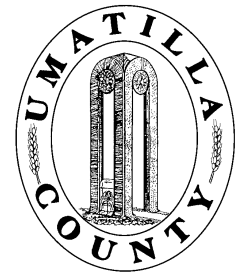


Umatilla County

Department of Land Use Planning



AGENDA

Umatilla County Planning Commission Public Hearing
Thursday, May 24, 2018, 6:30 p.m.
Justice Center Media Room, Pendleton, OR

Planning Commission

Suni Danforth, Chair
Gary Rhinhart, Vice-Chair
Tammie Williams
Don Wysocki

Tami Green
Cecil Thorne
Hoot Royer
Molly Tucker Hasenbank

Planning Staff

Bob Waldher, Planning Director
Carol Johnson, Senior Planner
Jacob Potterf, Planner/ GIS
Gina Miller, Code Enforcement Coordinator
Tierney Dutcher, Administrative Assistant

1. **Call to Order**
2. **Adopt Minutes (Thursday, March 22, 2018)**
3. **New Hearing:**

CONDITIONAL USE PERMIT #C-1301-18 – CENTRAL WASHINGTON ASPHALT, INC., APPLICANT, JAMES SPENCE PROPERTIES, INC., OWNERS.

The applicant requests an amendment of one of the conditions of approval in Conditional Use Permit #C-333 (1984) and implied limitation in Conditional Use Permit #C-479 (1987) to change the hours of operation. Current hours of operation are limited to daylight hours. The modification would change the condition to the following:

“[H]ours of operation will be day-light hours only, except for those projects for which road work is required by contracting governmental entities to occur during dark periods between sunset (nautical dusk) to dawn. Those governmental projects may occur during night-time (nautical dusk to dawn) hours. In no case shall basting or crushing occur except during day-light hours.”

The asphalt batch plant related to this request is located on a portion of property described as Township 5N, Range 36E, Section 07; Tax Lot #200. The subject property is zoned Exclusive Farm Use (EFU) with Aggregate Resource (AR) overlay, and is located off Walla Walla River Road, east of City of Milton-Freewater. The uses on the subject property, including the asphalt plant, are existing and not new uses.

The applicable criteria of approval for modifying Conditional Uses and Land Use Decisions are found in Umatilla County Development Code (UCDC) Sections 152.611. Criteria of approval for Asphalt Plants are found in UCDC Section 152.617(I)(A).

4. **Adjournment**

Umatilla County

Department of Land Use Planning



DIRECTOR
ROBERT WALDHER

MEMO

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

TO: Umatilla County Planning Commissioners
FROM: Bob Waldher, Director
DATE: May 24, 2018

RE: May 24, 2018 Planning Commission Hearing
Central Washington Asphalt (Applicant)
James Spence Properties, Inc. (Owner)
Conditional Use Permit Amendment #C-1307-18

Request

On May 2, 2018, Central Washington Asphalt, Inc. (CWA) submitted a requests for an amendment of one of the conditions of approval in Conditional Use Permit #C-333 (1984) and implied limitation in Conditional Use Permit #C-479 (1987) to change the hours of operation. Current hours of operation are limited to daylight hours. The modification would change the condition to the following:

"hours of operation will be day-light hours only, except for those projects for which road work is required by contracting governmental entities to occur during dark periods between sunset (nautical dusk) to dawn. Those governmental projects may occur during night-time (nautical dusk to dawn) hours. In no case shall basting or crushing occur except during day-light hours."

The asphalt batch plant related to this request is located on a portion of property described as Township 5N, Range 36E, Section 07; Tax Lot #200. The subject property is zoned Exclusive Farm Use (EFU) with Aggregate Resource (AR) overlay, and is located off Walla Walla River Road, east of City of Milton-Freewater. The uses on the subject property, including the asphalt plant, are existing and not new uses.

Criteria of Approval

The applicable criteria of approval for modifying Conditional Uses and Land Use Decisions are found in Umatilla County Development Code (UCDC) Sections 152.611. Criteria of approval for Asphalt Plants are found in UCDC Section 152.617(I)(A).

Conclusion

The Planning Commission is asked to refer to the Findings and Conclusions and supporting information provided by the applicant to determine whether or not to amend C-333 and C-479, changing the allowed hours of operation for the asphalt batch plant operations. The Planning Commission will approve or deny the pending Land Use Request. Approval or Denial must be based on substantive, factual evidence in the record, not conclusory statements.

Memo

Planning Commission Public Hearing – May 24, 2018

Central Washington Asphalt

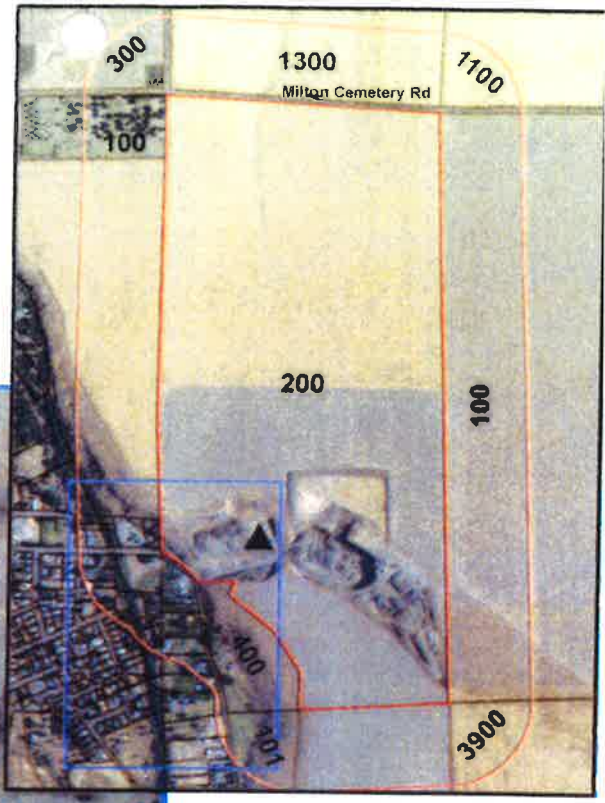
Conditional Use Permit #C-1307-18

Attachments





- Vicinity Map of Existing Facility
- Findings and Conclusions
- Noise Study
- Comments Received Prior to Hearing
- Conditional Use Permit C-333
- Conditional Use Permit C-479
- 2014 Zone and Text Amendment Z-300-14, T-14-052

Vicinity Map of Existing Facility

**CENTRAL WA ASPHALT INC
 APPLICATION FOR
 CONDITIONAL USE C-1301-18
 (AMMENDMENT TO C-333 & C-479)
 MAP 5N 36 07, TAX LOT 200
 FOR LIST OF NOTIFIED NEIGHBORS
 SEE ADDITIONAL PAGE**



0 1,000 2,000 Feet

-  Existing Asphalt Batch Plant
-  Subject Parcel Tax Lot 200
-  750 Foot Notification Area
-  Neighboring Tax Lots



0 250 500 1,000 Feet

Map Disclaimer: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. Parcel data should be used for reference purposes only. Created by J. Potterf, Umatilla County Planning Department Created 5/3/2018

MAP	TAXLOT	OWNER	IN CARE OF	ADDRESS	CITY	STATE	ZIP
5N3512DD	2400	AVALOS BRENDA		1711 OAK ST	MILTON FREEWATER	OR	97862-1237
5N3512DD	601	BREEDING BRAD L & WENDY S		1507 WILKENSON ST	MILTON FREEWATER	OR	97862-1254
5N360700	600	CASTLE PETER M & BARBARA A		53862 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862-7902
5N360700	200	CENTRAL WASHINGTON ASPHALT INCE		PO BOX 939	MOSES LAKE	WA	98837-0142
5N3512DD	200	CULP ASHLEY C DR		53874 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862-7902
5N3512DD	2700	DAVIS PHILIP L & SALLY E		1805 OAK ST	MILTON FREEWATER	OR	97862
5N360000	1400	EASTERN ORE NATURAL GAS CO					
5N360700	300	ELSEY JOE T & LONDO ASHLEE M		53664 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862-7900
5N351200	200	FRAZIER JOE L & DEBORA		1135 VALLEY VISTA AVE	WALLA WALLA	WA	99362-8756
5N360700	500	FREE CAROL S		53840 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862-7902
5N3512DD	2200	GARZA ANGELA KAE & GARZA ALFONSO H		50 HUCKLEBERRY LOOP	MILTON FREEWATER	OR	97862-8608
5N3512DA	803	GOODWIN GARY R & MARY		311 SE 15TH AVE	MILTON FREEWATER	OR	97862-1206
5N3618B0	202	GREEN GENA L & ALBERT C		53906 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862-7903
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5N360700	200	JAMES SPENCE PROPERTIES INC		519 W MAIN ST	WALLA WALLA	WA	99362
5N3512DA	1000	JOHNSON JOHN L		PO BOX 128	MILTON FREEWATER	OR	97862-0128
5N3512DD	100	LONDO ASHLEE M		53664 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862-7900
5N351200	100	MASONIC I O O F CEMETERY #61	ATTN: RICHARD MEIER	PO BOX 50	MILTON FREEWATER	OR	97862
5N3512DA	1100	MILTON-FREEWATER CITY OF	C/O CITY RECORDER	PO BOX 6	MILTON FREEWATER	OR	97862
5N3512DD	2300	NORRIS BETTY LOU		1707 OAK ST	MILTON FREEWATER	OR	97862
5N360000	1500	NORTHWEST PIPELINE CORP	AD VALOREM TAX DEPT MD 46-4	PO BOX 2400	TULSA	OK	74102
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5N360000	3900	SCHULTZ SHARON M		38710 HAMILTON RD	LONG CREEK	OR	97856-7811
5N3512DD	390	SHERIDAN GARY & DONNA		1523 WILKENSON ST	MILTON FREEWATER	OR	97862-1254
5N360700	400	STOCKE NITA		311 S MAIN ST	MILTON FREEWATER	OR	97862-1081
5N3512DA	800	STOLZ MILO & GAIL A		82133 COFFMAN LN	MILTON FREEWATER	OR	97862
5N3512DD	2001	UMATILLA COUNTY OF		216 SE 4TH ST	PENDLETON	OR	97801-2692
5N360700	900	VALDES LINDA L		53918 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862-7903
5N3512DA	700	WAGNER BERYL KAY ETAL		73557 TAUTS LN	PENDLETON	OR	97801-6061
5N3618B0	200	WHEELER KYLE & MARIE		41646 CHARDONNAY AVE	PALMDALE	CA	93551
5N3618B0	300	BOND JOSEPH H JR & PATRICIA J		53936 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862
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5N3618B0	400	STEPHENS JODI		53944 WALLA WALLA RIVER RD	MILTON FREEWATER	OR	97862

Findings and Conclusions

**UMATILLA COUNTY PLANNING COMMISSION
AMENDMENT DRAFT FINDINGS AND CONCLUSIONS
CENTRAL WASHINGTON ASPHALT – APPLICANT/PROJECT OWNER
CONDITIONAL USE PERMIT AMENDMENT, C-1301-18
AMENDMENT OF CONDITIONAL USE PERMITS, C-333 & C-479
ASSESSOR’S MAP T5N, R36E, SECTION 07; TAX LOT 200, ACCOUNT #134106**

1. APPLICANT/PROJECT OWNER:

Central Washington Asphalt, Inc.
P.O. Box 939
Moses Lake, WA 98837
Contact: Ron Jones, Manager
Central Washington Asphalt, Milton-Freewater Division

2. LANDOWNER:

James Spence Properties, Inc.
519 W. Main Street
Walla, Walla, WA 99362

3. ASSESSOR MAP AND TAX LOT NUMBER:

Map # 6N3607; Tax Lot 200

4. PROJECT ACREAGE:

The total acreage of Tax Lot 200 is 286.79 acres. However, the portion of the subject property that is subject to this request is much smaller and only includes the area of the existing asphalt plant.

5. COUNTY COMPREHENSIVE PLAN MAP DESIGNATION:

North/South Agriculture

COUNTY ZONING MAP CLASSIFICATION:

Exclusive Farm Use (EFU)

6. PROJECT LOCATION:

The subject property is located at 53847 Walla Walla River Road, Milton-Freewater, OR 97862. The existing quarry is east of Walla Walla River Road, and southeast of the City of Milton-Freewater Urban Growth Boundary.

7. NOTICE: Mailed May 3, 2018, to area Property Owners and the following:

AGENCIES & INTERESTED PARTIES: Oregon Department of Environmental Quality, Oregon Department of Transportation – LaGrande, Confederated Tribes of the Umatilla Indian Reservation – Cultural and Natural Resources, Department of Land Conservation and Development – LaGrande, Umatilla County Assessor, Umatilla County Public Works, Umatilla County Code Enforcement, Milton-Freewater Rural Fire District, City of Milton-Freewater, Oregon Department of Geology and Mineral Industries

8. HEARING DATE: May 24, 2018

9. **REQUEST:**

Modify condition of approval in Conditional Use Permit #C-333 (1984) and implied limitation in Conditional Use Permit #C-479 (1987) to modify hours of operation for certain projects. The condition to be modified states:

1. Hours of operation be limited to day-light hours only.

In order to comply with contract terms in state and local government road contracts for work during nighttime hours, Central Washington Asphalt (CWA) requests a modification of the condition of approval as follows:

"hours of operation will be day-light hours only, except for those projects for which road work is required by contracting governmental entities to occur during dark periods between sunset (nautical dusk) to dawn". Those projects may occur during night-time (nautical dusk to dawn) hours. In no case shall blasting or crushing occur except during day-light hours."

The reason for the request to expand hours of operation for certain projects is that State and County highway departments have come to realize that accomplishing roadway construction and paving projects at night is less disruptive to the traveling public, as traffic typically is much lower during non-daylight hours. Many of the contracts for these projects now require operations only occur at night. In order to supply materials for these projects, contractors like CWA that provide paving materials, must also work through the night. Asphalt is created through a heating process, and must be delivered within a certain temperature range and cannot be allowed to cool beyond certain specified temperatures. This means that as a rule, asphalt cannot be prepared during the day for nighttime deliveries.

The proposed change to the hours of operation would not add employees, or change operations or other features other than to allow CWA to respond to certain governmental contracts. Work hours at the Subject Property would be shifted to accommodate requirements of these specific types of contracts. The remainder of the site is subject to a 2014 Goal 5 decision that limits the hours of operation. Truck traffic and other aggregate operations not associated with the asphalt plant, but included on the County's Goal 5 inventory, would not operate outside the hours of operation required by the County's 2014 decision.

The applicant estimates that for certain government contracts, typically 50 trucks would be required through evening hours (approximately 100 trips) during the contract period. The concern for traffic impacts to Grove Elementary School in Milton-Freewater is eliminated because school is not operational during nighttime hours.

The modified hours of operation would apply only to the Subject Property which includes the existing asphalt plant, loader, stockpile and office trailer (See Figure 1). Mining, crushing, and hauling around other parts of the site would continue to occur only during the hours of 6 am to 7 pm, approved by the County governing body in #Z-300-14 and #T-14-052.

Nighttime operations on the subject property would only occur when justified by a specific contract from a governmental agency that requires nighttime deliveries of construction and paving materials.

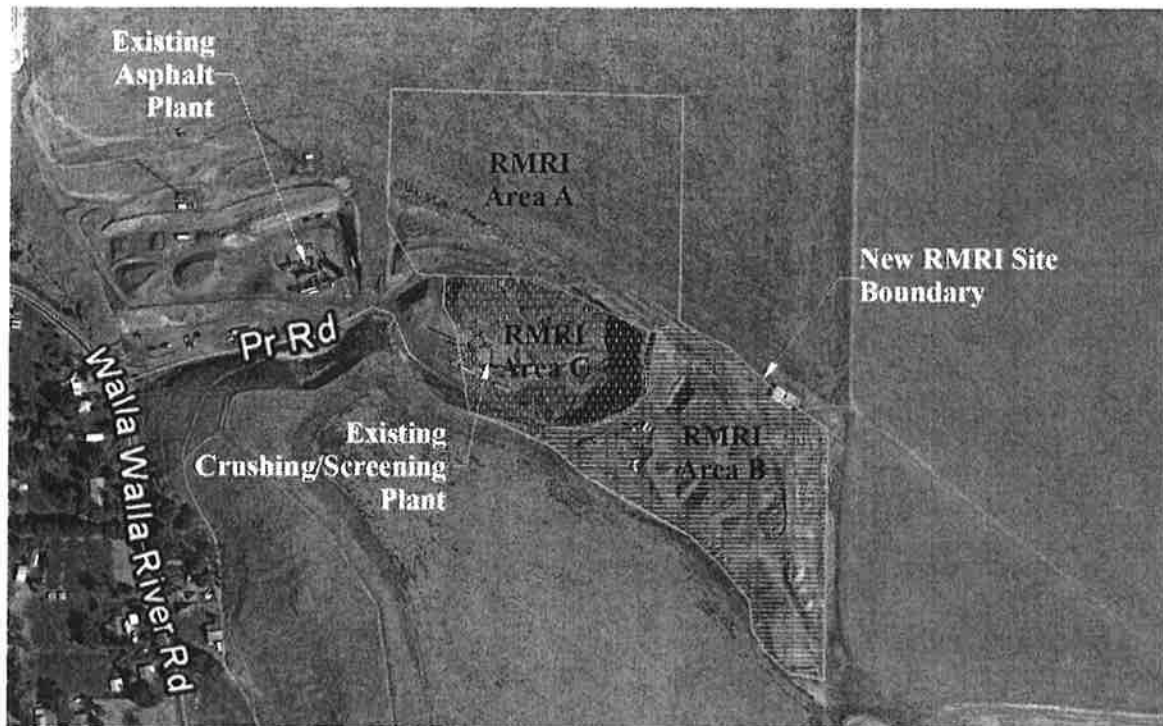


Figure 1. Subject Property - This area of the “Existing Asphalt Plant” is already on the County’s Goal 5 inventory and is referred to herein as “Subject Property.”

10. BACKGROUND

The Subject Property is a part of a Goal 5 significant mining site known as “Spence Pit” and was approved for mining and related operations by a Conditional Use Permit C-333, (October 22, 1984). Hours of operation for extraction activities were limited in C-333 to “day-light hours only” by Condition of Approval¹ and C-479 recited that the prior operator said hours would be limited to day-light hours.¹ Specifically, the then operator stated that “the plant would only operate during daylight hours.”²

A request for Zone Map Amendment (#Z-300-14) and Plan Text Amendment (#T-14-052) was approved by the Umatilla County Board of Commissioners on July 31, 2014, for the remaining areas of the pit as well as it added some additional area to the pit and the Goal 5 inventory. That decision specified “Hours of operation will be 6:00 a.m. to 7:00 p.m.”³ The 2014 decision specifically excluded the existing asphalt plant.⁴ Accordingly the 2014 approval is not at issue or relevant to this request.

¹ “Findings of Fact and Conclusions of Law” for Conditional Use Request #C-333, page 7, “Conclusions of Law” #11, Condition I.

² “Findings of Fact”, included in the “Findings of Fact and Conclusions of Law” for Conditional Use Request #C-479, page 2, Finding #11.

³ “Umatilla County Board of Commissioners Findings and Conclusions” (“2014 Decision”), Conditions Applicable to Mining in the Approved 33.26 RMRI Area, Condition #8, page 48 of 49.

⁴ This is discussed at some length in the 2014 Decision, however the 2014 County decision affirmed that the approval of the asphalt plant granted by #C-333 and C-479 remained valid. See 2014 Decision, pp. 19-20.

11. APPLICABLE CRITERIA AND STANDARDS

The Umatilla County Development Code (UCDC) provides a process for modifying “Conditional Use Permits and Land Use Decisions”:

Conditional Uses and Land Use Decisions

152.611 New or Altered Conditional Uses and Land Use Decisions...

(A) Conditional uses and land use decisions listed in this chapter maybe permitted, enlarged or altered contingent upon appropriate authorization, in accordance with the standards and procedures set forth in this subchapter.

UCDC Section 152.612(B) provides that modifying a conditional use permit shall be processed via administrative review. However, the Umatilla County Planning Director has referred this land use request directly to the Planning Commission for consideration.

Asphalt Plants are considered a Conditional Use (Section 152.616(C)). The existing uses on the subject property including the asphalt plant are permitted and are not new uses.

12. DISCUSSION OF APPLICABLE CRITERIA AND STANDARDS

The UCDC does not provide specific standards or criteria for consideration of a request to modify an approved conditional use permit. Rather, the code provides only that modification is authorized. Logically, that means that the standards are simply that the applicant should provide reasonable assurance to the County that the change to the conditional use will be consistent with the approved conditional use permit. The applicant believes that reasonable assurance is provided herein.

No feature of the Subject Property or site is proposed to be changed. The existing asphalt plant is approximately 800 feet east of the Walla Walla River Road and will not be relocated.

Respecting noise, a noise expert⁵ has reviewed the proposal and determined that with appropriate mitigation, that all DEQ noise standards for night-time operations will be met. A copy of the Noise Study is included in Exhibit 1, attached to this document. The applicant agrees that his recommendations should be made a condition of approval as follows:

The applicant shall cut the asphalt plant exhaust stack down by 15 feet and construct or install a minimum 5-foot high berm or barrier along the south edge of the asphalt batch plant area. The berm or barrier shall be constructed long enough to extend at least 15-feet to the east and 15-feet to the west of the line-of-sight between the baghouse exhaust fan stack and the southeast corner of the residence at 53846 Walla Walla River Road. The applicant shall also install an 8-foot high plywood barrier along the west and south sides of the catwalk that surrounds the asphalt plant’s gravel dryer drum burner.

The applicant notes that CWA truck drivers do not use either compression braking or exhaust braking on the haul road or at the driveway. As an extra measure of assurance, CWA has ordered a sign “no Jake brakes” to put on the access to/from the subject property to reinforce this.

With respect to traffic, a traffic analysis was prepared and submitted with the 2014 application concerning all truck and other traffic coming from the entire site including the Subject Property. That report concluded that operations during daylight hours would not have a “significant impact”

⁵ The same noise expert as who evaluated the remainder of the site in the Goal 5 process which resulted in the 2014 governing body decision.

on adjacent streets, either in the County or in Milton-Freewater. As background traffic is much reduced at night, the volume of traffic created by night operations would be expected to have even less of an impact.

Furthermore, additional truck trips to the Walla Walla River Road during the night will have no adverse impact on the school or the school speed zone, as school children are unlikely to be present at these times.

13. FINDINGS

Umatilla County finds the applicant requests amendment of the conditions of approval found in C-333 and C-479 to modify the hours of operation.

Umatilla County finds that the request is to accommodate work during nighttime hours for certain state and local government road contracts.

Umatilla County finds that the Goal 5 process in 2014 excluded the existing asphalt plant. Therefore, Z-300-14 and T-14-052 are not considered in this decision.

Umatilla County finds that a noise expert has reviewed the proposal and determined that with appropriate mitigation, all DEQ noise standards for night-time operations will be met. The applicant agrees that his recommendations should be made a condition of approval.

13. CONCLUSION

Umatilla County concludes the proposed limited modification for the hours of operation for the Subject Property will have a minimal impact, meet all other standards consistent with the approved conditional use permits C-333 and C-479, and approves the request subject to the following conditions of approval:

Precedent Conditions: The following precedent condition must be fulfilled to finalize approval of this request.

1. Pay notice costs as invoiced by the County Planning Department.
2. Obtain a Zoning Permit from the Umatilla County Planning Department to establish modification of the hours of operation for the existing asphalt batch plant operations for certain governmental road projects.
3. In order to mitigate noise from the batch plant operation, the applicant shall cut the asphalt plant exhaust stack down by 15 feet and construct or install a minimum 5-foot high berm or barrier along the south edge of the asphalt batch plant area. The berm or barrier shall be constructed long enough to extend at least 15-feet to the east and 15-feet to the west of the line-of-sight between the baghouse exhaust fan stack and the southeast corner of the residence at 53846 Walla Walla River Road. The applicant shall also install an 8-foot high plywood barrier along the west and south sides of the catwalk that surrounds the asphalt plant's gravel dryer drum burner.
4. CWA shall install signage reinforcing that "no Jake brakes" shall be used on the haul road or at the driveway.

Subsequent Conditions: The following subsequent conditions must be fulfilled following final approval of this request:

5. Hours of operation for the existing asphalt batch plant operations shall be day-light hours only, except for those projects for which road work is required by contracting governmental entities to occur during dark periods between sunset (nautical dusk) to dawn". Those projects may occur during night-time (nautical dusk to dawn) hours.
6. In no case shall blasting or crushing occur except during day-light hours.
7. Truck drivers entering and exiting the operation shall not use either compression braking or exhaust braking on the haul road or at the driveway.
8. The operations shall comply with DEQ noise standards for night-time operations.

UMATILLA COUNTY PLANNING COMMISSION

Dated _____ day of _____, 20____

Suni Danforth, *Planning Commission Chair*

Mailed _____ day of _____, 20____

Attachments:

Exhibit 1 – Noise Study

Noise Study



ABD Engineering & Design

Architectural Acoustics • AV Design • Noise & Vibration

April 30, 2018

Wendie Kellington, Attorney at Law
Kellington Law Group, PC
P.O. Box 159
Lake Oswego, OR 97034
503-636-0069 | wk@klgpc.com

Re: Nighttime Operation of CWA Spence Pit Asphalt Plant

Introduction

At the request of Central Washington Asphalt, Inc. (CWA) ABD Engineering & Design, Inc. (ABD, the new name of the merged Daly-Standlee & Associates, Inc. and Acoustics By Design, Inc. firms) conducted a study of the Spence Pit asphalt batch plant outside of Milton-Freewater, Oregon to determine if noise radiating from the plant would be in compliance with DEQ nighttime-hour limits at all residential receivers around the facility. CWA indicated the study was requested because they may need to begin operating the plant beyond the current authorization for operation during “daylight hours” to fulfill contract requirements associated with future roadway projects awarded by state and local government entities. CWA understands the limitation to “daylight hours” to mean they are now authorized to operate from dawn to nautical dusk. Accordingly, CWA requested we review whether operations between “nautical dusk” and dawn meet applicable DEQ noise standards.

This report provides the results of the study and discusses steps that can be taken to ensure the noise radiating from the asphalt batch plant will be in compliance with all DEQ noise regulation limits.

