like them to address these issues tonight.

Mr. Stamp again requested that the hearing be continued to give the applicant an opportunity to address the many concerns presented today. He also presented a report from Lynn Green,

Consulting Engineering Geologist at Evren Northwest Inc. to support his argument that the applicants inventory analysis is woefully inadequate. Mr. Green's opinion is that, "Without performing 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 meets the definition of 'significant' as defined by LCDC (Oregon Land Conservation and Development Commission)." Mr. Stamp emphasized that the site-specific investigation should be completed by a geologist.

Commissioner Williams asked for clarification about information provided by Mr. Stamp suggesting the applicant cannot ask for approval for Goal 5 because there is an existing 1000-acre significant aggregate site nearby. Mr. Stamp explained that part of the process is to consider if approval of mining at this proposed site will conflict with an existing Goal 5 significant site. He pointed out that the applicant incorrectly stated in their application that there are no known Goal 5 resource sites within the impact area for the proposed aggregate site. Mr. Stamp argued that Mr. Aylett's significant aggregate site is located directly east of the subject property and the applicant failed to address the issue of conflicts with this site.

**Opposition Testimony:** Wade Aylett Jr., 75134 W Oregon Lane, Irrigon, Oregon & Wade Aylett Sr., 74854 Washington Lane, Irrigon, Oregon. Mr. Aylett (Jr.) stated that he heard a statement made suggesting that people are hurting for rock. He disputes that claim and stated that for the past 2 years he has had approximately 80,000 tons of rock in stockpiles waiting to be used. Therefore, he does not believe people are actually hurting for rock. Furthermore, he stated that he used to have open communication with others regarding available work in the area but that has recently changed. He used to be able to call people and understand the quantity he needed to produce but now he feels he is being left in the dark and he does not know why. He finds it suspicious that this request is occurring at the same time things are changing.

Mr. Aylett Sr. stated that he believes there are a lot of politics going on right now. Commissioner Wysocki asked for clarity on who is leaving them in the dark. Mr. Aylett Jr. stated that there are a lot of contracts with Amazon lately and he has never ran out of rock. He insisted that there has never been a supply issue for rock.

Mr. Aylett Sr. stated that they work hard to take care of their employees. He argued that there are quite a few pits in the area already and the existing aggregate operations can supply enough rock to support the community. He believes if this keeps going on they will struggle because it costs a lot of money to run a successful company. He believes the outsiders coming into the area and making a lot of promises need to stop. He concluded that he would like the record to remain open and for the hearing be continued and provided pictures of the site to be added to the record.

**Opposition Testimony:** Debora L Aylett, 74854 Washington Lane, Irrigon, Oregon. Ms. Aylett stated that she and her family have been in operation since 2004. She expressed concerns about the proposed new site being so large and she questioned if the area can support another pit.

**Neutral Testimony:** Terry Clarke, 1325 NW Horn Avenue, Pendleton, Oregon. Mr. Clarke stated that he 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). He explained that it is an 80-acre site with Goal 5 protections and is leased to American Rock Products at this time.

Mr. Clarke stated that he does not want to deny Mr. Coleman the right to establish a mining site. However, he expressed concern about the large size of the site and pointed out that Mr. Coleman described it as a '50-year site'. He believes that is a significant timespan and he doesn't think there is a public need for additional product.

Mr. Clark urged the Planning Commission to think deeper than an average aggregate site plan and remarked that he does not see a complete site plan represented in the applicant's materials. He would like additional information about how the mining fits and where they intend to start with plans for water rights, berms, road improvements and screening included. He believes the applicant should provide engineered plans to demonstrate exactly how they plan to execute the operation over time because there is too much information missing.

**Public Agency:** Greg Silbernagel, Watermaster, Oregon Water Resources Department, 116 SE Dorion Avenue, Pendleton, Oregon. Mr. Silbernagel stated that the applicant provided information that 4 water rights are associated with the groundwater use for gravel washing at the aggregate site. After further research, Mr. Silbernagel determined the water rights being referenced in the application are no longer associated with the subject property. He explained that the certificates issued were all canceled irrigation water rights and were not valid for use in gravel washing or mining.

Mr. Silbernagel stated that this area is within the Ordinance Basalt Critical Groundwater Area (CGWA) as well as the Ordinance Gravels CGWA, where water rights have been closed since the 1970's. Therefore, OWRD would not accept an application for a new water right if it were submitted today. He explained that the applicant does not have an industrial water right associated with the mining site. However, if the applicant wants to transfer irrigation water rights to industrial uses, there is a process for that. He further explained that the timeline for the request is approximately 1.5-2 years and the applicant cannot change the irrigation season as part of that process. This means they cannot have year-round irrigation at the site with their existing water right certificates.

Mr. Silbernagel clarified that, typically when an irrigation water right is transferred to industrial use the land owner cannot continue irrigating with it. As part of the process, the irrigation water right is cancelled, and a new water right certificate is issued for industrial uses.

Mr. Silbernagel stated that the issues outlined above are usually assessed in advance and addressed by the land owner prior to applications being submitted. He would have liked to have had more dialogue with the applicant prior to this meeting. He heard rumors from surrounding land owners for months that this was happening, however he was not made aware of the application until the

day before the Planning Commission hearing. He concluded that his opinion is neutral about the rock pit operating at this site, but reiterated his concerns surrounding lack of water.

Commissioner Wysocki acknowledged that there are several pits operating in the area and asked if they all have water rights. Mr. Silbernagel confirmed that they do. He added that the irrigation in the area is supplied by groundwater aquifer recharge.

**Applicant Rebuttal:** Carla McLane, Consultant, 170 Van Buren Drive, Umatilla, Oregon. Ms. McLane stated that the applicant is comfortable with moving forward with a continuance.

Chair Danforth and Director Waldher determined the continued hearing will be scheduled for December 15, 2022 at 6:30pm at the Umatilla County Justice Center, Media Room.

Chair Danforth adopted the following exhibits into the record;

Exhibit A; October 18, 2022, Email communication between Megan Davchevski (Planner) and Greg Silbernagel (Watermaster, OWRD)

Exhibit B; October 18, 2022, Email communication between Megan Davchevski (Planner) and Amanda Puntun (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)

## **MINUTES**

Chair Danforth called for any corrections or additions to the minutes from the August 25, 2022 meeting. There were none. Commissioner Tucker moved to approve the minutes as presented. Commissioner Timmons seconded the motion. Motion carried by consensus.

## **ADJOURNMENT**

Chair Danforth adjourned the meeting at 10:08pm.

Respectfully submitted,

Tierney Cimmiyotti, Administrative Assistant

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