Noise Study Approach

During the summer and fall of 2013 Daly-Standlee & Associates, Inc. (now a part of ABD) conducted a study of the noise that would radiate from mining and crushing operations in a mining area east of the asphalt batch plant (see Figure 1). The study took into account noise that would radiate to residences from the asphalt batch plant as well as noise that would radiate to the residences from the mining and crushing operations. While the 2013 mining study considered the contribution of noise from the asphalt batch plant in the overall analysis, the study did not include an in-depth analysis of the all the noise sources associated with the asphalt batch plant. The limited analysis of the noise radiating from the asphalt batch plant occurred at that time because it was found that the sum of the asphalt batch plant noise and the mining and crushing operation noise would be in compliance with the applicable DEQ noise regulation limits during those times when both plants would operate simultaneously. Because a change may occur in the operating hours for the asphalt batch plant, it was decided that a specific study of the plant

Nighttime Operation of CWA Spence Pit Asphalt Plant

April 30, 2018

Page 2

should be made to ensure the noise radiating from the plant would be in compliance with the limits during all hours of the day and night.



Figure 1. RMRI site associated with DSA's 2013 noise study

During the 2013 mine noise study it was found that noise radiating from operations at Spence Pit was always highest at the residence located immediately west of the entrance to the pit off Walla Walla River Road (the residence at 53846 Walla Walla River Road). It was also found that when the noise at the 53846 Walla Walla River Road residence was in compliance with DEQ noise regulation limits, it was also in compliance with the regulation limits at all other residences around the area. Therefore, the study was focused on the noise that radiates from the plant to the residence at 53846 Walla Walla River Road.

On April 23, 2018 sound level measurements were made at 53846 Walla Walla River Road and at the asphalt batch plant itself during a time when all the equipment at the asphalt batch plant was operating at a maximum noise output level. Maximum noise output conditions for the equipment included having the burner on the gravel drying drum operating at its high-fire setting, having the baghouse dust collection system fan operating at full flow and having all

Nighttime Operation of CWA Spence Pit Asphalt Plant

April 30, 2018

Page 3

conveyors and moving equipment (front-end loader) serving the plant in normal operation. All measurements were made between 7:40 a.m. and 9:37 a.m. but the majority of the measurements occurred between 8:00 a.m. and 9:00 a.m. when the temperature ranged between 39°F and 45°F, the wind was relatively calm, and the relative humidity was between 60 and 70%. The atmospheric conditions during the measurements were considered good for sound propagation between the asphalt batch plant and the residence.

The sound measurements were made at the residence to help determine if the noise radiating from the asphalt batch plant was in compliance with both the DEQ daytime-hour and nighttime-hour noise limits and to provide data to determine the relative contribution of noise coming from the various pieces of equipment at the batch plant. The sound measurements at the asphalt batch plant were made to gather reference sound data that could be included in a sound propagation modeling program to predict the amount of sound radiated to the residence from individual sources.

DEQ Noise Regulation Limits

CWA has indicated that it may, at times, need to operate the Spence Pit asphalt batch plant between “nautical dusk” and dawn to meet government road contract requirements. The DEQ noise regulations have one set of limits for industrial noise sources such as the asphalt batch plant that are applicable between 7:00 a.m. and 10:00 p.m. (commonly referred to as the daytime hour limits) and another set of limits that are applicable between 10:00 p.m. and 7:00 a.m. (commonly referred to as the nighttime hour limits) “Nautical dusk” is not a specific time of the day that corresponds directly to the DEQ noise regulation limits because the time of “nautical dusk” in the winter is different from that found in the summer. However, given the fact that the asphalt batch plant could possibly need to operate for some jobs between “nautical dusk” and dawn the next morning, it is safe to conclude that the noise radiating from the asphalt batch plant would have to meet the limits that are applicable to the hours of 10:00 p.m. to 7:00 a.m. – the nighttime hour limits.

The DEQ noise regulation says that during nighttime hours, noise radiating to a residence from an industrial noise source shall not cause hourly noise levels that exceed the following:

An hourly L_{50} of 50 dBA

An hourly L_{10} of 55 dBA

An hourly L_{01} of 60 dBA

The hourly L_{50} noise level is defined as the sound level equaled or exceeded 50% of the time during an hour (30 minutes of time). The hourly L_{10} noise level is defined as the sound level exceeded 10% of the time during an hour (6 minutes of time). And, the hourly L_{01} noise level is defined as the sound level exceeded 1% of the time during an hour (36 seconds of time).

It should be noted that, because Spence Pit has been an industrial site for well before the DEQ noise regulations were written, the hourly noise limits shown above would not apply to the noise radiating from the dump trucks as they travel back and forth on public roads between Spence Pit and the job site. The noise radiating from trucks traveling on public roadways is regulated by two other sections of the DEQ regulations (OAR 340-035-0025 – new motor vehicle standards and OAR 340-035-0030 – in-use motor vehicle standards).

Nighttime Operation of CWA Spence Pit Asphalt Plant

April 30, 2018

Page 4

Study Results

Only short-term (10 second) sound level measurements of the asphalt batch plant noise could be made at any given point in time at the 53846 Walla Walla River Road residence due to the fact that noise radiating from traffic traveling on Walla Walla River Road was louder than the asphalt batch plant noise. The results of long-term measurements would have little value in analyzing the asphalt batch plant noise because it would have been dominated by traffic noise.

The results of the short-term sound level measurements at the residence indicated the sound radiating from the asphalt batch plant typically ranges between 52 and 57 dBA at the residence, depending on the operating conditions of the plant at any given moment. The 52 dBA level was observed when the asphalt batch plant gravel dryer drum burner was operating in a low-fire mode and the 57 dBA level was observed at one time when the asphalt batch plant gravel dryer drum burner was operating in a high-fire mode. There were also times when the asphalt batch plant was operating in a high-fire mode and the sound level at the residence was observed to be around 55 dBA. This finding was likely due to changes in the atmospheric conditions between the batch plant and the residence.

During most hours of operation, an asphalt batch plant will cycle through both low-fire and high-fire conditions and the amount of time it operates at the two settings depends on the amount of asphalt required during an hour at a particular job site. In some instances, the asphalt batch plant may operate and produce asphalt for only a short portion of an hour and it may actually not operate in low-fire and high-fire mode for a full hour. In other instances, the batch plant may continually operate for a full hour with it operating in low-fire mode for as much of the time as high-fire mode. Regardless of how long the asphalt batch plant will operate during an hour in its loudest setting, based on the results of the short-term sound measurements on April 23, it can be concluded that the noise radiating from the Spence Pit asphalt batch plant will likely not be in compliance with the DEQ nighttime hour hourly L₅₀ noise level limit of 50 dBA during a highway construction project. Consequently, the noise radiating from the asphalt batch plant needs to be reduced to ensure the noise will be in compliance during all hours between 10:00 p.m. and 7:00 a.m.

Noise Reduction Options

From the sound propagation modeling work conducted as part of the noise study, it was determined that there are likely three sound sources at the asphalt batch plant that need to be addressed to effectively reduce the noise at the residence to a level that ensures compliance with the DEQ nighttime-hour noise regulation limits. They are, shown in ascending order of influence:

1. The baghouse draw-thru blower noise radiating from the top of the blower exhaust stack.
2. The noise radiating from the high-pressure blower attached to the top of the gravel dryer drum burner unit.
3. The noise radiating from the air intake opening on the south end of the gravel dryer drum burner unit.

Even though the sources shown above are presented in an ascending rank-order, the fact is, the total noise at the residence cannot be effectively reduced to below the DEQ nighttime hour limits without some reduction of noise being provided to all three of the sources. This is due to the fact

Nighttime Operation of CWA Spence Pit Asphalt Plant

April 30, 2018

Page 5

that each source may contribute acoustic energy in different frequencies of sound that affects the overall sound level at the residence.

The noise radiating from the top of the baghouse draw-thru blower exhaust stack can be reduced by a sufficient amount by using one of two options; installing a duct silencer into the exhaust stack or reducing the height of the stack and constructing a berm along the south edge of the asphalt batch plant area. According to results of preliminary analyses, a 3-foot long silencer installed in the stack would reduce the noise radiating from that source to the point to where its contribution would be less than 45 dBA. Also, according to analysis results, cutting the exhaust stack down by 15 feet and constructing a 5-foot high berm or barrier along the south edge of the asphalt batch plant area will provide a sufficient reduction of that sound coming from the source. Either solution will be adequate to ensure compliance with DEQ nighttime hour noise standards.

The noise radiating from the high-pressure blower attached to the top of the gravel dryer drum burner unit, and the noise radiating from the intake air opening on the south end of the burner unit can be reduced at the same time by installing an 8-foot high plywood barrier along the west and south sides of the catwalk that surrounds the burner unit. The height of the plywood barrier required along the burner unit catwalk could be reduced to 7-foot if the 5-foot high berm or barrier is used to mitigate the baghouse exhaust fan noise and it is constructed to extend east far enough along the south side of the asphalt batch plant area to break the line-of-sight between the burner equipment and the residence at 53846 Walla Walla River Road.

Conclusion

Through the use of noise controls discussed above, the noise radiating from the asphalt batch plant at Spence Pit can be reduced to the point to where it will be in compliance with the DEQ nighttime-hour noise limits. It should be noted that utilizing the mitigations discussed above will also have the effect of reducing noise radiating from the asphalt batch plant during daytime hours, further ensuring compliance with daytime standards as well. Based on the condition of the trucks observed at the asphalt batch plant on April 23, and based on my experience with the sound generated by those trucks, the asphalt transport trucks owned and operated by CWA will be in compliance with the DEQ noise regulations for trucks.

The mitigations discussed in this report will allow the asphalt batch plant to operate both day and night and be in compliance with the DEQ noise regulation limits at all residences in the vicinity of Spence Pit.

If you have any questions, please feel free to call and discuss them.

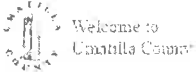
Sincerely,

ABD Engineering & Design, Inc.



Kerrie G. Standlee, P.E.
Principal Acoustical Consultant

Comments Received Prior to Hearing



Robert Waldher <robert.waldher@umatillacounty.net>

Notice of Public Hearing (CUP-333)

Peter Castle <pmcastle2@q.com>
To: Robert.Waldher@umatillacounty.net

Tue, May 8, 2018 at 10:03 AM

To: Robert Waldher, Director – Umatilla County Planning Department
From: Peter and Barbara Castle

This e:mail is in response to your Notice of Public Hearing. We will not be able to participate in this hearing, but wish to have our strong opposition to the proposed modification of the hours of operation in the Conditional Use Permit C-333 entered into the record.

We purchased this property (Tax Lot 600) in 2006 as our retirement home. This was prior to the beginning of the asphalt plant and mining operations. Since the beginning of the operations and since the last hearings regarding the current CUP, the operations have repeatedly violated the operational hours stipulated in the CUP. The entrance to the plant is less than 100 yds from our house. There is a steep grade from Walla Walla River Road up to the plant. As a result there is considerable noise from the loaded trucks braking as they descend to enter the roadway as well as noise from the returning trucks climbing up to the plant. The most frequent violations occur during the Summer months, making it impossible to sleep with the windows open. We have complained to Code Enforcement (Gina Miller) on a number of occasions in the past several years, to no avail. Even with the windows closed the noise is intrusive. We believe that we have the right to a decent, undisturbed night's sleep.

We will be happy to provide any additional information that would strengthen our opposition. Please reply to this e:mail, so that we can be assured that our concerns have been registered.

Respectfully submitted,

Peter Castle, PhD
Senior Consulting Scientist (Retired)
Idaho National Laboratory

RE: Neighbor letters of support.pdf

2 messages

Wendie Kellington <wk@klgpc.com>
To: Bob Waldher <robert.waldher@umatillacounty.net>
Cc: Ron Jones <ron@cwainc.us>

Wed, May 16, 2018 at 7:56 AM

Hi Bob,

Attached for the record of the CWA proposal to modify hours of operation for government projects the contracts for which require night time work, are two letters from neighbors expressing support. Please include them in the record, including in the materials that will go to the planning commission. Also, just an FYI – CWA drivers do not use either compression braking or exhaust braking on the haul road or at the driveway. As an extra measure of assurance, CWA has ordered a sign “no Jake brakes” to put on the road to reinforce this. Thank you. Best, Wendie



Wendie L. Kellington | Attorney at Law.
P.O. Box 159
Lake Oswego Or
97034

(503) 636-0069 office
(503) 636-0102 fax
wk@klgpc.com
www.wkellington.com

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 **Neighbor letters of support.pdf**
327K

Robert Waldher <robert.waldher@umatillacounty.net>
To: Wendie Kellington <wk@klgpc.com>
Cc: Ron Jones <ron@cwainc.us>

Wed, May 16, 2018 at 8:08 AM

Thank you, Wendie - I will add these to the project record and Planning Commission hearing packet. The packets will be posted to the website tomorrow.

bob
[Quoted text hidden]

Bob Waldher, RLA

Director

Umatilla County Department of Land Use Planning

216 SE 4th ST | Pendleton, OR 97801

Phone: 541-278-6251 | Fax: 541-278-5480

<http://www.umatillacounty.net/planning> - Visit our website for copies of planning documents, permit applications and other helpful information.

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

May 15, 2018

Joe & Ashlee Elsey
53836 Walla Walla Rvr. Rd.
Milton Freewater, Or 97862

To Whom It May Concern:

We live at 53836 Walla Walla River Rd. We are writing to inform all parties involved with Central Washington Asphalt and Umatilla County. The up and coming project that are scheduled to start in the middle to late June and other nighttime projects have no direct effect on us. Central Washington Asphalt has upgraded their Milton-Freewater site location to help with sound and we believe that they are also making changes to help prevent/control dust. If trucks and equipment are driven with out the use of the exhaust brakes we have no issue with the sound, day or night. With the continued effort by Central Washington Asphalt to make the plant area a quieter and cleaner place we extend our support to their proposal to be able to work at night on government road projects.

Sincerely



Joe & Ashlee Elsey

May 15, 2018

Members of the Planning Commission

RE: Central Washington Asphalt, Milton Freewater Plant Change to Work Nighttime Hours to
Serve Government Contracts

Dear Planning Commission

I live at 53840 Walla Walla River Rd Milton Freewater Or 97862, which is directly across from the driveway for Central Washington Asphalt's Milton Freewater gravel pit. CWA is a good neighbor. They have minimal noise, they keep their dust down and their drivers are courteous. I support their request to be able to make asphalt and do other work at the pit at night, so they can haul material to government road projects that have to be done at night. I am not concerned about noise, as the noise emanating from the pit now is minimal and does not bother me. I understand that to work at night they will perform other noise mitigations that will make the operations at the pit quieter even during the day and that the pit will operate well within state noise standards when government contracts make them work at night. I don't know what more you could ask for and I support CWA. I think it is important to allow good employers like CWA to flourish and change with the times when the work they do doesn't harm anyone else as is the case here. Thank you.

Sincerely

A handwritten signature in cursive script that reads "Carol Free". The signature is written in dark ink and is positioned above the printed name.

Carol Free

Bradley Humbert

1234 5th Street
12345 6th Street, 97000
555-555-5555
www.1234.com

05/16/2018

Ron Jones

General Manager,
Central Washington Asphalt
53847 Walla Walla River Road
Milton Freewater, OR. 97862

Dear Mr. Jones,

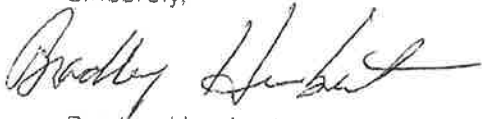
It has come to my attention that your company has been awarded the State of Oregon DOT paving project from Athena, OR. area to Pendleton, OR. it is my understanding that this project requires your company to perform paving at night. It is also my understanding that due to your county permit you have restrictions on hours of operation and you must amend your Zoning permit.

During the original hearing on what is known as the Spence Quarry I strongly opposed the AR overlay. At that time Central Washington Asphalt was not the operator of the quarry. Since the re-zone Central Washington has done an excellent job of following the rules and operating within their permit requirements. You have personally taken every opportunity to be apart of the local community and a great neighbor. I have ZERO objection to allowing the change to allow your company to operate 24 hour 7 day week when required to perform night operations under a municipal contract.

I understand that it may be inconvenient for residential neighbor's that live next to operations such as yours. The benefits outweigh that inconvenience. If Central Washington Asphalt was not located in Umatilla county I believe that this project would have been awarded to a company from outside of the county and the proceeds would not be kept in the local Milton Freewater area. Central Washington's track record of following the rules and providing family

wage jobs to local workers is much appreciated. In my opinion Umatilla County should allow your current hours of operation to be amended. I want to again thank you and your company for doing what you say and being part of the Milton Freewater community.

Sincerely,

A handwritten signature in cursive script that reads "Bradley Humbert". The signature is written in black ink and is positioned above the printed name.

Bradley Humbert

Conditional Use Permit C-333

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the Matter of Conditional Use Request #C-333)
to allow the processing of rip-rap and aggregate) UMATILLA COUNTY
materials from an existing pit in an EFU-40) HEARINGS OFFICER
(Exclusive Farm Use) 40 acre minimum zone.)
Humbert Excavating, applicant, James Spence)
Properties, Inc. owner.)

This matter came before the Umatilla County Hearings Officer for a hearing on May 9, 1984, in Room 20, Basement Conference Room, of the Umatilla County Courthouse, Pendleton, Oregon, upon application of Humbert Excavating, for a conditional use to allow the processing of rip-rap and aggregate materials from an existing pit in an EFU-40 (Exclusive Farm Use) 40 acre minimum zone for property described as follows:

Tax Lot 1700, Assessor's Map 5N 36. The subject parcel (site) is 30 acres along the east end of an easement that extends east off of the Walla Walla River Road, and approximately .50 miles southeast from the Milton-Freewater city limits.

Present was the Umatilla County Hearings Officer, Wendell Lampkin; also present was Mr. Joe Humbert, representing Humbert Excavating, to speak in favor of the request.

At this time, being fully informed on all the issues, the Umatilla County Hearings Officer makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Notice of hearings was given by publication in the East Oregonian newspaper on April 28, 1984 and The Valley Herald newspaper on May 3, 1984.
2. Notice was given by mail to the owners of all property within 250 feet of the subject parcel.
3. There was no pre-hearing contact between the Hearings Officer and the applicant regarding this request.
4. An on-site inspection of the property was completed on April 24, 1984. The site is the location of an existing rock quarry site. It lies within an existing gully and has access to this site through the gully. The site is surrounded on the north, east and south by agricultural land with a waste land buffer lying between the quarry site and the agricultural land. The gully lies to the west.
5. The County Comprehensive Plan adopted on May 9, 1983 designates the site as North/South County Agriculture.
6. The County Zoning Ordinance adopted on May 9, 1983 designates the site as EFU-40 (Exclusive Farm Use) 40 acre minimum.
7. The site is designated by the USDA - SCS gravel pit designation.

--continued--



8. The site is served by the Walla Walla River Road, a two-lane paved road maintained by the County Road Department.

9. The site is located outside the Urban Growth Boundary of Milton-Freewater and is dependent upon individual wells and septic tanks.

10. Referrals were sent to:

- A. City of Milton-Freewater - No reply.
- B. County Road Department - No reply.
- C. Dept. of Geology and Mineral Industries - No reply.
- D. Watermaster - No reply.
- E. DEQ - No reply.

11. Criteria:

Section 7.010 to 7.050 of the Development Code outlines the suggested standards for granting a commercial gravel pit pursuant to Section 3.017, Conditional Uses, in an EFU-40 zone. These standards will also be used by the Hearings Officer in granting non-commercial gravel extractions in the EFU-40 zone by the Umatilla County Road Department to improve local and surrounding road systems.

1. Extraction holes and sedimentation ponds shall comply with the following restrictions and regulations under the following circumstances:

A. In an existing pit:

- a. They shall not be allowed within 25 feet of a public road, county road or utility right-of-way and shall not exceed over 75% of the total land mass and shall be centered on the property.
- b. They shall not be allowed within 100 feet from the part of a property line which is adjacent to a residential dwelling.

B. In a new pit:

- a. They shall be located not closer than 500 feet from any part of a property line adjacent to a residential dwelling unless the operator can obtain a written release from the adjacent residential property owner allowing a closer setback. The new pit shall be centered on the property and shall not exceed 75% of the total land mass.

2. Processing equipment shall comply with the following restrictions and regulations under the following circumstances:

A. In an existing pit:

--continued--

- a. Equipment shall not be located within 50 feet of a public road, county road or utility right-of-way or further if the Hearings Officer deems it necessary.
- b. Equipment shall not be within 100 feet from any part of a property line which is adjacent to a residential dwelling or further if the Hearings Officer deems it necessary.

B. In a new pit:

- a. Where the use of a processing equipment, such as crushers, batch plants, etc., the operator will be required to place such equipment not closer than 500 feet from any part of a property line adjacent to a residential dwelling unless the operator can obtain a written release from the adjacent residential property owner allowing a closer setback.

3. All accesses and their locations shall be arranged in such a manner as to minimize traffic danger and nuisance to surrounding properties.

4. The operation areas shall be screened from adjoining residential districts, county roads, highways and public roads by placement of fences, walls, hedges or landscaped berms. Native plants and trees shall be emphasized or plants and trees with a demonstrated ability to survive under the conditions required shall be provided. If fencing and/or walls are required by the Hearings Officer, they shall be of a type and color that will blend with the surrounding landscape and existing uses. In all instances above, the placement and design shall effectively screen the site from the public.

5. Legible copies of a detailed site plan shall be submitted. Such site plans shall have a horizontal scale that is no smaller than 1 inch equals 400 feet and show, but not be limited to: the corners and boundaries of the mining roads, railroads, and utility facilities within or adjacent to such land; the location of all proposed access roads to be constructed in conducting such operations; if applicable, location of each phase of the mining activity; date; contour interval; and the identification of an area by legal subdivisions (section, township, and range). If aerial photographs are used as a base, the scale shall be shown.

6. Haul roads shall be constructed to a standard approved by the Public Works Director to reduce noise, dust and vibration and be located so that they are not directed through recreational residential or rural residential areas and zones. The Hearings Officer may require dust-free site access roads near concentrated residential areas.

7. A reclamation plan has been submitted to the County Public Works Director pursuant to the County Surface Mining Land Reclamation Ordinance.

8. The operation complies with all applicable air, noise and water quality regulations of all county, state or federal jurisdictions and all applicable state or federal permits are obtained.

--continued--

9. Rehabilitation of landscape after the extraction operations are completed.

- A. The Hearings Officer may require a time limit and a bond sufficient to cover costs plus 10% of necessary road improvements, berming, reclamation, landscaping and other pertinent conditions, if in his opinion, such bond or time limit will ensure timely rehabilitation and protect the health, safety and public welfare of adjacent property owners and lands. These standards do not apply to any parcel or area being used as a plant site, stockpile, or work area for an ongoing extractive mining or aggregate operation.

10. All equipment, refuse and temporary structures shall be removed from the project site and the site left free of debris after completion of the project.

11. The activity complies with other conditions deemed necessary by the Hearings Officer which may include but not be limited to:

- A. Limitations on lighting;
- B. Restrictions on the hours of operation;
- C. Fencing of open pit areas;
- D. An increase or decrease in required setbacks;
- E. Proof of adequate water supplies for dust control, reclamation and if required, landscaping;
- F. Off-site stockpiling and/or processing if located adjacent to concentration of residential dwellings.

12. Limitations on Conditional Uses:

1. Conditional uses permitted by Subsection 3.016 of this section may be established on non-productive agricultural lands subject to criteria set forth in paragraph (2) of this subsection and upon a finding by the Hearings Officer that each such use:

- A. Is compatible with farm uses described in ORS 215.203(2), the intent and purpose set forth in ORS 215.243, the comprehensive plan and this ordinance;
- B. Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2) (c) on adjacent lands devoted to farm uses;
- C. Does not materially alter the stability of the overall land use pattern of the area;
- D. Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract;

--continued--

E. Complies with other such conditions as the hearings body deems necessary.

2. Criteria to evaluate conditional uses:

- A. Immediate and future impact on public services, existing road systems and traffic demands;
- B. Soil type and its development limitations, including slides, erosion, flooding and drainage;
- C. Agricultural productivity including food productivity and the production of any usable agricultural product which requires open space and a non-urban environment;
- D. Development minimizes potential adverse effects on terrain, slope and ground cover;
- E. Development is compatible with the existing land use pattern and the character of the overall area;
- F. An adequate quantity and quality of water is available and either subsurface or other sanitary disposal system exists or can be provided and adequate provision for solid waste disposal exists;
- G. Conversion of agricultural land to non-farm uses shall be based upon consideration of the following factors;
 - a. Environmental, energy, social and economic consequences;
 - b. Compatibility of the proposed use with related agricultural land;
 - c. The retention of Class I through VI soils in farm use;
 - d. Other criteria listed in Section 7.060, Conditional Uses, of this ordinance that apply to a specific use.

13. Statewide Planning Goals:

1. Citizen Involvement - Before a decision is rendered on this land use request, a public hearing before the County Hearings Officer is conducted in Pendleton. Notice of the hearing is given by publication in the East Oregonian and Valley Herald newspapers and by mailed notice to all adjacent property owners within 250 feet of the site.

2. Land Use Planning - The Umatilla County Comprehensive Plan and Zoning Ordinance outline the procedures and standards to be used for consideration of land use requests.

3. Agricultural Lands - The site contains a soil designated for preservation by the planning goals, but due to the plan designation and existing land use, future utilization for agriculture is unlikely.

4. Forest Lands - This goal does not apply to the request due to its distance from any recognized forest lands.

5. Open Spaces, Scenic and Historic Areas and Natural Resources - The site would appear to contain deposits of aggregate resources, and with proper conditions placed on the removal and existing processes, little adverse impact on this goal should result.

6. Air, Water and Land Resource Quality - The site is located outside an existing urban growth boundary and is dependent on individual wells and septic tanks.

7. Areas Subject to Natural Disasters or Hazards - The site does not differ from any other in the state of Oregon in regards to seismic ratings and is not known to be located within a floodplain. Moderate hazards exist due to the soil erosion characteristics, but care during construction or other ground disturbance will avert adverse impacts to this goal.

8. Recreational Needs - This goal is of minor importance in the consideration of this request because the applicant has not indicated the provision of any recreational areas nor will any existing areas be adversely affected by the proposal.

9. Economy of the State - Approval of this request would have a slight positive impact on the state's overall economy.

10. Housing - This goal is of minor importance to the request as no new homes would be made available.

11. Public Facilities and Services - The site lies outside the Milton-Freewater Urban Growth Boundary and public facilities and services would not be made available.

12. Transportation - The present road system would not appear to be adequate to handle the additional traffic generated by the approval of this request. Should the request be approved, extreme care should be taken in the use of all roads in relation to this request.

13. Energy Conservation - The request would have little impact on this goal.

14. Urbanization - The request will not adversely impact this goal.


CONCLUSIONS OF LAW

1. Notice of the hearing was adequate.
2. Persons were given the opportunity to be heard.
3. The opinions of governmental units were sought and no adverse comments were received.
4. Mr. Joe Humbert was present at the hearing to speak in favor of the request. He stated that the application was approved in 1977, but he didn't go ahead because of financial problems. He stated he would be willing to meet the conditions.
5. Mr. Dick McMillian, owner of a hardware store in Milton-Freewater was present to speak in favor of the application.

6. There were three persons present at the hearing to voice opposition to the request. Mr. Floyd Moon, Mr. Raymond Cox and Mrs. Pauline Cox.
7. The request does not conflict with any Statewide Planning Goals.
8. The site has access to a county road, but the existing easement now serving the current quarry site is not adequate to handle the additional traffic needed to complete the proposed project.
9. The applicant will be required to meet and observe all state and federal regulations pertaining to air, water, dust and noise control as well as other conditions.
10. Allowing this request will not interfere with farming on adjacent lands.
11. Allowing this request does not materially alter the stability of the overall land use pattern of the area.

Based on the above-stated Findings of Fact and Conclusions of Law, the Umatilla County Hearings Officer does hereby grant this application with the following conditions:

1. Hours of operation be limited to day-light hours only.
2. The applicant work with the City of Milton-Freewater in regards to haul roads.
3. Reconstruct the access to the quarry site and build drainage systems to prevent further washing out of the access road.
4. Spray the noxious weeds and thistles that are now growing along the ridges and roadways.
5. Provide a way to secure the pit from unwanted trespass by recreational vehicles entering from the county road.
6. There be a yearly review next May, to determine if all the conditions have been met.


Wendell Lampkin
Hearings Officer


Date

Conditional Use Permit C-479

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the matter of Conditional Use Request)
#C-479 to allow an asphalt plant in an)
EFU Exclusive Farm Use (160 acre minimum))
zone. Applicant: Humbert Asphaltng.)
Owner: James Spence Properties, Inc..)

UMATILLA COUNTY
HEARINGS OFFICER

This matter came before the Umatilla County Hearings Officer for a hearing on March 18, 1987, in Room 20, Basement Conference Room, of the Umatilla County Courthouse, Pendleton, Oregon, upon application of Humbert Asphaltng, for a conditional use to allow an asphalt plant in an EFU Exclusive Farm Use (160 acre minimum) zone for property described as follows:

Tax Lot 1700, Assessor's Map 5n 36. The subject parcel (site) is 30 acres of a larger 143.61 acre parcel lying along the east end of an existing easement that extends east off of the Walla Walla River Road, and approximately .5 miles southeast from the Milton-Freewater city limits.

Present was the Umatilla County Hearings Officer, Wendell Lampkin; also, the applicant Mr. Dan Humbert, was present to speak in favor of the request.

At this time, being fully informed of all the issues, the Umatilla County Hearings Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Notice of Hearing was given by publication in the East Oregonian newspaper on March 12, 1987, and the Valley Herald newspaper on March 7, 1987.
2. Notice was given by mail to the owners of all property within 250 feet of the subject parcel.
3. There was no pre-hearing contact between the Hearings Officer and the applicant regarding this request.
4. The County Comprehensive Plan, adopted on May 9, 1983, most recently revised on November 6, 1985, and acknowledged by LCDC on November 21, 1985, designates the property as North-South/County Agriculture.
5. The County Development Ordinance, adopted on June 12, 1985, and most recently amended on November 6, 1985, designates the site as EFU Exclusive Farm Use (160 acre minimum).

6. The site is designated by the USDA-Soil Conservation Service as having a gravel pit designation.

7. The site is served by Walla Walla River Road a two-lane paved road maintained by the County Road Department.

8. The site is located outside the Urban Growth Boundary of Milton-Freewater and is dependent on individual wells and septic tanks.

9. Referrals were sent to:

- A. City of Milton-Freewater - No reply.
- B. County Road Department - Letter received stating they had no objections to the request.
- C. Dept. of Geology & Mineral Industries - No reply.
- D. DEQ - No reply.

10. Mr. Humbert was present at the hearing to speak in favor of the request, stating he would like to establish an asphalt plant at this site in order to be more self-sufficient. He emphasized that in order to operate, he must comply with all the rules and regulation of the DEQ pertaining to dust, smoke, ect.. The plant would be in operation from about April through the middle of December, but would not be in operation every day. The jobs they currently undertake are small projects. Mr. Humbert stated the plant would only operate during daylight hours.

11. Several letters were received pertaining to the proposal as follows: (a) letter from Charles Williamson, retired road supervisor, noting the potential impacts the request would have on the area; (b) letter against request from Mr. and Mrs. Byron Larson, and (c) letter against request from Lewis and Patricia Key.

12. The standards and criteria for granting a conditional use are listed in Sections 7.010 to 7.060 of the County's Development Ordinance. Specific policies within the Comprehensive Plan may also apply to the request concerning limitations in the County's EFU zone; and if so, are addressed herein .

Development Ordinance Criteria

Limitations on Conditional Uses - The following limitations shall apply to all conditional uses in an EFU zone:

- 1. Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.
- 2. Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2) on adjacent lands devoted to farm uses, nor interfere with other resource operations and practices on adjacent lands.

3. Does not materially alter the stability of the overall land use pattern of the area.
4. Is situated upon generally unsuitable land for the production of farm crops and other resource activities considering the terrain, adverse soil conditions, drainage and flooding, vegetation, location and size of tract.
5. Is consistent with agricultural and other resource policies in the Comprehensive Plan and the purpose of this zone.

Development Ordinance Criteria for Granting an Asphalt Plant:

1. Access roads shall be arranged in such a manner as to minimize traffic danger and nuisance to surrounding properties.
2. Processing equipment shall not be located or operated within 500 feet from a residential dwelling.
3. Haul roads shall be constructed to a standard approved by the Public Works Director to reduce noise, dust and vibration.
4. The operation complies with all applicable air, noise and dust regulations of all county, state or federal jurisdictions; and all state and federal permits are obtained before the activity begins.
5. Complies with other conditions deemed necessary by the Hearings Officer.

Development Code Criteria

1. Compatible with farm use - The proposed asphalt plant would not appear to be incompatible with surrounding farm uses as the proposed site is well buffered by scabland not suitable for agricultural purposes. The proposed site is also the location of an existing quarry that has been in existence for many years.

2. Interfere seriously with accepted farming practices - Approval of this request would not appear to interfere with accepted farming practices on adjacent lands devoted to farm use. The adjacent farmland is also owned by the owner of the quarry site. The agricultural production portion of the property is elevated above the quarry and proposed asphalt activity which lies down in the gully. Also, this area has not been farmed for many years with the existence of the quarry site. These two activities have separate accesses during their operation phases.

3. Materially alter the overall land use pattern of the area - Approval of this request would not appear to materially alter the overall land use pattern of the area as no new tax lots will be created, and the proposed use is only an expansion on an existing and similar use.

4. Situated upon unsuitable land for the production of farm crops - The proposed use will occupy the area of an existing quarry site where no additional agricultural land is anticipated to be removed from agricultural production.

5. Consistent with agricultural and resource policies - Approval of this request would not appear to be inconsistent with agricultural or resource policies in the Comprehensive Plan as the site is already occupied by a permitted non-farm use.

6. Access roads - The proposed asphalt plant has direct access off of the Walla Walla River Road via the same access now being used for the quarry operation. This access, and in particular the mouth of the access, has been an area of contention to the property owners living on the adjacent side of the road access. In past years, during heavy rains and spring thaw, this access acts like a spillway for water accumulating up this draw and dumps dirt, mud and large rocks on those parcels across the road. Should this request be granted, this problem should be addressed to avoid any future runoff problems.

CONCLUSIONS OF LAW

1. The opinions of governmental units were sought and no adverse comments were received.
2. Persons were given the opportunity to be heard.
3. Legal notice of hearing was properly advertised.
4. The site has adequate ingress and egress for any additional traffic generated by allowing this conditional use served by Walla Walla River Road a two-lane paved road maintained by the County Road Department.
5. Allowing this request would appear to be compatible with surrounding farm uses as the request will be associated with an existing quarry site that is well buffered on all sides by scabland that is not suitable for farm use.
6. Approval of this request would not interfere with accepted farming practices on adjacent lands due to its location down in a draw and below the existing farming operation also owned by the owner of the gravel pit.

7. Allowing this request would not materially alter the stability of the overall land use pattern of the area as no new lots will be created and the applicant is asking to expand an existing use on an area of land already committed to a mining operation.

8. Allowing this request would be consistent with agricultural and resource policies as the site is already occupied by a similar use.

9. Letters received stating in favor of this request and also letters received stating opposition to this request.

10. Approval of this request would not be detrimental to Umatilla County as the applicant has agreed to meet the criteria of the Development Ordinance Code and the following conditions:

1. The applicant will be required to locate the batch plant at least 500 feet from the nearest residential residence;
2. The applicant contact the County Road Department concerning the road access and the condition of the interior roads;
3. The applicant show proof that they have complied with all air, noise and dust control as required by the state and federal regulations with regard to the existing gravel extraction operation;
4. The applicant submit a revised plot plan showing the exact location of the batch plant in relation to existing residences and including any recommendation from the Road Department on haul roads;
5. The applicant place a culvert under the road access to the quarry site, according to the County Road Department's specifications and pave the access road into the quarry site to eliminate the depositing of mud on the county road.
6. A one-year review be held to determine if all the conditions have been met.

Based on the above stated Findings of Fact and Conclusions of Law, the Umatilla County Hearings Officer does hereby grant this application.


Wendell Lampkin
Umatilla County Hearings Officer

4-14-87
Date

2014 Zone and Text Amendment Z-300-14, T-14-052

**UMATILLA COUNTY BOARD OF COMMISSIONERS
FINDINGS AND CONCLUSIONS
ZONE MAP AMENDMENT REQUEST, #Z-300-14
PLAN TEXT AMENDMENT REQUEST, #T-14-052
MAP #5N 36 07, TAX LOT #200, Account #134106**

1. APPLICANT: A & B Asphalt¹
PO Box 5280
Benton City, WA 99320

2. OWNER: James Spence Properties
510 West Main Street
Walla Walla, WA 99362

3. REQUEST: The request is to add 33.26 acres of land to the acknowledged County Goal 5 Rock Material Resources Inventory (RMRI) of the Comprehensive Plan. This RMRI is the County's Goal 5 significant aggregate resource site inventory. The proposal is also to implement the RMI designation by applying the County Aggregate Resources Overlay Zone (ARZO) to the 33.26 acres. As relevant here, there are 9.83 acres abutting the 33.26 acres to be added to the RMRI to the west, and these 9.83 acres are already on the County RMRI.² Since these 9.83 acres are already on the RMRI, there is no reason to add them to the RMRI.³ The 33.26 acres proposed to be added to the County RMRI includes three areas:

1. A 14.15 acre portion of an existing quarry site⁴ approved for mining under County conditional use permits (CUPs) C-333 (1984) and C-479 (1987).⁵ Some of the 14.15 acre area has been mined and some has not been mined and all of the 14.15 acre area is still being mined. Mining is proposed to continue or begin anew, as applicable, on all of this 14.15 acres. None of this area is on the existing County RMRI.
2. A 7.47 acre area composed of a half arc around the above area. This 7.47 acre area is outside the above referenced CUP areas and outside of the existing RMRI area.
3. 11.64 acres of land to the north of the areas described above. This 11.64 acre area is also outside of the CUP areas described above and is not on the existing RMRI.

A map showing the areas to be added to the RMRI is attached to the application. The proposal to add the 33.26 acre areas described above to the County's RMRI

¹ While A & B Asphalt is the applicant, this approval is not personal to A & B and will run with the land.

² These 9.83 acres are also approved for mining and processing under two County conditional use permits – C-333(1984) and C-479 (1987).

³ It is noted here that about 30 acres is approved for mining and processing under a 1984 conditional use permit (C-333). This 30 acres includes the 9.83 acres on the RMRI, plus the 14.15 acres described in Section 1 below and other acres to the west of the proposed area that not included or at issue in, this application.

⁴ The existing quarry site is called the "Spence Pit".

⁵ Those CUPs, issued years ago are not at issue in this decision.

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is designed to protect and support mining in and around the existing pit and in specific areas outside the scope of the existing CUPs for the existing pit. Conducting mining operations pursuant to a Goal 5 designation as a significant site on the County's RMRI provides more protection and certainty for the aggregate operator than a site not on the RMRI.

4. **LOCATION:** The property is located east of the Walla Walla River Road, approximately ¼ mile from the city of Milton-Freewater.
5. **SITUS:** There is no situs address for this property.
6. **ACREAGE:** Tax Lot 200 is 286.79 acres.
7. **COMP PLAN:** TL 200 has the North/South Agricultural Region Plan Designation. There is an existing RMRI designation on a part of TL 200. The existing RMRI on TL 200 is described as T5N R36E 7 SW ¼ of the SW ¼ and is designated as a "2A" site. This means this RMRI area was determined by the County to be a "significant site with no conflicting uses identified". The 9.83 acres is the only developed part of the "Spence Pit" that is within the existing RMRI area. The proposed 33.26 acre area to be added to the RMRI is not within, but rather abuts, this ¼ section area described above as a "2A" site.
8. **ZONING:** Exclusive Farm Use (EFU, 160 acre minimum).
9. **ACCESS:** The property has access to Walla Walla River Road (Co. Rd. No.610) via a private roadway.
10. **ROAD TYPE:** Walla Walla River Road, (No.610), is a paved County roadway.
11. **EASEMENTS:** There is a natural gas line easement on TL 200. The specific location of the easement is identified on the county property owner notice map. The natural gas line transects TL 200 from north to south, approximately in the middle of the existing approved quarry area. The proposed RMRI amendment does not include, and is to the east of, this natural gas line easement.
12. **LAND USE:** TL 200 is used for agricultural purposes (dry land wheat farming) and also includes the approved quarry, asphalt batch plant and rock crusher operations. The area of the subject TL 200 property where the asphalt batch plant is situated is on the part of the property that is on the existing County RMRI and this asphalt plant is approved as "processing" approved under CUP C-333 and also specifically by CUP C-479 (1987) and is not a part of this application.
13. **ADJACENT USE:** Properties surrounding TL 200 are also zoned EFU, and are used in similar ways to the subject property – dryland wheat farming. Abutting the west TL 200 boundary is the Milton-Freewater Urban Growth Boundary. A small portion of the west boundary of TL 200 abuts a rural residential area with home sites. To the west approximately 1,500 feet from the TL 200 boundary is the

Milton-Freewater City Limits.

Adjacent land uses to the subject 33.26 acres, are dryland wheat farming to the north, south and east and mining (on the existing 9.83 acre RMRI site) to the west. No residences or residential zones abut the 33.26 acre area subject to the application.

- 14. SOIL TYPES:** The subject property contains non-high value and high value soil types. High Value Soils are defined in UCDC 152.003 as Land Capability Class I and II.

Soil Name, Unit Number, Description	Land Capability Class	
	Dry	Irrigated
61C: Oliphant silt loam, 3-12% slopes	Iie	Iie
50F: Licksillet- rock outcrop complex, 40-70% slopes ⁶	7e	--

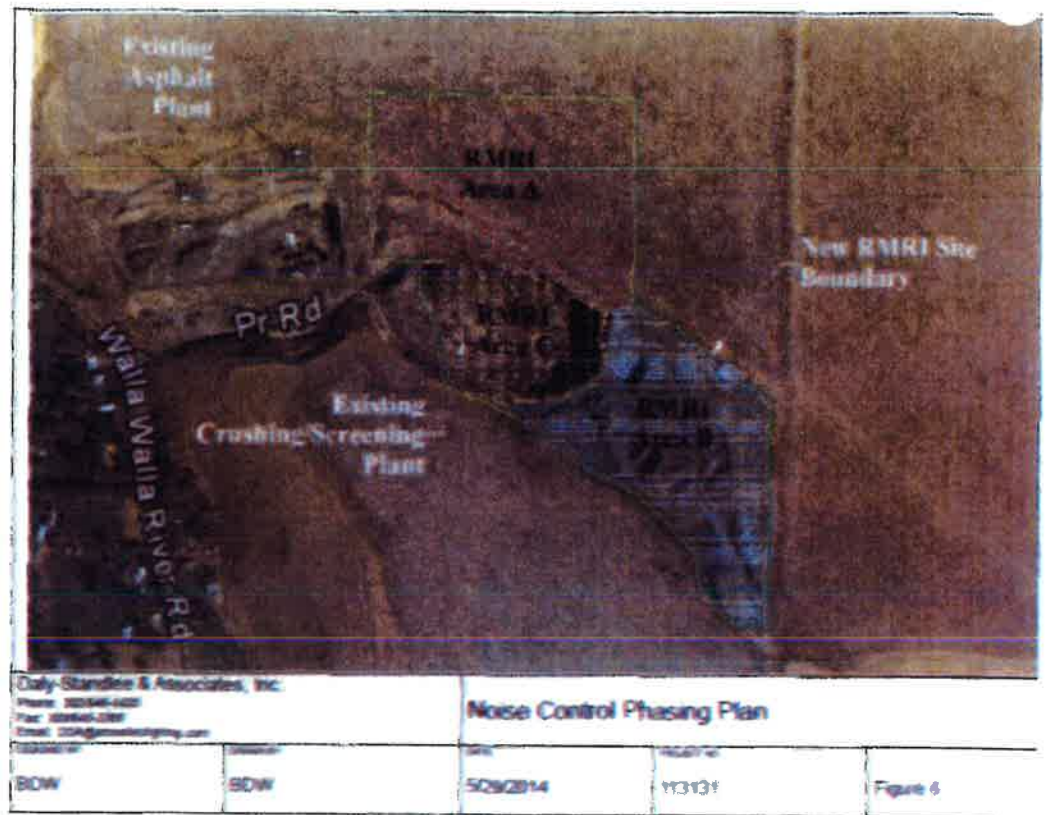
*Soil Survey of Umatilla County Area, 1989, NRCS*⁷. The suffix on the Land Capability Class designations are defined as “e” – erosion prone, “c” – climate limitations, “s” soil limitations

- 15. STRUCTURES:** There is an office and scale house to the west of the proposed 33.26 acre RMRI area, within the existing 9.83 acre RMRI area. There is also an asphalt plant located within the existing 9.83 acre RMRI area. The office, scale house and asphalt plant are currently approved through the existing county RMRI and also conditional use permits (C-333 and C-479) and so need not be included as a part of this application.

There is a portable rock crusher located in the existing CUP quarry area in the 14.17 acre area or the part of the proposed mining area referred to in this process as “Area B.” A graphic showing the mining areas is below for reference.

⁶ These soils are referred to in these findings as “Licksillet”.

⁷ This is the NRCS map that is now, and that was in 2004, “currently available.” OAR 660-023-0180(3)(c)(B).



Because the 14.17 acre area (which roughly includes most of areas C and B), a portion of the 33.26 acres to be added to the RMRI, is not on the existing RMRI, this area containing the portable rock crusher is included in the RMRI amendment approved herein. The crusher is “re-justified” here as the applicant seeks to add the area on which it is situated to the RMRI and this means all parts of the proposed RMRI must establish compliance with OAR 660-023-180.

16. UTILITIES: The parcel is served with electrical power.

17. WATER/SEWER: There are no water rights associated with the proposed operation. There is a domestic well that supplies water for the office and for dust control. The domestic well is considered an “exempt” use and may be used to supply up to 5,000 gallons of water per day for these purposes without a water right. The applicant will also maintain three 10,000 gallon water tanks on-site to store non potable water to aid in dust control. Auxiliary water may be purchased from the City of Milton-Freewater as needed. The applicant estimates daily peak demand of about 6,000 gallons of water per day. There is adequate water available to serve the site.

There is no sewer available to serve the property. The property is served by an on-site septic system.

18. RURAL FIRE: The property is served by the Milton-Freewater rural fire district and is within

the Milton-Freewater Ambulance Service District. A condition of approval requires evidence that the applicant establish and maintain a subscription to the fire district.

- 19. IRRIGATION:** The property is not within an irrigation district. As noted, there are no known water rights permitted by the Oregon Water Resources Department for this operation.
- 20. FLOODPLAIN:** The property is NOT in a floodplain. The property is found in Zone D ("Undetermined flooding") which is NOT a special flood hazard. The Community Number for Umatilla County is #41059C and the Panel Number that covers this area is #0575-G effective September 3, 2010. The Panel is not printed.
- 21. NOTICES SENT:** Notice was sent on February 20, 2014 to the Department of Land Conservation & Development and to affected agencies. Notice to adjacent property owners was sent on March 14, 2014 for the Planning Commission hearing and on May 31, 2014 for the Board of Commissioners Hearing. The notice area map includes all properties located within 750 feet of the subject property (tax lot 200) and all properties within 1,500 feet of the proposed RMRI area. All properties within the two boundaries were provided notice.
- 22. PUBLIC HEARINGS:** The Umatilla County Planning Commission conducted two hearings on the application. One hearing was on Thursday, March 27, 2014 and the other was on April 24, 2014. The Planning Commission deliberated on April 24, 2014 and recommended approval of the application subject to specific conditions, to the Board of Commissioners. The Board of Commissioners conducted their hearing on the matter June 11, 2014. After closing the hearing, the Board of Commissioners deliberated and voted to approve the proposal subject to the Planning Commission's recommended conditions of approval.
- 23. AGENCIES:** Department of Land Conservation and Development, Department of Agriculture, Department of Geology and Mineral Industries, Oregon Water Resource Department, Oregon Department of Transportation, County Assessor, County Public Works, Walla Walla Watershed Council, City of Milton-Freewater, Milton-Freewater School District, Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources.
- 24. COMMENTS/EXHIBITS:** A list of the exhibits placed before the Planning Commission and the Board of County Commissioners is listed at the end of these findings. No offered evidence was rejected. Rather, all evidence submitted to the decision makers was accepted.
- 25. STANDARDS OF THE OREGON ADMINISTRATIVE RULES, DIVISION 23 FOR GOAL 5 LARGE SIGNIFICANT SITES** are found in OAR 660-023-0180 (3), (5), & (7). The standards for approval are provided in underlined text and the responses are indicated in standard text. The UCO Aggregate Resource Zone standards in UCD 152.485-491 also apply to the extent they are not

inconsistent with the requirements and authorizations in OAR 660-023-180.

Because the Umatilla County Development Code has not been updated to incorporate the OAR 660-Division 23 Rules relative to Goal 5 Aggregate Resources, OAR 660-023-0180 to establish a Goal 5 Large Significant Site is required to be applied directly to this application per OAR 660-023-180 (9). The AR zone also requires compliance with applicable portions of OAR 660-023-180. UCO 152.487(5).

Summary/Overview of Goal 5 Process for Significant Aggregate Sites

There are seven steps in the Goal 5 process applicable to mining.

Step One

The first step is to decide whether the aggregate resource⁸ site to be added to the RMRI is "significant".

To decide whether an aggregate resource site is significant (and thus can be added to the County's RMRI), the County must apply OAR 660-023-0180(3) or (4). OAR 660-023-180(4)(a) authorizes a site to be determined to be significant if the material quantity in the site to be added to the RMRI is below 500,000 tons and is of a lesser quality than required for OAR 660-023-0180(3).⁹ The material in the 33.26 acre area to be added to the RMRI exceeds both thresholds. It is noted that OAR 660-023-180(4)(c) also authorizes a site to be determined to be significant regardless of quantity and quality if:

"A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination."

Regarding this provision, the County notes that prior to April 3, 2003, while the County had not added the 14.15 acres to the RMRI, the county had issued C-333 (1984) which authorized mining and processing on 30 acres including the 14.15 acres to be added to the RMRI. The evidence in the record establishes that there is between 400,000 and 500,000 tons of rock meeting the quality requirements of OAR 660-023-0180(3)(a) in the 14.15 acre portion of the 33.26 acres to be added to the RMRI alone and, more than 500,000 tons of rock meeting the quality and quantity standards in the 33.26 acre area overall. Therefore, for simplicity the County determines the significance of the 33.26 acre area to the RMRI based on OAR 660-023-180(3), and not (4).

OAR 660-023-0180(3) requires an aggregate site¹⁰ to be considered "significant" if the applicant shows

⁸ OAR 660-023-0180(1)(a) defines the term "aggregate resources" as follows: (a) "Aggregate resources' are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction." The proposed 33.26 acre significant site is evaluated as a basalt resource area and basalt is commonly used in road building and other construction. This staff report, like the administrative rule, refers to this basalt resource as an "aggregate resource."

⁹ OAR 660-023-0180(4)(b) also includes the requirement found in OAR 660-023-180(3)(b) that the area to be added to the RMRI is composed of not more than 35% Class 1 or 2 soils.

¹⁰ This is an aggregate site because it has "aggregate resources." OAR 660-023-0180(1)(a) defines the term "aggregate resources" as follows: (a) "Aggregate resources' are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction." The proposed 33.26 acre significant site is evaluated as a basalt resource area and basalt is commonly used in road building and other construction. This staff report, like the administrative rule, refers to this basalt resource as an "aggregate resource."

that the quantity and quality of material meets certain quantity and quality standards and that the "proposed mining area" added to the RMRI is not composed of more than 35% soil classified as Class 1 or 2 on NRCS mapping. The OAR 660-023-180(3) quantity and quality standards are:

"(3)(a) A representative set of samples of aggregate material in the deposit on the site meets **applicable** Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than * * * 500,000 tons outside the Willamette Valley."¹¹

It is explained later in these findings that the material in the 33.26 acre area to be added to the RMRI meets the quantity and quality standards and is not composed of more than 35% Class I or II soils. Therefore, the area to be added to the RMRI under the proposal is required to be considered "significant."

Step Two

If, as here, the aggregate resource on the proposed RMRI site is determined to be "significant," then the second step in the process is to decide the scope of the "impact area" for purposes of evaluating whether there are "conflicts" from allowing mining on sensitive uses within the identified impact area. This conflicts analysis falls under the third step in the process.

Location from Which the Rule Requires Impacts Be Measured

OAR 660-023-0180(5) limits the area in which impacts may be evaluated and the types of impacts that may be evaluated in that area. OAR 660-23-0180(5)(a) establishes that impacts may only be evaluated from the perimeter of the area to be added to the RMRI. In a situation like this one where there is an abutting mine already on the RMRI, the rule states that the impact area is drawn from the expanded area to be added to the RMRI and does not take in the area already on the RMRI:

"For a proposed *expansion of an existing aggregate site*, the impact area shall be measured from the *perimeter of the proposed expansion area* rather than the boundaries of the existing aggregate site and *shall not include the existing aggregate site*." (Emphases supplied.)

Relatedly, OAR 660-023-0180(5)(g) establishes:

"Local governments shall allow a currently approved aggregate processing operation at an *existing site* to process material from a new or *expansion site* without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government." (Emphases supplied.)

The existing asphalt plant is located on the existing 9.83 acre area already on the RMRI. Therefore, if mining is allowed, then the County is required to allow that asphalt plant to be used to process material in the RMRI expansion area (the 33.26 acres) without subjecting the 9.83 acres already on the RMRI to

¹¹ OAR 660-023-180(3)(b) provides an alternate to this quality and quantity requirement as follows:

"(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section." The County has not adopted any such alternative standards.

an impact or other analysis.

This follows from the definition of an "existing site" (which is excluded from the impact analysis area) in OAR 660-023-0180(1)(c) which means a site that "was included on an inventory of significant aggregate sites in an acknowledged comprehensive plan, on September 1, 1996" or one that was not on the inventory but was "lawfully operating" on that date. As explained later in these findings, only the 9.83 acres (not to be added again to the RMRI) was on the county's acknowledged Goal 5 inventory of significant sites on September 1, 1996. However, it is also true that no part of the "Spence Pit" was "lawfully operating" on the requisite date because between July 23, 1996 and November 5, 1996 the site here was under a DOGAMI "Closure Order".¹² The DOGAMI Closure Order expressly states:

"No further extractive mining activity or processing or removal of stockpiled material may be conducted at this site in the absence of a valid operating permit."

Thus it is impossible that the site was "lawfully operating" on September 1, 1996 because DOGAMI had forbidden it from operating on that date. Thus, per the express terms of the rule, the 33.26 acres proposed to be added to the RMRI, is an "expansion area" of the 9.83 acre "existing site". In this regard, OAR 660-023-0180(1)(d) defines "expansion area" to mean "an aggregate mining area contiguous to an existing site."

The Scope of the Impact Analysis Area

OAR 660-023-180(5)(a) specifies the scope of the impact area, as follows:

"The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site."

As noted, OAR 660-023-180(1)(c) defines "Existing Site" as follows:

"(c) 'Existing site' is an aggregate site that meets the requirements of subsection (3)(a) of this rule and was lawfully operating, or was included on an inventory of significant aggregate sites in an acknowledged plan, on September 1, 1996."

As explained in greater detail below, per these requirements, the impact analysis area is drawn 1,500 feet from the boundaries of the 33.26 acre area to be added to the RMRI and does not include the 9.83 acre area that is already on the RMRI. As is also explained below, the Board of Commissioners finds that there is no "factual information [that indicates] significant potential conflicts beyond this distance."

THIRD STEP

The third step in the analysis is to determine whether there are "significant conflicts" within the impact area.

¹² Birch Creek had the subject site at the time.

Impacts Considered in the 1500 foot Impact Area

OAR 660-0123-0180(5)(b) explains the types of conflicts that may be considered, as follows:

“The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, ‘approved land uses’ are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

- “(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;
- “(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;
- “(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;
- “(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;
- “(E) Conflicts with agricultural practices; and
- “(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780[.]”

As explained later in these findings, in the impact analysis area, relating to the first type of conflict “noise, dust or other discharges...” the three potential conflicts in the 1,500 foot impact area identified by the Planning Commission and Board of Commissioners: (1) noise, (2) dust and (3) blasting.

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Step Four

The fourth step in the process is to take the identified “conflicts” and decide whether there are “reasonable and practicable” measures that will reduce the identified conflict(s) to a level where they are no longer significant. The selected measures to minimize conflicts are required to be “clear and objective.” If there are such measures then the rule specifies that “mining shall be allowed.” These steps follow from OAR 660-023-180(5)(c), which provides:

“The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. *If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable.* If identified conflicts cannot be minimized, subsection (d) of this section applies. (Emphasis supplied.)

OAR 660-023-180(1)(g) defines how the County “minimize[s] a conflict” by stating to do so:

“means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to ‘minimize a conflict’ means to ensure conformance to the applicable standard.”

OAR 660-023-180(5)(e) specifies that mitigation conditions must be clear and objective as follows:

“Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective.”

As explained in these findings, based on the evidence the Board determined that: (1) dust conflicts are mitigated by assuring adequate water is available for dust control and requiring certain dust control measures; (2) noise is mitigated by mining as outlined in the noise study which keeps noise at levels that comply with all relevant state noise standards; and (3) blasting is mitigated by compliance with the applicant’s blasting plan as well as conducting one pre-blast survey and also providing notice of blasting each time within specified areas.

Step Five

The fifth step in the process is to take any identified conflicts that the County finds *cannot* be mitigated and decide whether mining should be allowed anyway, by running the proposal through the Goal 5 “ESEE” process specified in OAR 660-023-180(5)(d). This step is unnecessary where (as here) identified conflicts are minimized. OAR 660-023-180(5)(e). In other words, if conflicts are identified under step three, and the County were to find that there are no “reasonable and practical measures” by which those conflicts can be minimized, “then the county must proceed to step five and determine the ESEE consequences (economic, social, environmental and energy) consequences of ‘either allowing, limiting or

not allowing mining at the site.” *Hellberg v. Morrow County*, 49 Or LUBA 423, __ (2005) (“* * * If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.”)

As explained below, all identified conflicts are “minimized” as that term is defined in the rule. Therefore, the County is not required to address the fifth step ESEE analysis and it does not do so.

Step Six

The sixth step applies where mining is allowed, as here. In the sixth step, the County is to determine whether it needs to add any additional protections for the mining site by limiting or preventing new conflicting uses. This follows from OAR 660-023-180(7) quoted below:

“* * * local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site.”

As explained below, while the applicant proposed a notice to property owners and covenant not to object to lawful mining activities for “conflicting uses” within the 1,500 foot impact area, the County decided this was unnecessary. Under the County Code (UCO 150.04 and 150.08), once an area is added to the RMRI, it is deemed a “resource site” and no complaints about allowed mining activity from nonresource users will be acted on by the County and the scope of allowed complaints is quite limited. The County finds this is substantial protection for the site and that additional protection is unnecessary.

Step Seven

The final step in the process requires the County to determine post-mining uses of the property. This follows from OAR 660-023-180(5)(f), which states:

“Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780”

As explained below, the County incorporates the DOGAMI approved reclamation plan to specify the “post-mining” uses of the property.

Specific Analysis of the Applicable Goal 5 Rule Standards

STEP 1: OAR 660-023-0180(3) “Significance Determination”

- (a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (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;

This standard asks for an analysis of “representative samples” from rock the proposed RMRI area and whether the rock thus sampled meet certain standards. Rock core samples were taken in three random areas outside of the existing 14.15 acre pit, in the 11.64 acre area to the north. The area where core samples were taken from are composed of Class II soils according to the NRCS survey. Samples from random locations in the 11.64 acre area to the north confirm the amount of rock there and that it meets required standards. It was discovered through these core samples that the 11.64 acre area is essentially a continuation of the basalt that is mined in the existing pit and 7.47 acre half arc around the existing pit. The existing pit plus the 7.47 acre half arc around the existing pit are all composed of Class VII Lickskillet Rock Outcrop” according to the NRCS. The County finds that the three rock core samples are “representative samples” of the 33.26 acre area to be added to the RMRI.

The County further notes that the 14.15 acre portion of the existing pit is being mined and the record establishes that it alone is estimated to have between 400,000 to 500,000 tons of rock of the requisite quality left in it. Rock from the 14.15 acre area currently being mined have been evaluated by the company as well as for actual projects. The record shows that representative sampling from those evaluations meet the required ODOT quality standards described in the rule. The record is undisputed that the pit supervisor, Mr. Stalder, is familiar with the rock in the pit and has expertise in rock testing. He gave his opinion that the rock in the existing 14.15 acre area being mined meets all required ODOT standards.¹³ The evidence regarding the rock in the existing pit for rock soundness and degradation under a #20 screen is the opinion of Mr. Stalder which the County finds persuasive. The evidence of soundness based on a #20 screen from the representative core sample to the north is the geologists report described later. The WSDOT reports in the record from rock from the 14.15 existing pit, confirm that the rock meets all required tests. The exception is the one 2012 WSDOT report submitted by opponents. This one rock test failure does not undermine the representative samples for the 33.26 acre area taken from the core samples or the fact that the weight of the evidence including the representative rock from the 14.15 acres meets required ODOT tests.

The letter from the pit manager, Mike Stalder, further explains that the 14.15 acre area still has between 400,000-500,000 tons of high quality rock meeting the above referenced ODOT standards left in this area. He goes on to explain his expertise and to conclude:

“It is further my expert opinion that the lens of hard rock in the 14.15 acre area extends to the other areas to be added to the RMRI boundary...”

Moreover, the existing pit has long been described as rocky and a previous 1948 Umatilla County Soil Conservation Service soil survey, as described in a 1977 conditional use permit for the site, (superseded by C-333 in 1984), characterized the existing pit area as “rough, broken stoney land with characteristic steep slopes and rough, broken ground that makes cultivation impossible”. Further, there is a basalt rock face to the north and also east of the existing pit area. Basalt is also being excavated in south pit area of the 14.15 acres. It is visually obvious that the basalt in the existing pit continues into the 7.47 acre half arc of Lickskillet soils around the existing 14.15 acre pit area to be added to the RMRI.

¹³ The record establishes that the WSDOT and ODOT standards are the same. None of the WSDOT reports for the particular projects ran the material through a #20 screen for degradation but rather were tested having been screened at ¼” or 3/8”. The rock met the applicable degradation tests for ¾ and 3/8’ material.

The applicant submitted a geologist report and a materials testing report from Karl Languirand, P.G. and reviewed by Monica Saculles, P.E. (Geotechnical Engineer), explaining the ODOT standards and comparing the core samples taken from the 11.64 acres to the north, as below.

Sample Description	Soundness (Weighted Loss%)	L.A. Abrasion (Weighted Loss)	Oregon Degradation
Crushed Basalt Core from various depths	3.7 % Fine	21%	4.6 % Passing #20 Screen
	0.8 % Coarse		0.3" Sediment Height
2002 ODOT Standard Specifications according to section 02630	Tested Per AASHTO T 104	Tested Per AASHTO T 96	Tested Per ODOT TM 208
	12.0% Maximum Loss	35.0 % Maximum Loss	Passing #20 Screen - 30% Max Sediment Height - 3" Max

*The Oregon degradation % is the amount of degraded material that passes through a # 20 screen. WSDOT expresses Degradation as the percentage of rock that is not degraded and that does not pass through a screen or as a factor.

The geologist's report in the record explains that there are approximately 709,156 tons of quality minable material in the 11.64 acre area to the north alone based on two of the three bore holes¹⁴ and this rock has the requisite quality. This means the entire 33.26 acre area to be added to the RMRI has between 1,100,000 and 1,200,000 tons of rock meeting the required quality standards. The geologist also submitted a supplemental report responding to opponent concerns. The geologist's initial report explains that the rock sampled is from old lava flows and that in particular, the rock sampled from Bore Holes 1 and 3 was of nearly identical type and quality. Rock layers, like the massive basalt layer of quality rock at the existing pit's north and eastern rock faces and from the similar samples removed from the Bore Hole samples, do not begin and end at property lines. Where, as here, a thick layer of rock is evident at the current quarry face and where the NRCS study identifies the rock in the 14.15 acre existing pit and the 7.47 acre half arc around it as a particular type of rock outcrop and the same type of rock was found 400 and 1,000 feet to the center north and north west where test holes No 1 and 3 were located, it is reasonable to conclude that a continuous lens of rock of a similar type and quality underlies and extends through the proposed RMRI area boundary.¹⁵

Opponents did not dispute the quantity of rock in the proposed RMRI area and there is no evidence that the requisite quantity does not exist. The opponent concerns were about quality. They argued that the representative samples of the rock quantity and quality are not representative enough; that the sample methodology was flawed; and that the elevations for the collection of the samples were erroneous. The opponents also submitted a single June 2012 WSDOT sample they claim failed to meet ODOT

¹⁴ These two boreholes are located in the center of the property and to the west. See Geologist's Report "Site Map with Boring Locations."

¹⁵ It is noted that test hole No 2 had some similar rock but also had some lesser quality rock. The Geologist's report explains that the representative samples show that based on the other two borings in the RMRI area, there is more than 700,000 tons of rock meeting required standards.

standards and claimed that single test result undermined the other evidence of rock quality. Taking the latter first, the County finds that a single WSDOT sample failure does not undermine representative samples that did meet relevant ODOT standards – both from new rock core samples as well as from the existing pit areas. As to the other concerns, the County finds the applicant’s samples are adequately representative, that the sampling methodology was appropriate, and that the sampling elevations were correct. Specifics follow.

Regarding that the core samples are representative and the collection methodology valid. As the geologist explained in the supplemental report responding to these issues, the three boring holes were at selected at random locations and were identified using “standard geologic and engineering practices.” He further explained:

“The rock samples from the three borings were combined to mimic the work practice of the future pit operation. It was a way to assess future procedures accurately.”

As to the criticism of taking samples at varying elevations, the geologist’s supplement further explained:

“The depths of the samples that were collected mimic the work practices of the future mining operation as the mining will occur continuously throughout the vertical and lateral extents of the expansion area.”

The county finds that the sampling methodology was appropriate and that such appropriately taken and analyzed representative samples show that the rock in the proposed RMRI area is composed of more than 500,000 tons of aggregate resource material and that this material meets required ODOT standards and the minimum standards for Goal 5

b. Proposed RMRI area is not composed of more than 35% Class I or II soils.

The proposed RMRI area is within the Columbia River Plateau. Wind blown soils overlay a layer-cake of basalt flows that occurred over millions of years as explained in the Geologist’s Report.

Per the required NRCS, the proposed RMRI area includes Class II soils.

Table 2 – Soil Types in the Proposed RMRI Area

Soil Type	Area	Percentage	Capability Class (Dry)	Capability Class (Irrigated)
Lickskillet rock outcrop	21.62 acres	65%	VII	n/a
Oliphant	11.64 acres	34.99%	Ile	Ile
Total area	33.26 acres	100%		

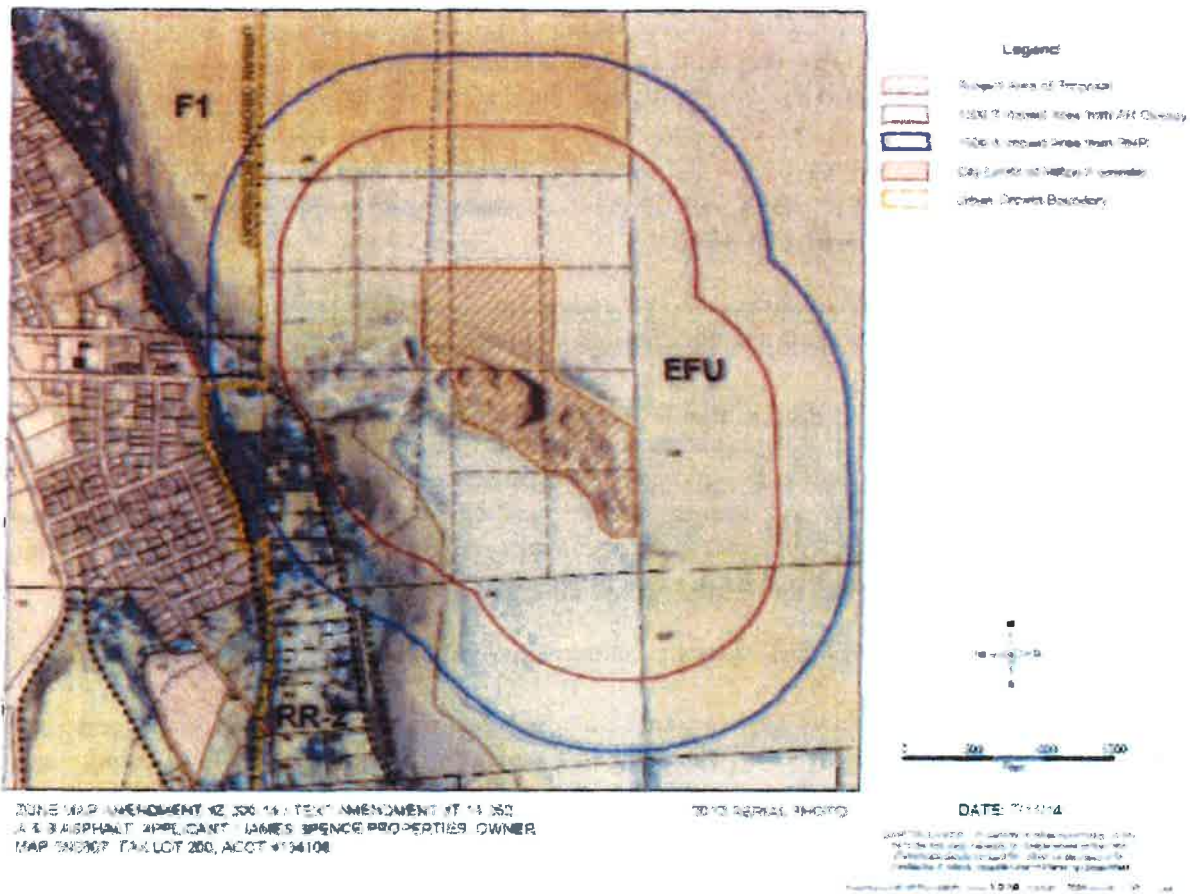
The Class II (Oliphant) soil¹⁶ does not exceed 35% of the area proposed to be added to the RMRI.

¹⁶ Soil types are taken from the required NRCS maps.

The proposed RMRI site is significant.

2nd Step – Impact Area for Analysis

The County identified a 1,500 feet Impact Area from the boundary of the 33.26 acre “proposed expansion area”. The blue line identifies the “1,500 feet impact area from Proposed Expansion Area.” It is also noted that the dark pink line on the vicinity map marks the area that is 1,000 feet from the western boundary of the proposed RMRI.



Just outside the 1000 foot mark is the boundary of Rural Residential Zoning, where several dwellings are located, just to the west of the Walla Walla River Road. Other land uses within the 1,500 feet boundary include dry land wheat farming and mining.

The impact area was drawn from the boundaries of the proposed 33.26 acre RMRI area and the Board finds this to be appropriate. It would not be appropriate to draw the impact area from the 9.83 acres that is already on the county RMRI. This was an issue in the hearings below and the Board explains its reasoning for excluding the 9.83 acres below.

OAR 660-023-0180(5) limits the area in which impacts may be evaluated and the types of impacts that

may be evaluated. OAR 660-23-0180(5)(a) establishes that impacts are to be evaluated from the perimeter of the area to be added to the RMRI. In a situation like this one where there is an abutting mine already on the RMRI, the rule further states that the impact area is drawn from the expanded area to be added to the RMRI and does not take in an abutting area that is already on the RMRI:

“For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.” (Emphases supplied.)

The definition of “existing site” in OAR 660-023-180(1)(c) means a site that “was included on an inventory of significant aggregate sites in an acknowledged comprehensive plan, on September 1, 1996” or one that was not on the inventory but was “lawfully operating” on that date. Only the 9.83 acres (not to be added again to the RMRI) was on the county’s acknowledged Goal 5 inventory of significant sites (the RMRI) on September 1, 1996. No part of the “Spence Pit” (which would include the 14.15 acres to be added to the RMRI and the 9.83 acres on the existing RMRI) was “lawfully operating” on the requisite date because between July 23, 1996 and November 5, 1996 the entire site was under a DOGAMI “Closure Order” stating the mine is “closed to all surface mining activities.”¹⁷ The DOGAMI Closure Order expressly states:

“No further extractive mining activity or processing or removal of stockpiled material may be conducted at this site in the absence of a valid operating permit.”

Accordingly, there can be no dispute that on September 1, 1996 the site was precluded from “lawfully operating”. If it did operate during this time, it would not be “lawfully operating.” Which means it is impossible that the site was “lawfully operating” on September 1, 1996. Which further means under the definition in the rule, that the only “existing site” is the 9.83 acre area that was already on the county inventory, which standard does not concern itself with whether the pit was “lawfully operating on September 1, 1996.” The proposed RMRI area abuts this 9.83 acre “existing site” area.

On March 27, 2014 DLCD submitted comments to the County. In that letter DLCD stated:

“It is [DLCD’s] position that it would be inconsistent with the rule not to recognize the entire existing quarry as an ‘existing site’ and that an ‘expansion area’ and an ‘existing site’ cannot overlap.”

DLCD then contended in a follow up email of the same date, a seemingly inconsistent position:

“An existing site is not precluded from obtaining Goal 5 protection. An operator of an existing site can apply for a comprehensive plan amendment to and seek protection for ongoing operations or new operations following the procedures set out in the Goal 5 rule”¹⁸.

It is difficult to draw a definitive conclusion from DLCD’s position. The County finds, however, it does not matter, because no “existing site” as the rule defines it is being added to the RMRI. Which brings us to the definition of “existing site” in the rule. DLCD acknowledged in its March 27, 2014

¹⁷ Birch Creek had the subject site at the time.

¹⁸ The “Goal 5 Rule” is OAR 660-023-180.

letter that the OAR defines an “existing site” to refer to the two above referenced situations: One type being a site that is already on an inventory of significant sites on September 1, 1996 (here the 9.83 acre area) and the other type of “existing site” is one that was “lawfully operating” on September 1, 1996. DLCD focuses on the latter type of “existing site” then went on to explain that it is not clear to the agency what “lawfully operating” means, but states it has a “preference” about the meaning of that term:

“[t]he term ‘lawfully operating’ leaves some room for interpretation. One possibility is that a business with a temporary gap in any permit authorization on September 1, 1996 may not have the same status under the rule as one that did not have such a gap. Another possibility is the term refers to land use authorization. The department prefers the latter interpretation, particularly since the term is in DLCD’s administrative rule; a rule that deals with land use authorization.”

Translated to the facts here, DLCD is saying that the 14.15 acre portion of the proposed expansion area should be considered an “existing site” based on the agency’s preferred interpretation of “lawfully operating” because there was a CUP that allowed mining it on September 1, 1996. Respectfully, the County believes DLCD’s “preferred” interpretation is wrong and cannot be reconciled with the express terms of the rule, its context or legislative history. As explained previously in these findings, on September 1, 1996, the pit was under a DOGAMI Closure Order stating the mine is “closed to all surface mining activities.” This order made any mining at the site unlawful, expressly stating that:

“No further extractive mining activity or processing or removal of stockpiled material may be conducted at this site in the absence of a valid operating permit.”

In order to operate a mine lawfully, the operator must possess a valid DOGAMI permit. ORS 517.750 et seq. When state permission to operate a mine is required, and that permission is removed through a “Closure Order”, then no mining operations are lawful. By analogy, a suspended license to drive a car does not mean that one lawfully operates their car during the period of the license suspension. Accordingly, and with respect, the County finds that the mining operator (“Birch Creek” is the previous operator) did not and could not as a matter of law “lawfully operate” the mine without a valid DOGAMI permit; that all permission to mine had been removed by DOGAMI before, during and after on September 1, 1996, and so the pit did not and could not lawfully operate on that date.

Moreover, the legislative history of the Goal 5 rule supports that “lawfully operating” has this meaning. Specifically, as the Goal 5 rule was being rewritten, there rule proposals to separately require and attach consequences to both DOGAMI permits and land use permissions. At one point having a DOGAMI permit was proposed as a requirement and during a similar timeframe, 1000 Friends proposed that the Goal 5 rule be written to give land use permits special significance. The final rule ascribes no independent significance to either and instead existing sites are defined as those that are either “lawfully operating” (which presumably referred to lawful in both respects – having DOGAMI and local land use permission), as well as mines on existing significant site inventories. The rule also allows certain existing mines to by-pass the significance analysis altogether, where a property owner has an “enforceable property interest” in an expansion area.¹⁹ OAR 660-023-0180(3)(d). No mention is made of separate consequences for land use and DOGAMI permission as had been proposed by

¹⁹ There is no claim in this case that the property owner or the operator had an enforceable property interest in an expansion area.

commentators. This tends to support that "lawfully operate" means what it says – both land use and DOGAMI permission is required.

Similarly, ORS 197.180, establishes that "state agencies carry out their planning duties, power and responsibilities and take actions that are authorized by law with respect to programs affecting land use." In order to carry out this responsibility, DOGAMI has a State Agency Coordination Program which has been acknowledged by the Land Conservation & Development Commission. DOGAMI and county in good faith carry out their respective regulatory responsibilities in accordance with the SAC Program so that landowners operate with both land use (county) and mining (DOGAMI) permits. The permits are interdependent and neither can be viewed as legal in isolation. Both active DOGAMI and land use permits are required in order for a site to be considered "lawfully operating."

Accordingly, the County finds that per the express terms of the rule, as well as its legislative history, the 33.26 acres proposed to be added to the RMRI, is an "expansion area" of the 9.83 acre "existing site", because the 9.83 acres was on the County inventory, but no part of the pit was lawfully operating, on September 1, 1996.

In this regard, OAR 660-023-0180(1)(d) defines "expansion area" to mean "an aggregate mining area contiguous to an existing site." The proposed RMRI is contiguous to the 9.83 acre existing site.

Opponents point out that the RMRI "Technical Report" includes narrative stating:

"Seventeen sites were identified as having or causing no conflicting uses (shown as '2A' on Table D-XXII). These sites are characteristically located on scab land bluffs far from any residential and intensive farming (cultivated) areas. All are small sites are two acres or less and all are inactive; *i.e.* not currently being used."

We understand opponents to claim the acknowledged county RMRI which specifically lists "T5N R36E 7 SW ¼ of the SW ¼" (which is a 40 acre quarter, quarter section) as a designated "2A" site is wrong and that the "existing site" on the RMRI can be no more than 2 acres based on this language in the "Technical Report" quoted above. The County disagrees and finds:

1. The acknowledged inventory (in the Technical Report at D-XXII) controls;
2. The acknowledged inventory establishes TL 200 has a 40 acre section on the RMRI which 40 acre section includes the 9.83 acres, but not the rest of the area to be added to the RMRI under the application and this decision. This is because the 9.83 acres is in the 40 acre section area described on the inventory, but the area to be added to the RMRI is not;
3. The fact that the RMRI includes the 9.83 acres in the listed 40 acres is consistent with the fact that a CUP had been issued for 30 acres (not 2 acres) for mining in 1977 (Z-2231²⁰/C-2232 and C 2232) and then again in 1984 (C-333). The findings for those decisions are in the record and expressly establish that no conflicts with the approved mining were identified. The date of the county RMRI is May 1980, updated in September 1982, June 1984 and September 1984;

²⁰ The 1977 planning action also included a zone change for aggregate uses for the 30 acre area approved for mining (Z-2231). While the findings for that decision are helpful to show that this site was never intended or understood to be limited to 2 acres at the time the RMRI was developed, the County also notes the subject property was later zoned EFU which zone continues to apply today.

4. Not all inventoried "2A" sites were two acres or less, the subject site among them. This is evidenced by the terms of the inventory itself, as well as the staff report dated April 11, 2014 prepared by county planner Shane Fink for the record from which this can also be, and hereby is, inferred.

The opponents also claimed that the CUP for the asphalt plant in C-479 at some points in history did not comply with conditions of approval (when an opponent operated the site) and that the County should invalidate C-479. However, the County does not understand how such a claim is relevant to whether the 9.83 acres is an existing site. The 9.83 acres is an existing site because it is on the RMRI. The status of C-479 makes no difference to that issue. The only relevance of C-479 to this matter is through OAR 660-023-0180(5)(g) which provides:

"(g) Local governments shall allow a *currently approved* aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government."²¹
(Emphasis supplied.)

No one disputes that the processing activities (the asphalt batch plant) occurring under C-479 are "currently approved." The opponents argued that C-479 should be revoked for various alleged reasons. However, those allegations do not change the fact that the processing (asphalt plant) on the 9.83 acres are "currently approved" per C-479 (and C-333 as we will see below), and the Board so finds.

As a precaution only and without waiving that the county believes the issue to be irrelevant to this application other than the fact that C-479 expresses a "current approval", the County finds as follows:

1. There is no claim C-333 is invalid in any respect. The asphalt plant is approved under both C-333 and C-479. If C-479 is invalid for any reason, then there is no evidence that C-333 is not a valid "current approval" for the processing (asphalt plant) on the 9.83 acre area already on the RMRI. C-333 specifically authorizes "processing" and "processing" is defined in the UCO 152.003 as "* * * the batching and blending of mineral aggregate into asphalt and Portland cement located within the operating permit areas." That definition describes the asphalt plant on the 9.83 acre area already on the RMRI. Further, C-333 explains it was for the same thing approved in 1977 (C-333 p 6). The conditional use permit approved in 1977 approved both an asphalt batch plant and crushing²² among other things. The County finds that C-333 is a current approval for the asphalt plant.
2. C-479 was issued in 1987 and a slight modification decision to C-479 (changing the name of the operator) was issued in 1992. Both of these decisions were issued more than 10 years ago. They may not be challenged now per ORS 197.830(6).
3. The county has twice determined C-479 is valid and all conditions satisfied. Once in 2006 and once in 2010, both in letters from the planning director. These decisions are final and binding and may not be collaterally attacked now. All opponents have been aware of these decisions at least because

²¹ C-479 placed no limits relevant to this standard on the processing operations it approved.

²² As noted elsewhere in these findings, the crushing operations have been evaluated in this application because they are in the area proposed to be added to the RMRI (the 14.15 acre portion of the 33.26 acres).

either they were the direct recipients of these letters or because they became aware of them in this proceeding. No one filed an appeal of these decisions at any point. These decisions are final.

4. At least one zoning permit specifically referring to and for C-479 was issued by the county. The Board finds that this zoning permit is, as provided in the UCO: "An official finding that a planned use of a property, as indicted by an application, complies with the requirements of this chapter or * * * conditional use permit." That zoning permit is a final decision not subject to collateral attack.

Scope of the Impact Analysis Area

Opponents claimed the impact analysis area should be enlarged beyond 1,500 feet from the proposed RMRI boundary to include the following:

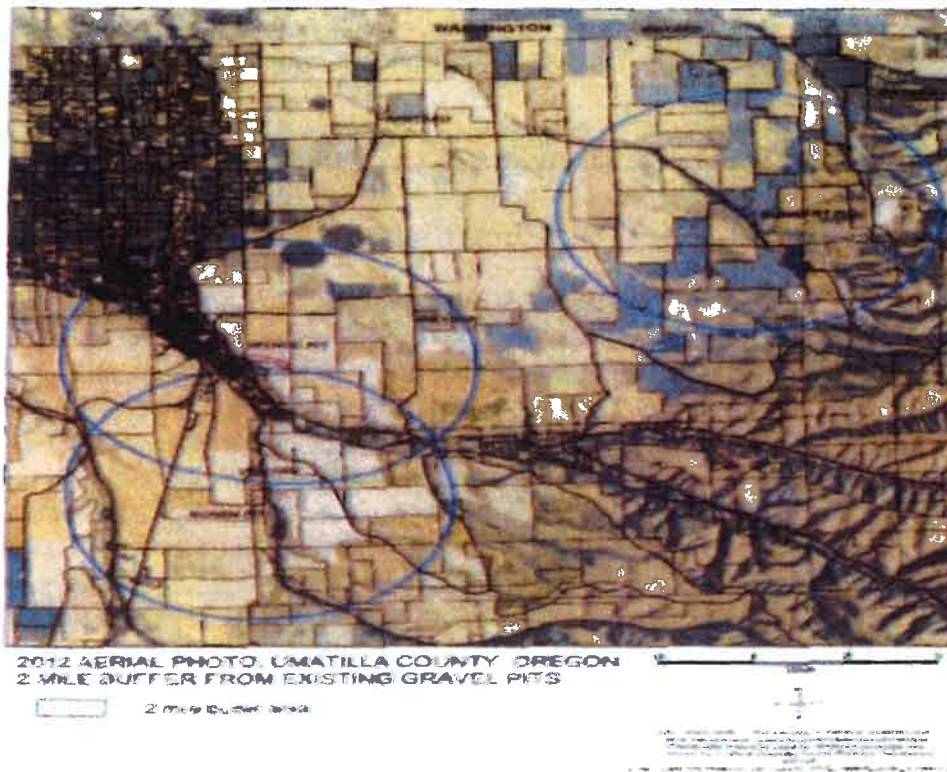
1. Opponents seek to increase the impact analysis area to include two vineyards – one of vineyards are on Couse Creek Road, about 1.75 miles south from A&B and the other is on Spofford Road, about 1.75 miles east from A & B, on the claim that any dust from the proposed RMRI area, no matter how miniscule the amount, "will contribute to the development of mites, which will threaten the grape crop at these vineyards".
2. Grove Elementary School because the school play yard is a City of Milton-Freewater inventoried Goal 5 open space site.
3. The Walla Walla River, based on a county inventory designating the entire river as a "Sensitive Area for Fish Production."

The County finds that there is no lawful justification for enlarging the OAR 660-023-0180(5) safe harbor 1,500 foot impact analysis area. OAR 660-023-0180(5) provides that "The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, *except where factual information indicates significant potential conflicts beyond this distance.* (Emphasis supplied.) The County finds that factual information in the record does not indicate "significant potential conflicts" beyond 1,500 feet from the proposed 33.26 acre RMRI area. The explanation follows.

Vineyards²³

The vineyards are separated from the proposed RMRI area by distance (about one mile away and nearly 2 miles away respectively) and topography. *See* graphic below.

²³ The asphalt plant in the 9.83 acre area already on the RMRI need not be and is not considered.



Opponents contend that any dust from anything, including mining in the proposed RMRI area, will adversely affect these two distant vineyards and contribute to vineyard mites. The factual information in the record does not indicate significant potential dust conflicts from the proposal beyond the 1,500 foot impact boundary in the rule. Dust is well controlled at the site and unlikely to transcend the operations boundaries to any significant extent. Any dust that is generated from mining at the proposed RMRI area will potentially be only present at these distant vineyards in the most miniscule amounts and would not pose a ‘significant’ conflict.

Opponents produced photographs of the site that they assert show dust from the A & B operation, ostensibly to claim this dust will somehow migrate to the two vineyards. However, in the first place, the evidence in the record is that many of these photographs show steam, not dust; and the balance of these photographs show dust limited to the tax lot 200 boundaries within which A & B operates. In fact, the site does not now and is not reasonably expected to produce fugitive dust. As DEQ explained in the correspondence with the County in the record: “From time to time we [DEQ] have received complaints of excess dust from the crusher and/or [A & B’s] asphalt plant. * * * However, upon investigating the complaints, no compliance problems were observed.” Moreover, the neighbor most greatly affected by the operation – owning two residential properties right across from A & B’s driveway -- wrote letters of support for the record stating they have no problems with the A & B operation. The County finds that the applicant adequately controls off site dust and that dust does not transcend the TL 200 A & B boundaries to any significant actual or potential extent.

The county also notes that A & B’s crusher has all required DEQ authorizations and those authorizations are in the record. In this regard there is also in the record a memorandum from Tom

Hack, ODEQ, confirming that A&B has the requisite Air Contaminant Discharge Permit (AQDP) and is in good standing with ODEQ. The County further notes that compliance with DEQ standards is adequate to show dust is appropriately controlled per the terms of the Goal 5 rule.

Further, the County finds that the applicant has adequate water to control dust as explained by the applicant's expert Martha Pagel regarding the availability and adequacy of water sources for dust control as summarized in the beginning of these findings. Opponents claimed otherwise, but the County finds the testimony and evidence from Ms. Pagel to be the most persuasive.

The evidence is also that the area within which the vineyards are located is within significant dryland wheat operations, the harvest of which produces significant dust – far more than the subject operation. Within 300 yards of one of the vineyards - the vineyard to the south and east of the proposal area -- is the Konen mining operation for which there is evidence in the record showing that operation produces significant dust. This vineyard apparently co-exists with the Konen mining operation which operation features a crushing operation and an asphalt batch plant. The vineyard located further to the east from the subject property is about 2 miles from opponent Humbert's mining operation and nearly two miles from the proposal here. It is also in the middle of dryland wheat operations. Given these two vineyards are (a) separated from the proposed area by significant distance and topography, (b) that the applicant adequately controls dust; and (c) that there is no significant amount of dust that transcends the applicant's boundaries, there is no reasonable basis to conclude that factual information indicates significant potential conflicts beyond the 1,500 foot impact area that is established by OAR 660-023-180(5). Further, the County finds that even if a particle of dust from the proposed RMRI area did reach either of these vineyards that such would be a de minimus event and de minimus addition to dust already at those vineyards and not a "significant potential conflict".

City of Milton-Freewater Inventoried Goal 5 Resource – Grove School Open Space

The City of Milton-Freewater's officially adopted acknowledged Goal 5 inventory includes Grove Elementary School as an open space Goal 5 resource. Grove Elementary School is a few hundred feet outside the 1,500 foot impact boundary established in OAR 660-023-180(5). The City's Goal 5 program selects as its "program to protect" this open space resource that the city designate it "Public Lands Zone." In fact, it is so zoned. The proposal to add 33.26 acres to the County RMRI has no impact on the City's zoning of this property, which is how the City has decided to protect that resource. There is no evidence that the proposed mining activities have any impact on the City of Milton-Freewater's zoning designation of the Grove School as "Public Lands Zone." Further, the evidence is that there are no special noise, dust or traffic impacts that are potentially significant at the school that impact its ability to serve as "open space" that is posed by the RMRI proposal. Even though not strictly required, the applicant's initial and supplemental noise analyses considered noise from operations at the RMRI site at the school and determined that no significant adverse impacts are predicted. The applicable DEQ noise standards in this regard are shown in the figure below.

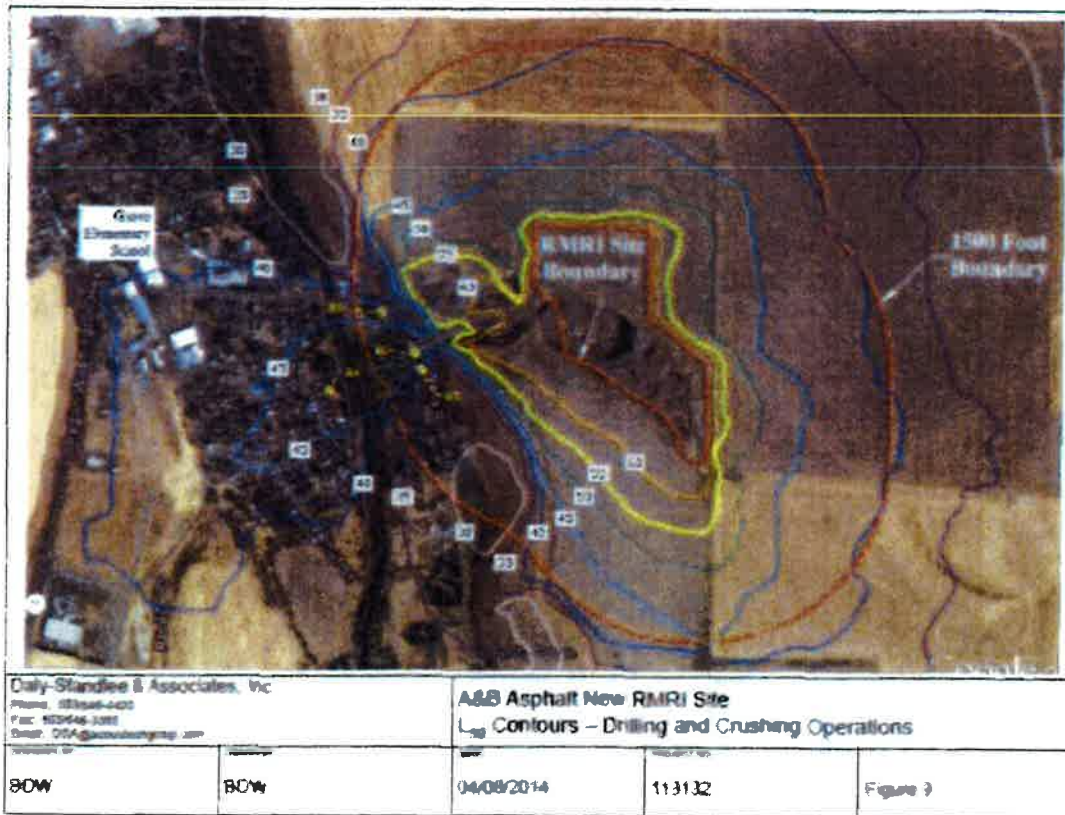
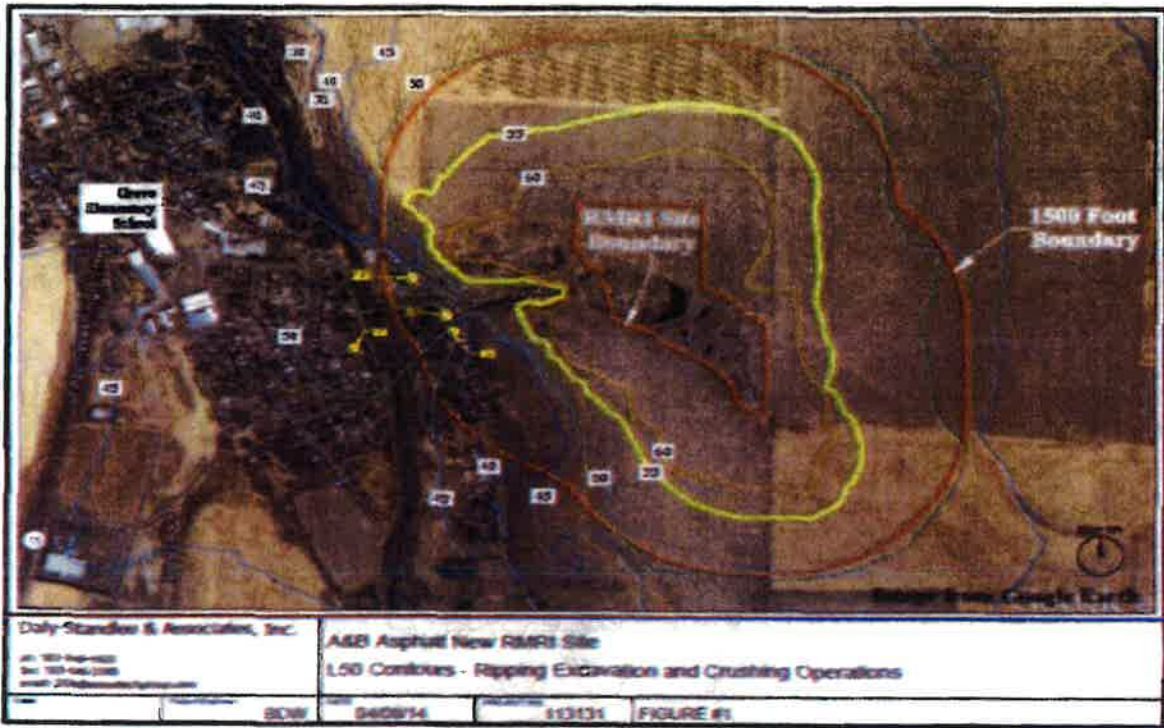
DEQ Noise Regulations

- Existing noise source
- Expansion of existing site

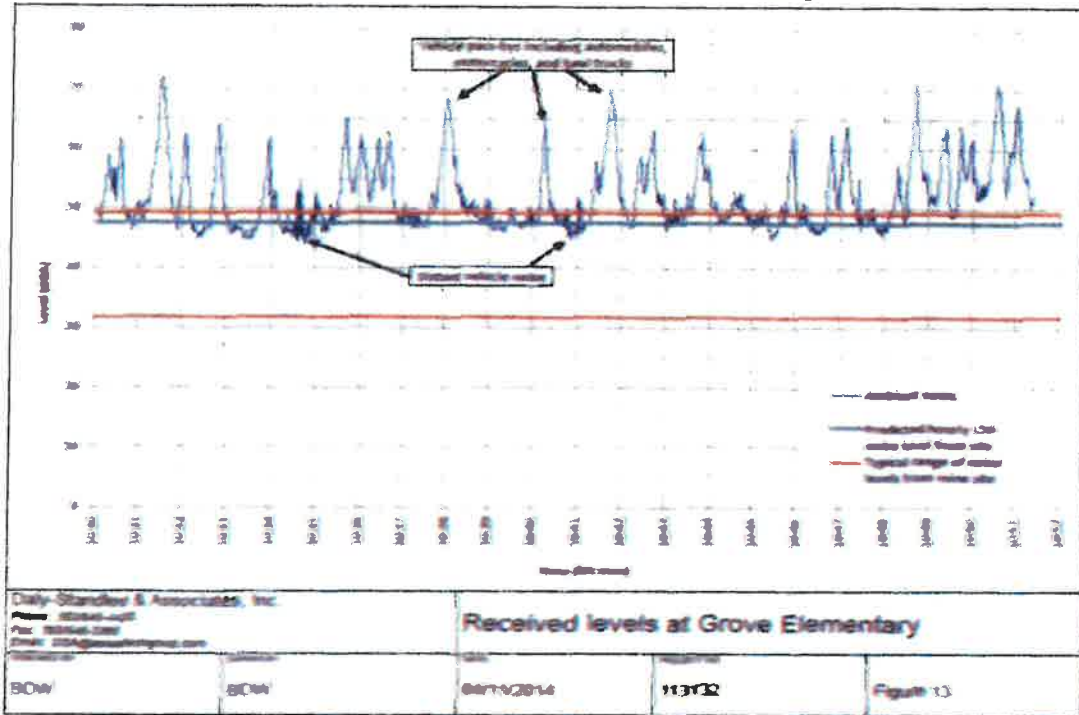
OAR 340-035-0035 – Noise Criteria

	Maximum Allowable Rule		
	Hourly L_{01}	Hourly L_{10}	Hourly L_{50}
Day (7am – 10pm)	75	60	55
Night (10pm – 7am)	60	55	50

As shown in the two graphics below, all DEQ noise requirements are met including at Grove School.



In fact, the evidence in the record is that background noise at the school is greater than noise predicted from mining at the proposed RMRI site, as demonstrated in the graphic below.



Further, there is nothing about traffic patterns from the proposed RMRI that justify any conclusions that the proposal has any potential for a significant traffic conflict. The Board finds that the type and volume of traffic coming and going from the proposed RMRI area will be substantially equivalent to the type and volume of traffic coming from the existing mining operations on the property. The only difference is that as mining areas are exhausted, new areas will be mined within the RMRI.

The County concludes that factual information does not justify a conclusion that there are significant potential conflicts to the Open Space Designation or use of Grove School to justify expanding the default 1,500 foot impact area to include it.

Walla Walla River

Opponents argue that the impact area should be enlarged to include the Walla Walla River because it is a Goal 5 designated “Sensitive Area for Fish Production.” Factual information does not support that mining within the proposed RMRI area has potential significant impact on the Walla Walla River or its ability to produce fish. There is no significant potential noise impact to the river as is demonstrative in the noise information presented above. The only possible impact to the river from the proposal relates to stormwater from the proposed RMRI site. However, the County finds that evidence in the record establishes that the operation in the proposed RMRI area does not cause and will not cause any significant offsite storm water discharge problems to justify adding the river to the impact analysis area. In fact, the evidence is that the operator adequately controls stormwater from the site and the County so finds. The County notes that DOGAMI nominated the operator, A & B, for excellence in storm water control. The evidence is also that the operator has significantly improved and controlled stormwater that

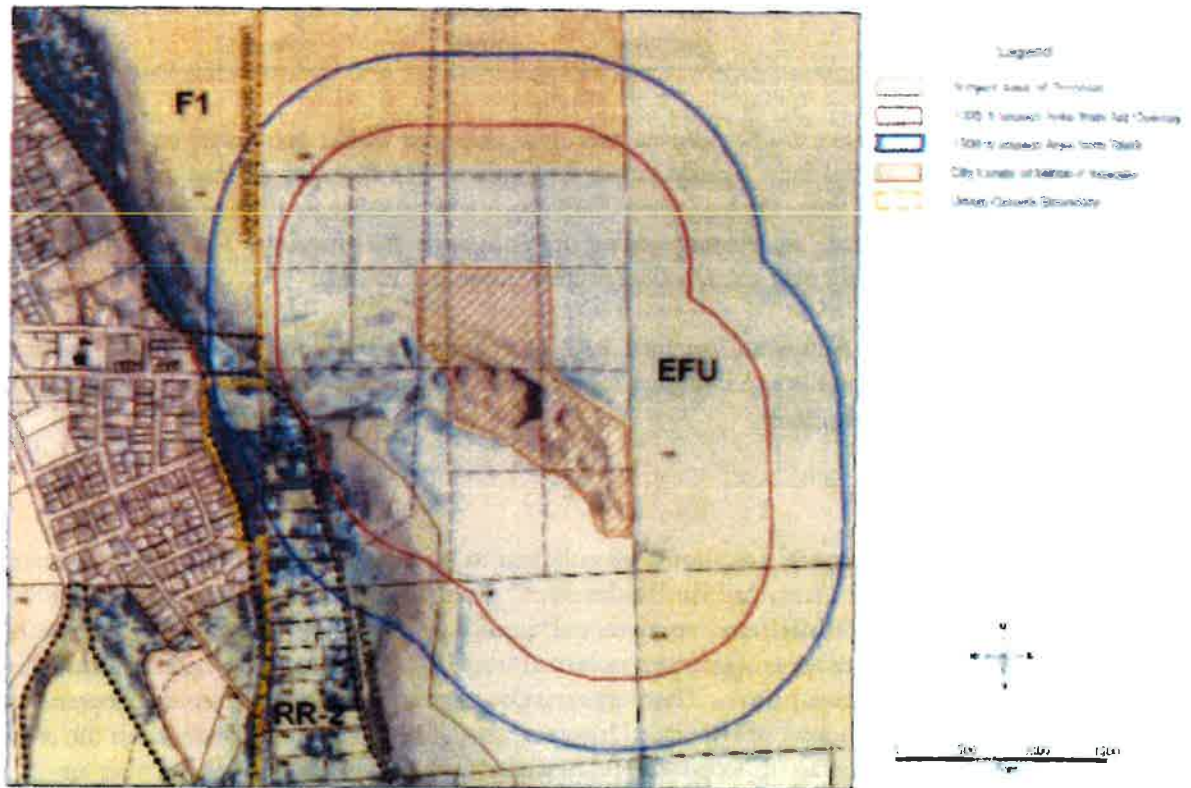
flows through the property including water that is not generated at the site. The County finds the evidence in the record does not support a conclusion that the 1,500 foot impact area should be enlarged to include the Walla Walla River based on stormwater or other impacts because there is no potential for significant stormwater or other impacts from the mining in the proposed RMRI area.

Third Step – Evaluate Impacts in 1,500 foot Area

“(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

“(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;”

The impact analysis area for the discussion below is shown on the graphic below



ZONE MAP AMENDMENT #Z-300-14 / TEXT AMENDMENT #T-14-052
A & B ASPHALT APPLICANT / JAMES SPENCER PROPERTIES OWNER
MAP #20307 TAX LOT 200 ACCT #134108

2012 AERIAL PHOTO

DATE 7/1/14

Umatilla County Board of Commissioners
1000 W. 2nd St., Umatilla, OR 97882
Phone: (503) 862-2222 Fax: (503) 862-2223
Website: www.umatillaoregon.gov

Noise

The applicant submitted a Goal 5 Noise Study conducted by Daly-Standlee & Associates to evaluate conflicts as the above rule requires. Existing and approved land uses within the 1,500 foot impact area are residences. The noise study considered these to be "noise sensitive properties"²⁴. Uncontrolled noise exceeding DEQ allowed limits has the potential to present an adverse impact on residences within the 1,500 foot impact area. The applicant must adhere to the DEQ Noise Standard as found in OAR 340-035-0035 *Noise Control Regulations for Industry and Commerce*. The applicable noise standard the proposal must meet is the DEQ standards listed below:

DEQ Noise Regulations

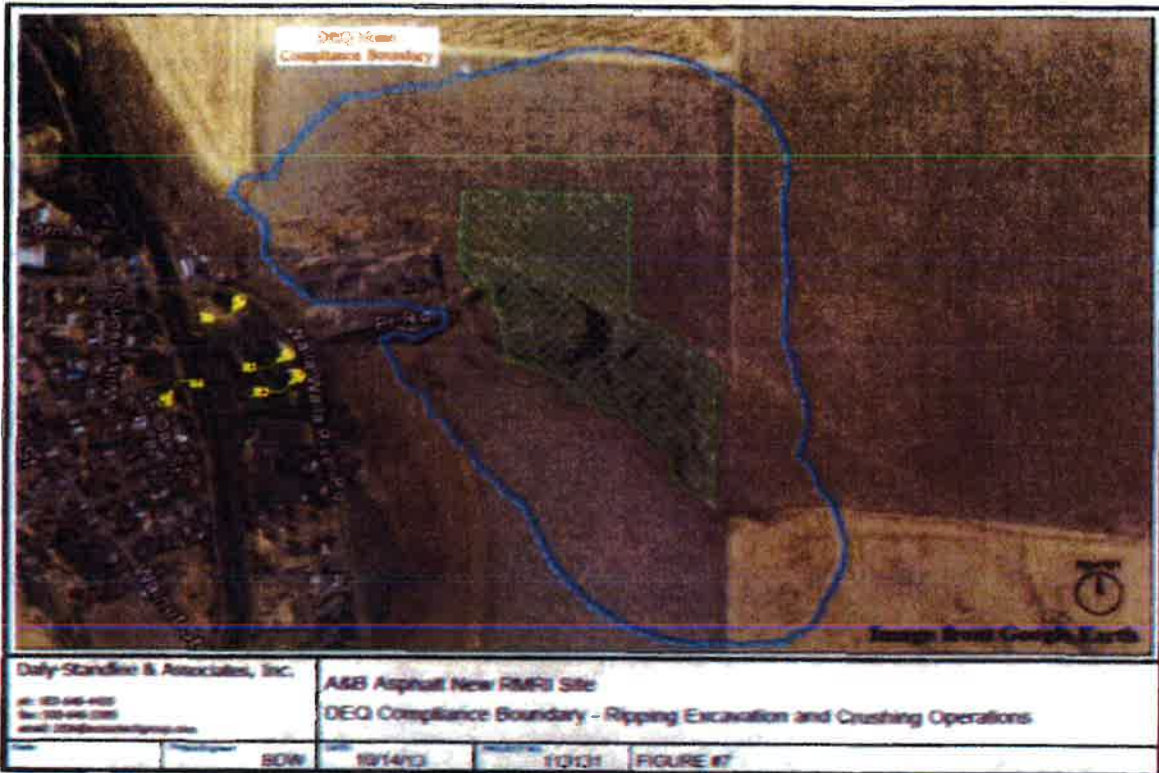
- Existing noise source
- Expansion of existing site

OAR 340-035-0035 – Noise Criteria

	Maximum Allowable Rule		
	Hourly L ₀₁	Hourly L ₁₀	Hourly L ₅₀
Day (7am – 10pm)	75	60	55
Night (10pm – 7am)	60	55	50

The study concludes that "the noise radiating from the A&B Asphalt's new RMRI site will comply with the DEQ noise criteria at all times that mining operations occur in the proposed new RMRI site." The proposal's adherence to applicable DEQ noise standards is illustrated in the attached graphics which show the "Noise Compliance Boundary" where outside of the "Blue" boundary, noise associated with mining within the proposed RMRI area is in compliance with applicable DEQ requirements.

²⁴ OAR 340-035-0015 Definitions: (38) "Noise Sensitive Property" means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.



As is shown below there is no existing or approved residence (noise sensitive property) outside of the blue color noise compliance boundary. Accordingly, the County finds the applicant's noise report and supplements in the record are substantial evidence upon which the County concludes that no noise violating any applicable DEQ standard will transcend the RMRI site boundaries.

The applicant's noise analysis is generally based on the type of equipment to be used, as well as the sequence, location and manner in which mining is proposed to occur including the creation of berms, as well as the below grade mining activities and natural barriers between the mining proposed in the new proposed RMRI area and residences. See Noise Study Figure 3 showing the mining areas A-C and Noise Study 6.4 "Assumptions Used in Predicting Future Mining Noise Levels". A condition of approval is imposed requiring the mining operation to proceed consistently with the Noise Study. It is noted that noise mitigation is feasible in large part due to site topography, as the Noise Report at pages 16-17 states:

"The noise radiating toward residences from the existing crushing and screening plant located on the floor of the Spence Pit is fairly well minimized by the terrain between the equipment and the residences. The 'dog-leg' turn in the pit formed by the excavation that has occurred in the past has created a natural barrier between the equipment and the residences. During the trip to gather reference sound data for the equipment that will be used in the new RMRI site, it was noted that the excavation and crushing operation noise was not audible at the entrance to the Spence Pit simply due to the way in which the line-of-sight between that equipment and the gate was blocked by the terrain."

The County finds that so long as mining follows the sequence and practices relied on in the applicant's noise report noted above, all noise will be mitigated as that term is used in the rule because it will meet all applicable DEQ standards.

The DEQ rules for blasting are different than for mining generally. DEQ rules require blasting noise not exceed 98 dBC slow response. The nearest residence to the blast areas is about 1,100 ft away. The evidence in the record from Daley Standlee and the applicant's blasting expert, establishes the proposal can and will meet this standard so long as the applicant complies with the blasting plan. Compliance with the blasting plan is a condition of approval. The County finds that noise mitigation, especially the nearest residence to blast areas being 1100 feet, is both expected and feasible. Even if mitigated to comply with DEQ requirements and even where a blast causes no damage, noise and pressure from a blast can be frightening to people. The County finds that so long as the applicant complies with the blast plan in the record and people are given notice, noise is adequately mitigated. In this regard, conditions of approval are imposed that (1) requires the applicant to comply with the blast plan it submitted for the record, (2) conduct one pre-blast survey of property within 2,500 feet of the proposed RMRI boundaries, and (3) give 24 hour advance notice of all blasts to property owners of property within the 1,500 impact analysis area.

Dust

Dust has the potential to adversely affect residential uses within the 1,500 foot impact area. With respect to fugitive dust from the crusher,²⁵ that is regulated by DEQ and the crusher meets all DEQ

²⁵ The asphalt batch plant is within the existing RMRI and is not subject to this application.

requirements. The evidence in the record is that DEQ periodically inspects the site and it is in compliance with dust rules. No fugitive dust is expected to migrate to any significant extent off the boundaries of TL 200. Water is applied to keep dust down. In addition, on-site roads have crushed basalt surfacing, which minimize dust from vehicle movements. The County finds the evidence and testimony presented by Martha Pagel for the applicant persuasive that the applicant has adequate sources of water for dust control. Conditions of approval are included requiring (1) a flow meter be installed on the water well used for the RMRI area, (2) that the applicant obtain and emplace on the property the three, 10,000 gallon water tanks outlined by Ms. Pagel in her written submissions, and (3) that the applicant maintain compliance with all applicable DEQ requirements, water haul roads regularly with the use of water trucks and water extraction areas regularly with the use of a sprinkler system.

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

Roads within a one mile area are either County collector roads (Walla Walla River Rd is a "Major Collector") or a State Highway. A state highway is an "Arterial" road. There are no local roads serving the proposed RMRI area. There is only the private driveway – private local haul road -- and its intersection with Walla Walla River Rd. According to LUBA in *Morse Bros. v. Columbia County*, 37 Or LUBA 85 (1999), where there are no local roads then there are no impacts that may be considered under the rule. Regardless, the applicant conducted a TIA to demonstrate compliance with the TPR for the site as well as a supplement responding to the opponents' concerns. The applicant's traffic analysis analyzed and concluded there is no conflict between the proposal with sight distances, road capacity, or any other clear and objective transportation related standard. The County agrees and that analysis is adopted by the County herein. Further, the applicant's TIA and supplement concludes, and the County agrees, that the proposal is to continue mining at an existing mine; that no substantial change to the type or level of traffic associated with the proposal will occur from the type and level of traffic that is now associated with the mining operations. There is no conflict presented by the transportation impacts of the proposal.

C. Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;

There are no airports within the Impact Area. The closest public airport is located some 15 miles to the north in Walla Walla. Thus, there are no conflicts with public airports and the proposed RMRI mining operation.

(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;

The County finds, with the caveat noted below, that the only other Goal 5 resources within the Impact Area is the existing mining operations on the existing RMRI. The County finds that both the new RMRI area and existing operation on the existing RMRI area are compatible and that no conflicts

between them are anticipated. Thus, no conflicts exist between the proposed aggregate site and other area Goal 5 resources.

One caveat is in order. Opponents pointed out that the City of Milton-Freewater has inventoried in its comprehensive plan its views of the Blue Mountains. The subject property while not in the City, can be said to be within the view of the Blue Mountains from some parts of the City. It is not clear if a city inventory of a view that can extend many miles into another jurisdiction is a Goal 5 resource that must be considered in this context. As a precaution and without finding it to be necessary or appropriate (particularly since the city did not advance any issue in this regard even though notified of the proposal), the County evaluates this City inventoried Goal 5 resource.

The City inventoried view does not exist in a vacuum. The program that the City adopts in its plan is limited and the means to protect the noted scenic views is the result of a balance reflected on the city inventory, to protect views and economic uses. Accordingly, the means the city has chosen to protect the noted views, is by imposing limitations on the building height of certain structures: "Economic development should be allowed but limited by height restrictions which generally protect views of the mountains from the City." The application proposes no new or other structures that are subject to any building height standards. Moreover, quarry operations are largely at or below grade. While there will be some work temporarily in Area A which is at the top of the grade on the subject property, the mining operations will quickly create and then move below a berm and then below grade, and not be visible from the City at all. Moreover, the subject property is far enough away from the Blue Mountains that the view of them will not be substantially impaired by continuing to mine at the site. Further, the city program does not purport to justify denying economic development proposals in the name of view shed protection in any case. Rather, the City protects views through height restrictions against structures that block views and there is nothing about the proposal that will block any such view. Therefore, the County decides that to the extent it is relevant, the proposal does not conflict with the City's Goal 5 inventoried views of the Blue Mountains.

(E) Conflicts with agricultural practices;

The rule asks for an evaluation of "conflicts with agricultural practices". It further specifies:

"To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section."

In turn, ORS 215.296 requires the following analysis:

"[w]ill not force a significant change in accepted farm * * * practices on surrounding lands devoted to farm * * * use," and "[w]ill not significantly increase the cost of accepted farm * * * practices on lands devoted to farm use."

The County finds that the evidence establishes that there are no significant conflicts between the proposed RMRI operations and agricultural practices within the 1,500 foot analysis area. The evidence is that dryland wheat farming occurs within the 1,500 foot analysis and that it has long coexisted with the existing mining operations of A & B, as well as the previous operators - Birch Creek and Humbert. The County finds that dryland wheat farming coexists without conflict with Konan's mining operation to the

south. The only potential conflict with agricultural operations in the 1,500 foot analysis area is the generation of dust. However, the Board finds that the operator does now, and can feasibly in the future, adequately control dust to avoid significant dust falling on and interfering with agricultural operations within 1,500 feet of the proposed RMRI. In this regard, the County finds it particularly persuasive that the owner of the dryland wheat operation to the north that will adjoin the 11.64 acre that has not previously been mined (Spence who also leases to A & B) testified there is and has been no problem between the mining operations and the dryland wheat operations. While the batch plant on the existing RMRI 9.83 acres is irrelevant, the County further notes the testimony of an opponent at its own land use process to site its own an asphalt batch plant near agricultural operations (a vineyard), explained:

“Mr. Shannon referred to a 40 page DEQ permit which is required for the operation of asphalt plants and said that *asphalt plants operate cleanly and have been built next to waterways. Asphalt is also used to patch reservoirs. The exhaust from a diesel-operated piece of farm equipment has more emissions than an asphalt plant.*” (Emphasis supplied.)

The County finds that there is no conflict between mining as proposed in the proposed RMRI area and agricultural activities within the 1,500 foot analysis area and that any potential conflict posed by dust is adequately controlled such that significant dust will not reach wheat operations in the 1,500 foot impact area. Accordingly the County finds that the proposal to add the 33.26 to the County RMRI and to allow mining neither forces a significant change in accepted farm practices on surrounding lands devoted to farm use, nor significantly increases the cost of accepted farm practices on lands devoted to farm use.

F. Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;

Opponents asked the county to consider as conflicts, evidence that A & B received some traffic tickets and fines from ODOT. This is not a conflict with any residential or other use in the 1,500 foot analysis area. The County does not believe that this is a type of “conflict” in any event is one that the rule allows to be considered. *See Morse Bros. v. Columbia County*, 37 Or LUBA 85 (1999) (reversing a local government denial of an application under the Goal 5 rule under this section finding the identified conflicts under this section were not allowed as a matter of law unless contemplated by the county’s own adopted ordinances.) No county ordinance makes this issue relevant here and the County finds it is not. The County further notes that in the applicant’s supplemental traffic analysis it states:

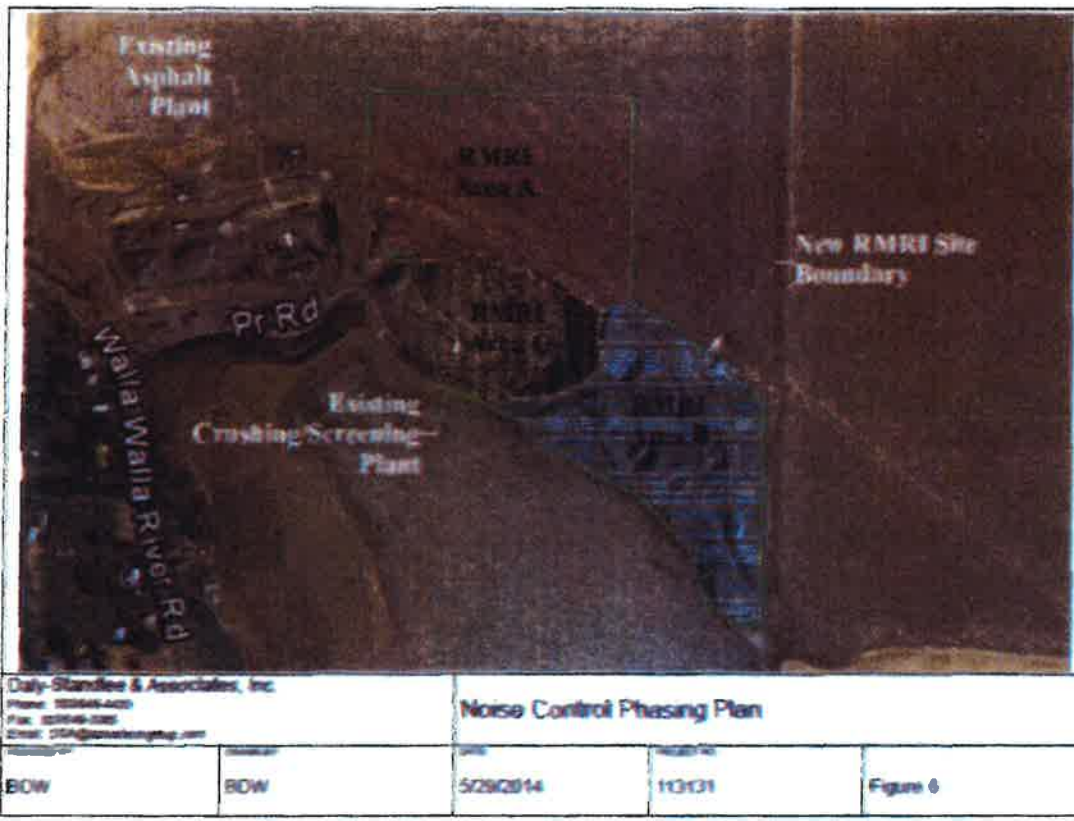
Further, there are no documented/significant safety impacts along SE 15th Avenue between the quarry site and OR 11 including the roadway section adjacent to Grove Elementary School. Also, based on a review of City of Milton-Freewater traffic warnings and citations issued for this roadway section, from January 2011 through April 2014 there were 5 warnings and 1 citation and all were related to speed. This speeding issue is not specifically attributable to quarry operations and none of the warnings or citations was issued to or received by A & B drivers.

The County declines to add the alleged tickets and fines issue as one relevant to this process.

Fourth Step – Minimize Conflicts

Under the fourth step in the rule it is necessary to identify any reasonable and practicable measures can be established to minimize conflicts. Here all identified conflicts are adequately minimized by the conditions of approval explained above and listed at the end of this decision.

Because the County finds that all conflicts can be minimized as that term is defined in the rule, then the rule requires that mining be allowed. The County in this decision hereby allows mining in the RMRI area subject to the conditions of approval imposed. The specific approved RMRI area is that area shown below, taken from the noise study. This map is chosen by the County to represent the RMRI boundaries because the conditions of approval require adherence to the **phasing program** in the noise study, which is tied to this map. The approved RMRI area is shown on the below graphic:



NEXT STEP – IDENTIFY POST MINING USES

The rule requires that post mining uses be identified:

“Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.”

The County adopts as its identification and determination of post mining uses the DOGAMI approved reclamation plan and the reclamation plan supplement that is in the record.

NEXT STEP – PROTECTING THE RMRI AND ALLOWED MINING USE

[Protecting the site from other uses/conflicts] Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site.)

The process to determine how to protect the site from other uses/conflicts is referred to as an ESEE Analysis. The standards for the ESEE analysis are set forth in OAR 660-023-0040 & 0050. The applicant provided an ESEE analysis under these standards on pages 17-22 of their application. The applicant sought a requirement for nonresource users to be given notice of the mining activity and be required to sign a waiver of objection in exchange for any county land use approvals. The county denies the applicant's requested protective program finding it to be unnecessary. The reason follows.

The County has a section of its code devoted to "Resource use Protection. UCO 150. A non-resource use is defined to include a mining use that is not on the County RMRI ("not conducted in accordance with a program complying with Goal 5"). UCO 150.03 defines resource use as follows:

"RESOURCE USE. Any current or future generally accepted aggregate mining, farming, ranching or forest practice or facility conducted in compliance with applicable county land use ordinances."

The UCO protects "resource uses" as follows:

UCO 150.04 PROTECTING RESOURCE USES OUTSIDE UGB.

(A) No resource use occurring outside an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of the county.

(B) This section applies regardless of:

- (1) The location of the purportedly affected non-resource use.
- (2) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use.
- (3) Whether the resource use or non-resource use has undergone any change or interruption.
- (4) Whether the resource use or non-resource use is located inside or outside an area designated as secondary resource lands

The UCO goes on to state that the fact that the County may approve a particular land use, does not give any rights inconsistent with the Resource Use Protection provisions in UCO 150. UCO 150.07. UCO

150.08 provides:

“§ 150.08 COMPLAINTS BY NON-RESOURCE USERS.

Any persons engaged in a nonresource use are deemed on notice that the county will not act on complaints involving a resource use protected under this chapter, wherever located, so long as such resource use complies with applicable provisions of federal and state laws and this chapter

The decision here puts the subject 33.26 acre site on the RMRI. As such the site, including mining and processing, is a “resource use” that is protected by this chapter. The County finds that additional protection for the RMRI mining uses is unnecessary.

660-023-0040 ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. * * * The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

The items (a) through (d) will be addressed below.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

To determine potentially conflicting uses that could occur under the county code within 1500 feet of the boundary of the proposed new RMRI area, the following county uses are considered:

(Note, the list of uses in the EFU Zone is substantially the same as uses listed in the F1 EFU Zone, where one property is located within the 1500 foot impact area.)

UCDC 152.056 - EFU Permitted Uses –
Outright

- (A) Farm Use
- (B) Harvesting of a forest product.
- (C) On-site filing
- (D) Temporary public roads
- (E) Projects specifically identified in the TSP

- (F) Landscaping
- (G) Emergency measures
- (H) Construction of a road
- (I) Utility facility service lines
- (J) Maintenance or minor betterment of existing Transmission lines
- (K) The transport o biosolids
- (L) Reconstruction of roads

- (M) Irrigation canals
- (N) Minor betterment of roads

UCDC 152.058 - EFU Permitted Uses –
Zoning Permit

- (A) Activities within parks
- (B) Operation for the exploration of geothermal
- (C) Operations for the exploration for minerals
- (D) Winery
- (E) Farm stands
- (F) Replacement Dwellings
- (G) Signs
- (H) Accessory buildings
- (I) On-site filming
- (J) Takeoff and landing of model aircraft
- (K) Fire Service facilities
- (L) Gathering of fewer than 3,000 persons
- (M) Wetlands
- (N) Climbing and passing lanes
- (O) Accessory structures to a farm use\
- (P) Met towers
- (Q) Home Occupations

UCDC 152.059 - EFU Permitted Uses – Land
Use Decisions

- (A) (Item Deleted)
- (B) Churches and Cemeteries**
- (C) Utility Facilities Necessary for Public Service
- (D) A facility for the processing of forest products
- (E) Continuation of fire arms training
- (F) A facility for the processing of farm crops
- (G) The land application of reclaimed water
- (H) (Item Deleted)
- (I) (Item Deleted)
- (J) (Item Deleted)
- (K) Dwellings – Farm, Non-Farm and Lot of Record Dwellings**

UCDC 152.060 - EFU Conditional Uses

- (A) Commercial activities in conjunction with farm use
- (B) Mining
- (C) Private Parks, private playgrounds, private hunting and fishing preserves and private campgrounds**
- (D) Public parks**
- (E) Golf Courses**
- (F) Commercial utility facilities for the purpose of generating power for public use
- (G) Personal Use Airports
- (H) Home occupations
- (I) Community centers
- (J) Hardship Dwellings**
- (K) Dog kennels
- (L) A site for the disposal of solid waste
- (M) The propagation, cultivation, maintenance and harvesting of aquatic species.
- (N) Construction of additional passing lanes
- (O) Reconstruction of additional passing lanes
- (P) Improvement of public roads
- (Q) Destination Resorts
- (R) Living History Museum
- (S) Bottling of water
- (T) On-Site filming
- (U) Construction of highways
- (V) Residential houses**
- (W) Transmission or communication towers
- (X) Expansion of existing county fairgrounds
- (Y) Room and board**
- (Z) Wildlife habitat
- (AA) Aerial fireworks display
- (BB) Composting facilities
- (CC) Uses compatible with the TSP
- (DD) Public or private schools**

Uses in the Rural Residential Zone

RR2, RURAL RESIDENTIAL ZONE (Note, this list of land uses in the RR2 Zone is substantially the same as uses listed in the R-1 Zone, where one property is located within the 1500 foot impact area.)

(A) Uses permitted outright. In a RR-2 Zone, the following uses and their accessory uses are permitted without a zoning permit:

(1) Farm use, as defined in ORS 215.203 except livestock feed yards and sale yards, hog or poultry farms and the raising of fur-bearing animals or hogs, and except the dwelling and other buildings customarily provided in conjunction with farm use referred to in ORS 215.203

(2) Normal operation, maintenance, repair, and preservation activities of existing transportation facilities.

(3) Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.

(4) Projects specifically identified in the Transportation System Plan as not requiring further land use regulation.

(5) Landscaping as part of a transportation facility.

(6) Emergency measures necessary for the safety and protection of property

(7) Acquisition of right-of-way for public roads, highways, and other transportation improvements designated in the Transportation System Plan.

(8) Construction of a road as part of an approved subdivision or land partition approved consistent with the applicable land division ordinance.

(B) Uses permitted with a zoning permit.

In a RR-2 Zone, the following uses and their accessory uses are permitted upon the issuance of a zoning permit, pursuant to §152.025:

(1) Dwelling, single-family;

(2) Home occupations as provided in §152.573;

(3) Mobile home

(4) Non-commercial greenhouse or nursery.

(5) Public or semi-public use

(6) Signs

(7) Residential home (adult foster care)

(8) Nursery

CONDITIONAL USES PERMITTED In a RR-2 Zone:

(A) Church

(B) Commercial greenhouse or nursery

(C) Roadside stand for the sale of agricultural products grown by the owner

(D) Grange hall or community center, park, playground or recreational facility

(E) Boarding, lodging or rooming house

(F) Rest home, home for the aged, nursing home, or convalescent home

(G) Utility facility

(H) Veterinary clinic or animal hospital

(I) Model home including sales office, subdivision or development sales office

(J) Special exemptions, as provided in §§152.575

(K) Cemetery

(L) Home occupation/cottage industry

(M) Personal-use landing strip for airplanes and helicopter pads

(N) Construction, reconstruction, or widening of highways, roads, bridges or other transportation projects

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

The uses allowed in the EFU and RR2 Zone could be adversely affected by mining on the proposed site if potential conflicts were not minimized as they are here. Because all conflicts from mining in the RMRI area are mitigated to the level that they are not significant, and because the County already protects against complaints, there is no reason to impose further protections for the RMRI site.

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

The County finds that any one of the potentially allowed uses have the potential of conflicting with the aggregate site if located within the impact area. Goal 5 resources within the impact area other than the existing mine on the existing RMRI and if applicable (as explained above) the City's view of the Blue Mountains. However, as explained elsewhere in this decision the County's existing code protections for resource uses and the fact that mining in the RMRI is mitigated means there is nothing more to do under this provision.

There are parcels located within the 1,500 foot impact area that do not have dwellings. If any potentially allowable use including a dwelling or a church were to locate within the Impact Area in the future, there could be perceived but not actual conflict with the proposed RMRI mining uses. This is because mining operations produce some noise, some dust and traffic and people sometimes object to these. However, here, conflicts have all been adequately mitigated as explained in this decision. The County finds people are adequately put on notice that their rights to object to lawful mining uses are significantly limited because the County has adopted code provisions that people are presumed to be aware of.

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

The County finds that the impact area is defined as 1,500 feet from the proposed RMRI boundaries.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local

government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

In the impact area there is the potential for two, possibly more, new dwellings or potentially other uses, based on the assumption that vacant parcels could qualify for a future single family residence. Given the limitations on qualifying for a farm dwelling, there may not be many future dwellings in the EFU Zone. Additionally, each of the EFU parcels have land located inside and outside of the 1500 foot impact area and so if a parcel qualified for a farm dwelling, the home site might be located outside of the 1,500 impact area. Some of the parcels are located in the flood zone and may be restricted altogether from construction of any occupied structures due to the restrictions on building in a floodplain and floodway. Regardless even if all parcels within the 1500 foot impact area developed with any of the allowed uses that could potentially conflict with mining, there are no consequences to the allowed RMRI mining activity. This is because as is explained elsewhere, the mining activity has been adequately mitigated to minimize its objectionable impacts and the County's resource users protections adequately protect the mining resource use from complaints and is adequate notice that such uses are protected.

(a) Economic Consequences of Future Uses

Dwelling Uses

Allowing potentially conflicting uses maintains property values. There is no reason to limit these uses because of the approved RMRI, as explained elsewhere.

(b) Social Consequences

The size of the available building area 1,500 feet from the boundaries of the proposed RMRI to situate any new potentially conflicting use is very small, and this together with the lack of access as well as the applicable EFU zoning limits, the potential for new dwellings, churches, community centers and schools in the 1,500 foot impact area is quite small etc. New uses (other than one or two new dwellings) are unlikely to locate in the RMRI impact area and so the social consequences are likely to be insignificant in any case. Regardless, because there is no legitimate conflict in fact from the proposal, there is no apparent reason to limit the County's ability (or the landowners property right) to a new dwelling, church, community center or school or other use from locating in the 1,500 foot impact area beyond the standards that already exist: e.g. EFU and flood zone regulations.

(c) Environmental Consequences

If new potentially conflicting uses were established in the impact Area, then they might be affected or at least perceive that they are affected by noise, dust, or truck traffic associated with the lawful mining use. But they will not in fact be significantly impacted as explained in this decision elsewhere. Thus, it is likely that there would be little impact from future potentially conflicting uses given the mitigating measures already in place. Moreover, complaints are already significantly restricted by the County code as is also explained elsewhere. There is no consequence of note to the resource use allowed by

this decision to not limit the small number of potentially conflicting uses from being established within the 1,500 foot impact area.

(d) Energy Consequences

Prohibiting or limiting future potentially conflicting uses in the impact area would have essentially no impact on energy usage, as dwellings would locate elsewhere and consume identical quantities of energy. Either allowing or limiting these uses would likewise have no negative effects on energy use. This consideration does not err in favor or against of any type of restriction.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. * * * One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

Allowing mining in the proposed new RMRI is strong protection of the RMRI. This is because this entitles the RMRI mining use to receive the protections of UCDO 152.485 – 152.491 protecting the RMRR uses from vexatious litigation. There is no need to further restrict other uses to protect mining in the RMRI.

660-023-0050 Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5) (b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

There is no need to do anything more than to:

Designate the proposed RMRI area a significant site, put it on the RMRI and allow mining. This will bring the site within the protection of UCO 150.04, 150.07 and 150.08 which is at a minimum the substantial equivalent of the program that the applicant proposed but even more protective of the resource use under the RMRI.

II. STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE TO ESTABLISH AN AGGREGATE RESOURCE OVERLAY ZONE (UCDC 152.487 – 488)

As previously explained in these findings, the standards in the Goal 5 rule supersede and preempt contrary County requirements because the County has not adopted the Goal 5 rule requirements, making them apply directly. Therefore, the AROZ provisions which the County will use to implement the RMRI designation above, only apply to the extent that they are consistent with the Goal 5 rule. Thus, while the “applicability” section of the AROZ states that an AROZ zone alone does not allow “processing of aggregate from another site”, the terms of the Goal 5 rule specially authorize, and do not require re-justification of, processing material at the proposed RMRI at the 9.83 acre “existing site” where the batch plant is located. Accordingly, no further County permission is required to process material from the proposed 33.26 acre RMRI area at the existing 9.83 acre RMRI area, and doing so is allowed under the RMRI approval explained above. Additionally, the County interprets its AROZ use of the term “aggregate” to have the same meaning of the term “aggregate” found in the Goal 5 rule.²⁶ The basalt material to be mined here is used in road building and is therefore, “aggregate” under both the Goal 5 rule and the AROZ. The applicable AROZ standards for approval are provided in underlined text and the responses are indicated in standard text.

§ 152.487 CRITERIA FOR ESTABLISHING AN OVERLAY ZONE.

(A) At the public hearing the Board of Commissioners shall determine if the following criteria can be met:

(1) The proposed overlay would be compatible with the Comprehensive Plan; The only applicable portions of the comprehensive plan are those relating to agriculture and to mining. The proposal complies with both. With respect to Agriculture, the plan recognizes that EFU zoning authorizes nonfarm uses and that the plan’s Goal 3 Agriculture element is designed to preserve farm land and minimize conflicts from nonfarm uses. The plan (18-4) however recognizes the importance of agricultural areas to nonfarm natural resource uses:

²⁶ OAR 660-023-180(1)(a): a) “Aggregate resources’ are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction.” Basalt is a naturally occurring concentration of rock commonly used in road building.

“It is the intent of Umatilla County to continue the capability to economically farm lands by limiting conflicts with non-farm uses. This will be done by prohibiting both incompatible non-farming activities and/or carefully monitoring land divisions to those compatible with agricultural needs.

The protection and preservation of farmland is primarily for the purpose of preserving agricultural soils and thus the industry as a basis for food and fiber production now and in the future. Secondary benefits *preserve potential mineral resources*, fish and wildlife resources and the valuable character of open space.” (Emphasis supplied.)

As explained in other parts of this decision, potential conflicts between the proposal and farming is adequately mitigated. Further, the proposal complies with the Comprehensive Plan, Chapter 8, and Policy 38 states:

Policy 38. (a) The County shall encourage mapping of future agencies sites, ensure their protection from conflicting adjacent land uses, and required reclamation plans.

(b) Aggregate and mineral exploration, extraction, and reclamation shall be conducted in conformance with the regulations of the Department of Geology and Mineral Industries.

(c) The County Development Ordinance shall include conditional use standards and other provisions to limit or mitigate conflicting uses between aggregate sites and surrounding land uses

Policy 38(a) while not artfully worded applies to aggregate resource sites like the subject. The reference to “other agencies sites” refers to sites permitted by DOGAMI or sites that are owned/operated by agencies like ODOT. The proposal encourages the mapping of future sites because it shows that if sites meet applicable standards, the County will approve them. Further, the proposed RMRI mining operation has been approved through the Goal 5 process and includes conditions of approval adequate to avoid conflicts with adjacent land uses which mitigates against those conflicting land uses complaining about lawful mining activities. The County code protects the mining use approved herein as once it is added to the RMRI – significant sites inventory -- it becomes a “Resource Use” subject to the protections of UCDO 152.485 - 152.491. Moreover, the proposal will adhere to DOGAMI rules for operation and reclamation of the site and the DOGAMI approved reclamation plan is specifically approved in this decision. This standard is met.

(2) There is sufficient information supplied by the applicant to show that there exist quantities of aggregate material that would warrant the overlay;

The applicant provided evidence demonstrating that the RMRI area consists of more than 500,000 tons of aggregate (actually somewhere between 1,100,000 and 1,200,000 tons) of “aggregate”²⁷ material. The material is actually a hard basalt but the County finds this to be within the scope of the use of the term “aggregate” here. This criterion is met.

(3) The proposed overlay is located at least 1,000 feet from properties zoned for residential use or

designated on the Comprehensive Plan for residential:

The County finds that there is no residential zoning district within 1,000 feet from the proposed mining operation. The nearest residential zone is along the western edge of Walla Walla River Road. The 1,000 foot distance from the proposed new RMRI area ends at the far eastern edge of Walla Walla River Road. The nearest residential zone on the far western edge of Walla Walla River Rd. In the alternative and without waiver that this above statement is the County's position, if the residential zone is deemed to go to the centerline of Walla Walla River Rd, then the RMRI is still more than 1000 feet from it. This standard is met.

(4) Adequate screening, either natural or man-made, is available for protecting the site from surrounding land uses.

As detailed in the application and the Noise Report, there are significant topographical barriers between the proposed RMRI and surrounding land uses. When mining begins in Area A, there will be a temporary period when topography does not provide screening until the berm is established and operations head below grade. Screening will be in the form of the berm and then the below grade operations. The natural screening of topography, the operations phasing and the establishment of the berm are all adequate natural screening to protect the site from surrounding land uses. This standard is met.

(5) The site complies with OAR 660-023-0180. The County determines above the site complies with OAR 660-023-0180. This standard is met.

§152.488 MINING REQUIREMENTS.

(A) All work done in an AR Overlay Zone shall conform to the requirements of the Department of Geology and Mineral Industries * * *.

The site has and will maintain a DOGAMI permit. This permit establishes conformity to DOGAMI requirements. Maintaining compliance with all DOGAMI requirements is a condition of approval.

(B) In addition to those requirements, an aggregate operation shall comply with the following standards:

(1) For each operation conducted in an AR Overlay Zone the applicant shall provide the Planning Department with a copy of the reclamation plan that is to be submitted under the county's reclamation ordinance; The reclamation plan approved by DOGAMI has been submitted as a part of the record in this proceeding. This standard is met.

(2) Extraction and sedimentation ponds shall not be allowed within 25 feet of a public road or within 100 feet from a dwelling, unless the extraction is into an area that is above the grade of the road, then extraction may occur to the property line; The County finds that no part of the proposed RMRI area is within these setback areas. These standards are met.

(3) Processing equipment shall not be operated within 500 feet of an existing dwelling at the time of the application of the overlay zone. Dwellings built after an AR Overlay Zone is applied shall

not be used when computing this setback. The County finds that there are no dwellings within 500 feet of any processing equipment in the 33.26 acre RMRI area.²⁸ This criterion is met.

(4) All access roads shall be arranged in such a manner as to minimize traffic danger, nuisance to surrounding properties and eliminate dust. The County finds that the haul road will be the same as what is currently utilized. Watering of the haul road is required to manage dust. This standard is met.

III. STATEWIDE PLANNING GOALS

It is unclear whether or to what extent that the statewide planning goals apply to this decision. Applying the Goal 5 rule to a mining site and allowing mining is a special kind of process that amends the County's Comprehensive Plan and is a process required by the specific terms of OAR 660-023-0180. OAR 660-023-0180 says nothing about applying other statewide planning goals. In context, it is reasonably implied that OAR 660-023-180 includes the totality of requirements applicable to proposals to add land to an RMRI. The only exception appears to be that the rule contemplates that particular goals will be applied in circumstances inapplicable here. OAR 660-023-0240. Many of the requirements of OAR 660-023-180 appear to be specific refinements to the provisions of Statewide Planning Goals that would otherwise apply to a plan amendment. For example, OAR 660-023-180(5)(b), includes a specific type of transportation analysis that would be superfluous if a Goal 12 TPR analysis were required. Further, the Statewide Planning Goals do not apply to the application of the AROZ to the property, because that action is the amendment of a land use regulation and it is consistent with the amendment of the County Comprehensive Plan approved herein to make the site a significant aggregate site and allow mining. ORS 197.835(7)(a). Nevertheless in an abundance of caution, the Goals are evaluated below.

Goal 1 Citizen Involvement

The proposal does not change or impact the County's Goal 1 citizen involvement program. Accordingly, here, Goal 1 is satisfied by following the County's acknowledged citizen involvement program. The County followed its acknowledged citizen involvement program and this goal is satisfied. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

Goal 2 Land Use Planning

Goal 2 requires an adequate factual base for land use decisions and an explanation of policy choices. The decision is based on substantial evidence (an adequate factual base) and these findings explain the County's policy choices. The plan amendment to add the subject property to the RMRI is implemented by the corresponding AROZ applied per this decision. The decision was coordinated with other units of government because as explained earlier in these findings applicable units of government were provided notice and the opportunity to comment. As applicable those comments are addressed in this decision.

Goal 3 and 4 Agricultural Lands and Forest Lands

28 As noted elsewhere, the asphalt plant for the mine is located on the 9.83 acres already on the RMRI. It is not subject to re-justification here and the AR zone is not being applied to it. In any case, the County notes that evidence is in this record that the asphalt plant is more than 500 feet from the nearest dwelling.

The property is planned and zoned EFU. It is not planned and zoned for forest uses. Goal 4 does not apply but Goal 3 does.

Adding the subject land to the RMRI is consistent with Goal 3 because mining is allowed in EFU zones – which implement Goal 3 – subject to compliance with OAR 660-023-0180. *See Hiebenthal v. Polk County*, 45 Or LUBA 297 (2003) (Goal 3 inapplicable to a use authorized in ORS 215.283(2)). The proposal is a use authorized by ORS 215.283(2)(b). Moreover, the proposal is further consistent with Goal 3 because instead of opening a new pit, it expands an existing one; limiting the amount of EFU land impacted to be devoted to producing aggregate material for road building in the County. The proposal complies with OAR 660-023-180 and having complied with the rule further establishes compliance with Goal 3.

Goal 5 Open Spaces and Natural Resources

Compliance with Goal 5 is achieved by complying with the Goal 5 rule – OAR 660-023-0180. The proposal complies with the Goal 5 rule.

Goal 6 Air Water and Land Use Resource Quality

For a mining use, the County need only determine that the mine is reasonably expected to comply with applicable state or federal environmental quality standards. *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786 (2003). The only applicable federal environmental quality standards are the Clean Air Act, which is implemented by Oregon DEQ through Air Contaminant Discharge Permits. Oregon also has clean air standards which are implemented through DEQ issuance of Air Contaminant Discharge Permits. As explained elsewhere in these findings the operation has and is expected to maintain all required Air Contaminant Discharge Permits. Goal 6 is satisfied.

Goal 7 – Natural Disasters and Hazards

Goal 7 requires the County to evaluate risks from development in areas subject to natural disaster or where there are hazards. The subject property is not in a flood or landslide hazard area. There is no particular wildfire hazard given the proposal is largely devoid of vegetation. There is a natural gas pipeline on a part of the property that abuts the proposed RMRI area. It is within the area already on the RMRI. Mining has successfully occurred around the pipeline for a long time, because mining has been ongoing at the Spence Pit in various locations around the pipeline, since the 1940s. The owner of that pipeline submitted a letter for the record stating that mining in the proposed RMRI area, including blasting could safely occur near the pipeline so long as no material was removed from the pipeline easement area. No material will be removed from the pipeline area per this approval, because the pipeline is not within the area authorized for mining as a part of this RMRI approval in the first place. Further, the blast plan for mining under this approval expressly requires that no material be removed from the pipeline easement area and requires that “no blast holes will be drilled in Northwest Pipeline Company’s 50’ wide easement.” The blast plan also requires preblast notice to Northwest Pipeline Company, the owner of the gas pipeline easement. Moreover, the blast plan requires “A minimum of two seismographs will be set up. The first seismograph will be placed at the gas line, upon Williams Northwest Pipeline Company’s approval, and the other at the nearest structure.” Compliance with the blast plan is a condition of approval. The County finds that Goal 7

is met because there are no natural hazards associated with the subject property and that potential problems with the gas line are adequately mitigated and controlled through compliance with the blast plan such that this approval does not significantly increase or create unreasonable risks associated with the pipeline.

Goal 8 Recreation

Goal 8 either does not apply or is satisfied. The Board observes that there is not much in the way of requirements in Goal 8 in any event. The County has planned for parks and other recreational needs for its citizens. To the extent Goal 8 generally expresses a sense that the proposal should not interfere with recreational uses the County notes that there is nothing about the approval of the RMRI here that adversely affects any recreation use. Findings about the open space at Grove Elementary School are included in other parts of this decision. The proposal does not in any way foreclose or impair recreational use of the school. To the extent the Walla Walla River is used for recreation, the proposal does not affect that use of the river either.

Goal 9 Economy of the State

Goal 9 requires the County to provide adequate opportunities for a variety of economic activities. Mining is an economic activity. This approval provides the opportunity for mining. Goal 9 is met.

Goal 10 Housing

This goal pertains to needed housing. The subject property is not planned or zoned for housing of any type. The proposal has no impact on needed housing and this Goal does not apply.

Goal 11 Public Facilities and Services

No public facilities like public water or sewer are available to it or proposed. As explained elsewhere in these findings, there is adequate water available to serve the proposal. A septic system serves the office. The Sheriff provides police protection and fire service is provided by the Milton-Freewater rural fire department. A condition of approval is imposed requiring the applicant maintain a subscription to the rural fire department. Storm water is adequately controlled on site as explained elsewhere. Goal 11 is met.

Goal 12 Transportation

Goal 12 relates to the requirements of the County transportation plan. The County has an acknowledged transportation plan. There are no nearby freeway interchanges or major mass transit stations or major air, land or water terminals. Goal 12 is met. The County does not believe the Transportation Planning Rule ("TPR") which implements Goal 12 applies. However, as a precaution it also notes that to the extent that the TPR applies it is met.²⁹ The applicant provided a

²⁹ As noted elsewhere, it does not appeal Goal 12 or the Transportation Planning Rule ("TPR") applies to this proposal. OAR 660-023-180(5)(b) includes a specific type of transportation analysis that would be superfluous if the TPR also applied. Similarly, the AROZ, while a map amendment, application of the AROZ simply follows and implements the RMRI authorized by OAR 660-023-180, the county TSP is acknowledged and the neither the project nor the County was not exempted from the TPR per OAR 660-012-0060(9). Thus, the AROZ does not trigger the

Transportation Impact Analysis and supplement that among other things, concludes that the proposal has “no significant impact” on a transportation facility under OAR 660-012-060 (TPR). The analysis in the applicant’s transportation submittals is incorporated by the County. The County finds the proposal has no significant impact” on a transportation facility because the proposal does not change the volume or types of transportation impacts from the existing mining operation that existing transportation system experiences or change how the transportation system is planned to function or does function over the planning horizon.

Goal 13 Energy Conservation

This goal requires development and use of land be managed and controlled so as to maximize conservation of energy. The proposal is consistent with this goal. Energy efficiency is maintained by expanding an existing site as here rather than opening a new one. The proposal avoids the need to open a new pit to mine aggregate resources and avoids distant travel between a new or different pit to process material at this site. It avoids the need for new processing facilities which are energy consumptive, and rather encourages the efficiency of utilizing existing processing facilities for rock mined at the expanded site. Sharing facilities as here and expanding an existing site rather than adding a new one promote energy efficiency.

Goal 14

Goal 14 does not apply because the proposal does not expand an urban growth boundary, does not establish an urban growth boundary and is not an “urban” use.

Goals 15-19

None of these goals apply because none of the implicated natural resources are present at or near the site.

CONDITIONS APPLICABLE TO MINING IN THE APPROVED 33.26 RMRI AREA:

Precedent Conditions: The following precedent conditions must be fulfilled prior to final approval of this request:

1. Sign and record a Covenant Not to Sue Agreement (Farming Practices). The Agreement will be provided by the County Planning Department.
2. Provide evidence of a current subscription to the Milton-Freewater Rural Fire District or evidence of coverage by another fire service provider

Subsequent Conditions: The following subsequent conditions must be fulfilled following final approval of the request:

TPR “significant impact” analysis per the terms of OAR 660-012-060(9). The County further notes that it would not make much sense for the rule to specifically authorize only a specific type of transportation analysis in the plan amendment process in OAR 660-023-180 to add a site to a significant mining site inventory, and then to turn around and require a full blown TPR analysis in applying the implementing AROZ zone.

3. Obtain a Zoning Permit from the Umatilla County Planning Department with an approved site plan showing setbacks, existing structures, driveways, utilities, etc. on the proposed RMRI area.
4. Obtain all other State permits necessary for development (i.e. building codes, DEQ On-site, etc.) including the following permits regarding the aggregate site:
 - a. DOGAMI. Comply with DOGAMI permit and Reclamation Plan requirements. A copy of the DOGAMI permit and Reclamation Plan is to be provided to the County Planning Department when issued.
 - b. DEQ. Obtain all necessary DEQ permits in relation to an aggregate site.
 - c. DEQ. Continue to meet the DEQ Noise Standard as found in OAR 340-035-0035(B).
5. Implement and adhere to the Applicant's Daley Standlee Noise Study Section 6.4 "Assumptions Used in Predicting Future Mining Noise Levels."
6. Follow the blasting plan which includes pre-blast notification to the owner of the gas pipeline as well as area property owners. Pre-blast notification to area property owners shall be to those persons as shown on the currently available Umatilla County tax roll for real property located within 2,500 feet of the RMRI boundary. Notification if given a week in advance of a blast may be by First Class U.S. Mail. If within 24 hours of a blast then notice shall be via email or telephone call so long as the recipient property owner has authorized the same; provided however that notice to area property owners complying with this condition may also be accomplished by leaving written notice at the door of residential property that is within the 2,500 notice area. If access to the door is not possible due to locked gates or threatening animals or other legitimate reasons, then notice may be posted on the property or nearby road right of way in the most visible way and place that is reasonable and possible.
7. No blasting or extractive activities within the 50 foot wide gas pipeline easement;

Conduct one pre-blast survey within the 1,500 foot impact area. If there is a complying preblast survey within the previous 3 months of this approval then evidence of such pre-blast survey shall be adequate to satisfy this condition.
8. Hours of operation will be 6:00 a.m. to 7:00 p.m.
9. Plant a buffer zone of trees to mitigate noise and dust
10. Install a flow meter on the domestic well
11. Install three 10,000 gallon water tanks for water storage on the property;
12. The applicant shall remove all debris at the conclusion of mining operations and leave the extraction area in a safe and useable condition.

13. If lighting is added then shielding is required to prevent glare onto the adjoining properties and roadways.
13. Haul roads will be watered regularly with the use of water trucks. Extraction areas will be watered regularly with the use of a sprinkler system.
14. Maintain a subscription to the Milton-Freewater rural fire district or other fire service provider.

Dated this the 31 day of July, 2014

UMATILLA COUNTY BOARD OF COMMISSIONERS



William J. Elfering
William J. Elfering, Chair

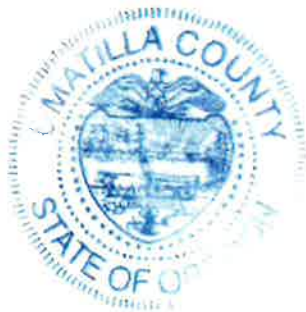
George L. Murdock
George L. Murdock, Commissioner

RECUSED DID NOT PARTICIPATE

W. Lawrence Givens, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Jane Anderson
RECORDS OFFICER



DRAFT MINUTES

REQUEST FOR A PUBLIC HEARING FOR CONDITIONAL USE PERMIT REQUEST

C-1293-17

Blue Mountain Hay, LLC, Applicant/Owner

&

SUBDIVISION REQUEST

S-055-18

**Dusty Pace, Applicant, South County Construction Inc.
& Eat Two, LLC, Property Owners**

PLANNING COMMISSION HEARING

March 22, 2018

**Umatilla County Planning Commission Public Hearing
Thursday, March 22, 2018, 6:30 p.m.
Albee Room, City of Milton-Freewater Public Library,
8 SW 8th Avenue, Milton-Freewater, OR**

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Gary Rhinhart, Vice Chair, Don Wysocki, Tami Green, Tammie Williams, Clive Kaiser, Hoot Royer
ABSENT: Molly Tucker Hasenbank, Cecil Thorne
STAFF: Bob Waldher, Planning Director, Carol Johnson, Senior Planner, Jacob Potterf, Planner/GIS, Tierney Dutcher, Administrative Assistant, Gina Miller, Code Enforcement Coordinator

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 p.m. and read the Opening Statement.

RECOGNITION

Planning Director Bob Waldher and Planning Commission Chair Suni Danforth recognized Don Marlatt for his commitment in serving on the Planning Commission since 2013. Mr. Marlatt was presented with a Certificate of Appreciation, as his time on the Planning Commission has come to an end.

Mr. Waldher stated that we have a new staff member in the Planning Department, Jacob Potterf. Mr. Potterf started in February as a Planner and GIS Technician and we are excited to have him on board.

The Planning Commission also welcomes two new Commissioners, Molly Tucker Hasenbank and Hoot Royer. Mr. Royer resides in the Hermiston area and is in attendance tonight. Mrs. Tucker Hasenback lives in the Weston Mountain area and will be joining us soon. Mr. Waldher thanked them for their service and looks forward to working with them on future applications.

NEW HEARING

**REQUEST FOR A PUBLIC HEARING FOR CONDITIONAL USE PERMIT REQUEST
#C-1293-17: Blue Mountain Hay, LLC, Applicant/Owner**

A “Request for a Public Hearing” was filed on February 20, 2018 to appeal the County’s tentative approval granted to Blue Mountain Hay, LLC for a Conditional Use Permit for “Commercial Activity in Conjunction with Farm Use.” The request is to develop the subject property with a variety of farm-related operations including a hay press, hay storage buildings, and an area for farm chemicals/fertilizer storage and sales. The 18.43-acre subject property is zoned Exclusive Farm Use (EFU) and is located at the northwest corner of Appleton Road and Highway 11, described as Tax Lot #2800, in Township 6N, Range 35E, Section 25B. Criteria of approval for Conditional Uses are found in Umatilla County

Development Code (UCDC) Sections 152.060, 152.061, 152.615, and, 152.617 (I)(B), and Resource Use Protections in UCDC Sections 150.01-150.08.

STAFF REPORT

Mr. Waldher stated that a majority of the Applicant's proposed uses are outright permitted uses for the EFU Zone and would not require a Conditional Use Permit (CUP). He distributed a copy of the Resource Use Protection section of the UCDC. He stated that since the Applicant is seeking to permit chemical storage and dry fertilizer storage on the property, Planning staff suggested that the application be processed as a CUP. Affected agencies and nearby property owners were notified of the CUP request and were sent a copy of the Preliminary Findings and Conclusions on January 9, 2018. The Planning Department received 3 letters, 1 email and 1 phone call from the notified public and agencies during the 21 day comment period. Copies of these communications can be found in the Planning Commission packets. Tentative Approval from the Planning Department was issued on February 6, 2018 and a Request for Public Hearing was received on February 20, 2018, within the 15 day appeal period. The request for public hearing was made by Mr. Tim Werhan, owner of Smiley's RV. A copy of the request is included in the hearing packets.

Mr. Waldher stated that he has communicated with Mr. Cory Cooley, Oregon Department of Agriculture (DOA) Pesticide Investigator for the Northeast region of Oregon. Mr. Cooley provided information regarding pesticides and storage of chemicals. He stated that several different state agencies have a part in the regulation of pesticides. Most of the chemicals stored at this site will be agriculture chemicals and so DOA will require permitting through their agency. Other aspects of the chemical and fertilizer storage will be regulated by the Oregon Occupational Safety and Health Administration (OSHA) and the Department of Environmental Quality (DEQ) will be brought in if there is an environmental issue or concern that needs to be addressed.

The Planning Commission was asked to refer to the Preliminary Findings and Conclusions and supporting information provided by the Applicant to determine if the request meets or does not meet the applicable criteria. They will either approve or deny the pending Land Use Request, and approval must be based on factual evidence in the record, not conclusory statements.

Chair Danforth called for any abstentions, bias, conflict of interest, declaration of ex-parte contact or objections to jurisdiction. There were none.

TESTIMONY

Applicant Testimony: Jeremy Christman, 31125 Cartney Dr., Harrisburg, Oregon. Mr. Christman represents the Applicant, Blue Mountain Hay. He started with a PowerPoint Presentation to explain more about Blue Mountain Hay.

Mr. Christman stated that Blue Mountain Hay is run by a family consisting of a father and 5 boys. They started out in the hay pressing business in the Willamette Valley and have been farming for decades.

They are half-interest owners in Valley Hay and grew to start Blue Mountain Hay in 2008. The thrust of their business is in wheat straw baling. The function of their job is to clear out the fields and bale things for farmers. They take the crop with them, store it and ship it to various fields and farms that need the product. The field is then left clean and ready for the farmer to start their next crop cycles.

In November of 2017, Blue Mountain Hay had an opportunity to acquire the subject property on Highway 11. The property is zoned EFU and they were able to obtain Zoning Permits for most of the buildings. They have moved into farming their own properties and require chemicals and fertilizers for production. Most of the chemicals consist of weed killers, pesticides and general fertilizer used for crops. If they were simply seeking Zoning Permits for the buildings, they would not need to address dust or noise in the process. They are seeking the community's support in this process and hope to build a good neighbor policy.

Mr. Christman stated that he would like to explain more about the purpose of the proposed buildings. While they were still in the planning stages they worked with the Oregon Department of Transportation (ODOT) and other agencies to figure out exactly what the layout was going to be. The equipment is required to be in a secure, dry storage location. They also need shops to repair equipment and a storage facility. At some point they would like to add a small press to duplicate what they do in the valley and they plan to have trucks parked on site. The Conditional Use Permit (CUP) would allow for an office building, dry chemical storage area and chemical storage area.

Mr. Christman stated that at this time, Highway 11 consists of an old field and old building that appears to be falling down. This project would call for removal of that building and replace with a new, professional building and secured storage. He believes this will improve the overall look of the area. He feels that they will bring more business and activities to Milton-Freewater and it would benefit the community as a whole. There are roughly 45 farming jobs within the baling operations and shops, not including the additional employees that will be needed as they grow the business on the property. Currently, farmers in Milton-Freewater travel 25-30 minutes to get supplies needed for bulk fertilization, pest control, weed abatement etc. Those products will be available for purchase on this property. He sees the project as a general win-win for everybody.

Commissioner Kaiser asked for clarification on how Mr. Christman determined that a 25-30 minute commute is necessary to get bulk chemicals for farming in the area. Mr. Christman stated that the family members researched that issue and provided the number. Commissioner Kaiser asked which specific site they are referring to. Mr. Christman stated that he cannot answer that question. Commissioner Kaiser stated that The McGregor Seed Company is located in Milton-Freewater, 5 minutes away from the proposed site. He stated that they will be competing with McGregor and asked more about the size of the operation. Mr. Christman stated that the chemical storage building will be 100 x 100 ft. and will hold approximately 2,500 gallons.

Commissioner Rhinhart asked if they will have fuel sales on site. Mr. Christman stated that they will have fuel on site for their own trucks, but no fuel available for purchase. Commissioner Rhinhart asked more about the chemicals that will be in the fertilizer storage areas. Mr. Christman stated that they will

have nitrogen phosphate and potassium in large quantities so they can make custom mixtures for farmers. Other chemicals are as simple as Roundup Max in large quantities for farm use.

Commissioner Rhinhart stated that the subject property is irrigated, high-value farm ground. He asked if they considered other locations for this project. Mr. Christman stated that the family has been looking at various parcels throughout the area, but this was the right location. He cannot comment on how many places they looked at. They have been leasing spaces to store equipment throughout the area and are eager to find a location that works to support their business needs. Commissioner Rhinhart stated that he supports the idea but is struggling with whether it is the right piece of ground for this activity.

Mr. Christman stated that Blue Mountain is in the hay business, including alfalfa, Timothy, meadow and organic hays. Currently those are shipped over to the valley to get pressed. The freight costs do not support a high efficiency business model. In having a press on site, they will save and the family is well known and well regarded for providing a quality package for the overseas market. The pressing activity falls within their skillset and it would benefit their business model.

Commissioner Wysocki stated that both anhydrous and liquid fertilizers are common products but the application states that they plan to use dry fertilizer. He asked if they have plans for liquid or anhydrous fertilizer storage in the future. Mr. Christmas stated that as of now, they will have dry fertilizers that will be stored in bins, used for mixtures and then loaded out. The chemical storage is designed for pesticides, fungicides and weed killers. There is no plan for liquid material at this point.

Commissioner Williams asked about the jobs that will be created to operate the facility. Mr. Christman stated that the 45 jobs he spoke of are inclusive of all workers associated with the operation including mechanics, processing agents and seasonal farm workers. Commissioner Williams asked if the jobs are already filled or if there will be new job opportunities associated with this project. Mr. Christman stated that some are returning seasonal farm workers. The office workers will be moving from another location to this new site. As they grow as a business and put more bailers on, they will source new positions locally.

Mr. Waldher provided a site plan to the Planning Commission and asked that the document be added into the record.

Chair Danforth stated that the setbacks will be 50 ft. and they will provide landscaping to shield some of the visuals. She asked about the noise associated with the process of bailing straw. Mr. Christman stated that it depends on the trucks. Without the chemical storage, fertilizer storage and office building, they would be able to do these other activities with a Zoning Permit. This would allow for the bailing activity without considerations for noise or dust. This discussion is a result of applying for the Conditional Use Permit which generated questions about the noise and dust. The chemical storage, fertilizer storage and office building will not create any excessive noise. Additionally, due to the fact that the property is located next to Highway 11, there will be no additional noise to note. The same activities are being done in the valley and the noise is so minimal that OSHA does not require ear protection for their workers.

Chair Danforth asked for more explanation about the seed cleaning activity that will take place at the facility. Mr. Christman stated that the family owns farms and need to have seed cleaned. At this time the seed is transported to the valley to be cleaned. With the Conditional Use Permit, they plan to receive dirt weight seed and send it through an elevator with shakers and screens. The chaff will be blown off and the end result is finished seed with a purity content that meets seller needs and regulations. Chair Danforth asked where the chaff goes. Mr. Christman stated that they end up at the pellet mill where they are converted into pellets and sold so nothing goes to waste. Chair Danforth asked if any of the chaff is released into the air or if it is all captured. Mr. Christman stated that dust is produced as part of the operation.

Commissioner Rhinhart asked if they plan to sell and treat seed. Mr. Christman stated that for this application, they are asking for approval to store their wheat and operate a chemical and fertilizer business. In the future they would like to bring other activities in-house. They are hoping to have one land use hearing where they ask for what they need and get approval, instead of needing a new permit each time they want to add to it. They may or may not come to fruition, but they will have the opportunity if and when circumstances allow. Commissioner Rhinhart asked if they know how long it will take to finish the expansion. Mr. Christman stated that Phase 1 consists of building the office structure, chemical storage, truck shop, equipment shed, truck scale and the fuel island. They estimate it will take a year to complete Phase 1. They would need to consider finances before they move on to Phase 2 and Phase 3. Commissioner Rhinhart asked if some of the land will still be farmed. Mr. Christman stated that there are about 10 unused acres and he's not sure it would be economical to farm.

Commissioner Wysocki asked if the purpose of the seed cleaning facility will be to market their own seed. Mr. Christman stated that they will clean their own seed and offer custom cleaning services to other farmers. They plan to eventually get into seed sales. Commissioner Kaiser asked if their operation grows, at what point does it become industrial and require a CUP? Mr. Waldher stated that the commercial aspect of the seed cleaning and sales fall under the CUP because it implies commercial activity in conjunction with farm use.

Commissioner Kaiser stated that the sales of seeds and fertilizers will produce additional traffic to the area. He asked if ODOT has been consulted. Mr. Waldher stated that ODOT indicated that the ingress and egress to the site will be off an ODOT facility, so they have jurisdiction. There are 7 reservations for access to the property and the applicant has been working with them to establish which is best. They have consolidated the access points into 3, with 40 ft. wide openings on each. They will not be accessing the property off the highway. Mr. Christman stated that they met with ODOT Permit Specialist, Tom Lapp, on site. They stated that they would like an overall traffic count and turn radius but Mr. Lapp concluded that the total amount of trucks they will use are de minimis in nature and do not require a traffic count. There are no traffic control lights necessary, but they would need to confirm ODOT's traffic study which was completed sometime around 2010 or 2012.

Chair Danforth asked about safety measures in place for the fertilizer storage to ensure groundwater is safe from contamination. Mr. Christman stated that OSHA requires that the chemical storage area has an immediate shower application, blow-down area and containment. For spill mitigation there will be a 4

inch containment berm connected to a drain that leads to a pump-out container. The dry fertilizers are generally organic, so there is no safety net necessary. There are safety protocols for those working with the dry fertilizers, but not for spills. Chair Danforth asked more about the chemical liquid containment. Mr. Christman stated that it will be stored in a heat conditioned, contained building, on racks or shelves. Based on the square footage and height available, they plan to store approximately 25,000 gallons maximum.

Commissioner Green asked if the family is already doing business in the fertilizer industry. Mr. Christman stated that this is a new venture for the family and they are just getting started. He stated that, although these chemicals are stored in concentrated levels, they are designed to be diluted and sprayed on the ground to kill fungus, pests and weeds. Chair Danforth stated that she understands that, but when used in farming practices the chemicals are heavily diluted. She asked if the applicant has made attempts to reach out to surrounding property owners, including those in the adjacent mobile home park. Mr. Christman stated that this application process has allowed them to communicate more with neighbors. He did not reach out to them personally because he did not want to make it seem as though they were trying to coerce property owners into favoring the project. He felt the public hearing was the proper way to answer all the questions and address any concerns neighbors have.

Commissioner Wysocki stated that most retail suppliers of fertilizers and agriculture chemicals provide services to patrons, like advice and field inspections. He asked if they plan to expand to develop a consulting business along with sales. Mr. Christman stated that as part of the Co-op they are working with, they will have a designated person to do that work but their business plans and business models are still a work in progress. Commissioner Kaiser asked if they will aid in the recycling of empty fertilizer and pesticide containers. Mr. Christman stated they would have to provide that service because there is nowhere else to dispose of them.

Chair Danforth asked how many tons they anticipate producing in the bailing process. Mr. Christman stated that they plan to produce 40,000 – 45,000 tons, annually. Commissioner Royer asked if they will be loading the bales onto containers on the property. Mr. Christman stated that they will be loading bales onto trucks from a loading dock. Commissioner Royer asked if they plan to store containers on the premises. Mr. Christman stated that they will load the trucks and immediately send them back out and the press will allow for production to fill about 6-7 containers daily.

Chair Danforth stated that the hours of operation will be daylight hours. She is concerned that during the summer season, it can stay light until 10:00 pm. She asked if they will be operating the press and machines and have tractors coming and going from the property that late. Mr. Christman stated that he does not know how busy they will be, but farmers tend to work as long as they possibly can. If they were not seeking the CUP they would have the right to operate all day and night, but they don't want to be bad neighbors. The CUP process captures the ability to apply conditions on how they operate. Ideally, they would like to be seen as an asset to the community. They do not want to be considered a project that will create fear, noise or disrupt people's way of life. This project should not do that, because if it did they would not consider it. Chair Danforth stated that she likes the prospect of this business, but she is aware of what surrounds the property, including the mobile home park and RV

business. She is not sure if she can fully support the location based on the dust and noise that will be produced.

Mr. Waldher provided a copy of Umatilla County Development Code (UCDC) pertaining to protected farming practices in a Resource Zone.

[UCDC 150.04 PROTECTING RESOURCE USES OUTSIDE UGB. (A) No resource use occurring outside an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, non-resource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of the county. (B) This section applies regardless of: (1) The location of the purportedly affected non-resource use. (2) Whether the non-resource use purportedly affected existed before or after the occurrence of the resource use. (3) Whether the resource use or non-resource use has undergone any change or interruption. (4) Whether the resource use or non-resource use is located inside or outside an area designated as secondary resource lands.

UCDC 150.07 LAND USE DECISIONS. The fact that the County's Comprehensive Plan, development ordinances and land use decisions may allow the siting, development or support of land use decisions may not negate the provisions of this chapter intended to protect a resource use.]

Mr. Waldher stated that many of the activities that are included in this request are determined to be farm uses and therefore are considered outright farm uses, including the hay press. Those activities would be allowed to occur on the subject property. They would only need to obtain a Zoning Permit for the new building. The CUP application captures the commercial activities such as the fertilizer storage. Additionally, if they chose to have their own seed cleaning operation and chemical storage for their own farm use, they would be able to do that because it is tied to the farm use and that falls under state statute.

Support Testimony: Arnold Weaver, 84543 Highway 11, Milton Freewater, Oregon. Mr. Weaver stated that he lives and operates a mechanic shop to the south of the proposed project location. He knows the people from Valley Hay and has had good experiences doing business with them. He feels that moving the operation to this area will produce more work for his business and he views this as a positive thing. He stated that he would anticipate less noise produced by this project than other businesses that are operating in the area at this time.

Support Testimony: Ryan Mathwich, 84780 Tum-A-Lum Rd., Milton Freewater, Oregon. Mr. Mathwich stated that he has been farming the subject property for the last 6 years. He has gotten to know the Derstines over the years and believes they are great people. They have purchased this property and have plans for it. He believes that the opportunity to sell commercially will not produce much more dust than would already occur with normal farming practices.

Opposition Testimony: Tim Werhan, Owner, Smiley's RV, 53816 W. Crockett Rd., Milton Freewater, Oregon. Mr. Werhan stated that he believes the proposed project is designed to take place in the country.

He believes that they are requesting to obtain a special permit that would give them a commercial license, allowing them to operate the property as a commercial entity rather than a farm entity. The production and sale of products makes them a commercial operation, not a farm. The property is zoned for farm use and this is his biggest objection.

Mr. Werhan stated that there are roughly 200-300 residents in the immediate area, including 2 mobile home parks and an RV park. He believes it will be impossible for this project to not to produce dust and chemical contamination to the air and water. He is concerned that no matter how many provisions they may take, accidents happen and chemicals get spilled. The water aquifer supplying water to hundreds of people is roughly 100 ft. from most of the wells in the area. He is concerned that concentrated chemicals are unsafe materials and could destroy the entire aquifer. Most farming practices only produce dust and dirt for a few weeks each year, while this operation would continue all year.

Mr. Werhan believes this application is being considered as a farm project, but in fact it is a commercial entity because they will not be growing crops or producing food. He believes that farming is raising a crop or livestock and this project will consist of processing and retail sales. He does not believe this aligns with normal farming practices and as a result, the neighbors will be forced to live with the consequences of additional noise, dust, dirt, odors, trucks, fuel and chemicals.

Mr. Werhan stated that the Appleton Road and Crockett Road intersection is the most dangerous intersection on the highway. Crockett Road is one of the major roads joining Spofford Road and Eastside Road, along with the park and the school. He believes the increased truck traffic will create more accidents and traffic deaths.

Mr. Werhan stated that it would be great to have the property developed into a commercial property. He would like to see the space used for a grocery store, hardware store or other similar business. He stated that he is trying to protect his community. He appreciates that they are bringing new business to Milton Freewater, but does not want the project on this piece of land.

Commissioner Green asked Mr. Werhan if he believes a grocery store would create traffic increases in the area, similar to the increases he is concerned about with this CUP. Mr. Werhan stated that it would not be the same because this CUP proposes to use large semi-trucks with pup trailers and other massive commercial vehicles. He feels that grocery store traffic would increase smaller cars merging on and off the highway, which is much safer. Commissioner Green stated that she is confused because he stated that his biggest objection is that this property is zoned for farm use and should be used for farm purposes. Mr. Werhan stated that he has an issue with this particular type of business because it will be intrusive. He believes a grocery store would not produce the same issues of additional chemicals, dust, dirt and noise in the area.

Commissioner Williams commented on the statement Mr. Werhan made about the aquifer being roughly 100 ft. from most of the area wells. She stated that farming the land would cause more leaching into their water base with farmers dumping Round-up on the ground year after year, versus one accidental chemical spill. The protections will be in place in the building and any spills will be cleaned up

immediately. Mr. Werhan stated that the amount of spray the farmers use does not saturate the ground enough to penetrate much of the soil. Commissioner Green stated that this CUP will allow for the land use piece of the operation but DEQ and OSHA will be involved and the chemicals will be more controlled. Mr. Werhan stated that the chemicals involved in the CUP will be in a concentrated form and a spill would be dangerous. Commissioner Kaiser stated that the applicant will be required to have a concrete containment tank underneath the building to catch any spilled materials.

Opposition Testimony: Katharyn Tuten-Puckett, 53785 W Crockett Rd., Milton Freewater, Oregon. Ms. Tuten-Puckett stated that she lives in Villadom Mobile Home Park which is a 55+ community next to Smiley's RV. She is concerned that this operation will take place next to the park which holds 84 mobile homes and 14 RV spaces. They are on a well and do not want the water contaminated. Ms. Tuten-Puckett stated that she will be 75 years old next month. Many of the residences at Villadom are there because the air is clean in Milton-Freewater and pollutants to the air and ground are a concern of hers. In the 4 years she has lived in the park, there have been 5 major traffic accidents at the corner of W Crockett Road and Highway 11. She believes that increasing the truck traffic will cause more accidents and damage to the roads. She stated that this is very good farmland and she feels it should be protected.

Opposition Testimony: Mitzi Gustin, 53708 W Crockett Rd., Milton Freewater, Oregon. Ms. Gustin stated that she has lived in her current residence for 17 years and travels the highway into town every day. She has reached out to ODOT about safety issues but was told that they are only concerned with vehicular deaths that occur. She feels that the area cannot support any more traffic unless the state installs traffic lights. Many residents use back ways to enter the highway because it is so unsafe. She has a 40 foot well and is concerned about groundwater contamination because she does not think OSHA will monitor the site regularly. She is disappointed that they plan to bring in 45 of their own employees because the community could use the work. She does not want a grocery store or gas station. She wants to be able to use her patio without extra noise.

Opposition Testimony: David Miller, 84722 Highway 11, Milton Freewater, Oregon. Mr. Miller stated that he lives on the north edge of the subject property. He is concerned about the amount of dust and noise that will be created.

Opposition Testimony: Darrel Lepiane, 85134 Triangle Station Rd., Milton Freewater, Oregon. Mr. Lepiane stated that his main concern is water quality. There are many residences and a school in the area and they all rely on wells. He is uncomfortable with the chemical aspect of the project. He wants to know about the size of containers they will use to store the chemicals. He asked who will be monitoring the project to be sure they are complying with water quality regulations. He asked if they will make scheduled checks or unannounced checks to see how things are being done on site. Chair Danforth stated that Mr. Christman will address his questions in his rebuttal.

Commissioner Rhinhart stated that Mr. Lepiane lives in an orchard area, where they have been spraying arsenic for years. The area already has high nitrate levels for their wells. He stated that there is likely to be more pollution to the wells by the septic tank than there will be from this project. Mr. Lepiane asked who will monitor the project to ensure things are done in a safe way. Chair Danforth stated that DEQ

oversees the process, which is complaint driven. Commissioner Kaiser stated that they will have annual inspections of the tank but a spill would trigger an investigation. Mr. Lepiane stated that he would like to have regular unannounced inspections and measures onsite to mitigate. Commissioner Rhinhart stated that they will help get the process set up and probably come out in the first year to review, but they will not likely have additional inspections unless a complaint is made.

Opposition Testimony: Clayton Stewart, 53597 W Crockett Rd., Milton Freewater, Oregon. Mr. Stewart stated that he is for growth in the community but commercial operations should not take place on a quality piece of farm ground. He stated that an orchard separates his property from the subject property and when the orchard is gone he will be looking right at them. He is not as concerned about the chemical spills because he knows DEQ will keep the chemicals contained. He is concerned about the safety issues with the highway and the straw that will be blowing around the area.

Public Agencies: Mr. Waldher stated that Corey Cooley from Oregon Department of Agriculture had outlined the 3 different agencies that would be involved with the regulation of the pesticides. The City of Milton Freewater provided comments requesting that the applicant consider landscaping along the Highway 11 corridor. That request has been added as a condition of approval. Commissioner Williams asked if they received comment from the Oregon Water Resources Department (OWRD). Mr. Waldher stated that OWRD received notice and did not provide any feedback.

Mr. Waldher stated that the public notice was sent to all property owners within a 750 ft. radius of the project, per state statute. The addresses are identified using County Assessor records and public notices are sent to the address on file. Therefore, the owner of the mobile home park received notice, but each individual person residing in the park would not be noticed in this process.

Mr. Waldher stated that the state has a broad definition of what is considered farm use. He referenced the UCDC definition of Farm Use, as defined in Oregon Revised Statute (ORS) 215.203.

[FARM USE. (as defined in ORS 215.203) (1) The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management, and sale of, or the produce of livestock, poultry, fur-bearing animals or honeybees, or for dairying and the sale of dairy products or any agriculture or horticulture use; animal husbandry or any combination thereof. FARM USE includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use....]

Mr. Waldher stated that staff's interpretation is that the activities being proposed on the subject property are farm uses. However, the fertilizer sales and seed cleaning fall into a commercial use category.

Applicant Rebuttal: Jeremy Christman, Representing Blue Mountain Hay, 31125 Cartney Dr., Harrisburg, Oregon. Mr. Christman stated that he is surprised about all the emotion involved in the hearing tonight. He was not aware this project would cause so much concern about safety. The owners chose to pursue a CUP instead of just obtaining the Zoning Permits because they wanted to inform the public and receive feedback. The family would like to put forth a nice presence in the community. He

stated that if the Planning Commission would like a tree line to mitigate dust, they are open to doing that. He added that the layout will change slightly now that ODOT has issued different driveway cuts and approved the project at that site. As a result, the property will have a layout that is more efficient because the 3 driveways allow for less funneling of traffic throughout the property.

The regulatory authorities will be in charge of what can and cannot be done on the property. He understands that spills are a concern, but most of the chemicals will be in 2.5 gallon jugs and stored in a contained area. He feels that the fact that DEQ has approved the permit and will regulate the use means concerns are somewhat minimal in scope.

Mr. Christman stated that currently with no growth, the employee force is filled. However, they hope to hire community members as soon as the additional buildings are completed. Mr. Christman stated that the CUP activity will not add additional noise. The farming activities could go all night, although they do not choose to do that.

Commissioner Kaiser asked what the hours of operation will be for the CUP activities. Mr. Waldher stated that there is a provision in the criteria for approval under UCDC 152.615(A), which states that, “[l]imiting the manner in which the use is conducted, including restricting hours of operation and restraints to minimize such environmental effects as noise, vibration, air pollution, water pollution, glare or odor”. He stated that staff is using these standards specifically for the commercial uses, not the farm uses.

Commissioner Rhinhart asked if they will be open on Sundays. Mr. Christman stated that the family never works on Sundays. They do not currently work Saturdays, but during harvest time they may have to work Saturdays.

Chair Danforth closed the hearing for deliberation.

DELIBERATION

Commissioner Rhinhart stated that he supports the project. He is not too concerned with the noise or the chemicals but he is concerned about the location. He stated that he is a hardcore farm land protector and he is concerned about the high value farm ground.

Chair Danforth stated that she lives in this area and drives the highway frequently. She agrees with the concern about additional truck traffic and is not sure this is the right location for this project. Another concern is the dust, especially because there are mobile home parks and an RV park in close proximity. The well water does not concern her because the shallow wells in the area are already contaminated with high nitrates. She wants additional businesses to come to Milton Freewater, but is concerned about the activities involved with this project.

Commissioner Wysocki stated that if it weren't for the CUP part of the project, the rest of the activities would be allowed outright in the EFU Zone. The retail sales of pesticides, agricultural chemicals and fertilizers make this request commercial, and those actions are being requested through the CUP.

Commissioner Williams stated that this activity is an outright farm use but she hears a lot of concern from the community. She stated that she was impressed with the change from the original 11 property access points to the revised 3 controlled access points. She stated that they have the right to do this through the ordinance that has been in effect for many years.

[Commissioner Green was feeling ill and excused herself before the vote.]

Chair Danforth asked if there were any additional conditions of approval to discuss before the final decision. Commissioner Kaiser stated that he would like to see a maximum size restriction of 120 x 120 ft. (14,400 sq. ft.) on the 2 new commercial buildings for chemical and fertilizer storage. He would like to propose a 6 P.M. curfew for the commercial activities and asked for the northwest and south borders of the property to be tree lined. Additionally, he is concerned that during more active times, there will be large amounts of chaff that comes off during the seed cleaning activity so he asked for a dust containment plan for the commercial use.

Commissioner Green stated that she wishes she could add a condition for the road, but that is ODOT's jurisdiction and the Planning Commission has no power over the road.

Chair Danforth stated that the City of Milton Freewater requested that there be no razor wire used. She stated that she understands they will want security fencing, but she asked that there is no razor wire along the highway.

Mr. Waldher stated that the following conditions of approval will apply; size limit of 14,400 sq. ft. on the commercial chemical/ fertilizer storage buildings, 6 P.M. curfew for commercial operations, dust control plan for commercial operations, landscaping, tree line to mitigate dust, and no razor wire on front size of property along the highway.

Chair Danforth added the following documents into the record; Blue Mountain Hay PowerPoint Presentation, UCDC Chapter 150: Resource Use Protection, Tim Werhan's Comments and Pesticide Information email from Cory C. Cooley, ODA Pesticides Program to Bob Waldher.

Commissioner Kaiser made a motion to approve the Blue Mountain Hay, LLC Conditional Use request #C-1293-17, subject to the precedent and subsequent conditions listed on page 12 and 13 of the hearing packet and additional conditions of approval imposed by the Planning Commission. The motion was seconded by Commissioner Williams. Motion passed with a vote of 4:2.

NEW HEARING

SUBDIVISION REQUEST #S-055-18: Dusty Pace, Applicant, South County Construction Inc. & Eat Two, LLC, Property Owners

The applicant requests approval to subdivide 17 acres of Rural Residential (RR-2) Zoned land into a 4-lot subdivision consisting of a minimum lot size of 2-acres per lot. The property is located along the west side of State Highway 395 and south of Colonial Lane, approximately 2-miles south of Pendleton. The property is identified as Tax Lot 202, Assessor Map 2N 32 34. Criteria include policies in the Comprehensive Plan listed in the public facilities, services, and transportation elements and approval criteria in Umatilla County Development Code (UCDC) Section 152.666 (6).

Chair Danforth called for any abstentions, bias, conflict of interest, declaration of ex-parte contact or objections to jurisdiction. There were none.

STAFF REPORT

Senior Planner Carol Johnson stated that the applicant owns a 17 acre parcel located approximately 2 miles south of Milton Freewater. The area is zoned RR-2, which is Rural Residential with a 2 acre minimum parcel size. The RR-2 zone is created with enough space to accommodate residents, on-site facilities, accessory structures, room for farm animals and garden/ landscaping. The standards for a subdivision are found in UCDC Section 152.666 (6), and are compliant with the Comprehensive Plan, Statewide Planning Goals, plat map requirements and zoning development standards.

Mrs. Johnston stated that there is a map on page 3 of the hearing packet which demonstrates how the 4 lots will be divided. Public notice was sent to property owners and affected agencies and no comments were received. She noted that the Conditions of Approval are located on page 8-9 of the hearing packet. She pointed out that this application was required to come before the Planning Commission because the land division request is to create 4 lots, which by state definition is considered a subdivision. If they were only creating 3 lots, the application would have been handled administratively.

Commissioner Kaiser stated that he is concerned about the septic system because it is located close to the McKay Reservoir. He asked what plan is in place to ensure nitrates do not get into the reservoir. Commissioner Rhinhart stated that the property is located below the reservoir, so it is downstream. Mrs. Johnson stated that the lots will be required to work with the Umatilla County Environmental Health Department to determine site suitability and obtain the proper onsite septic permits.

TESTIMONY

Applicant Testimony: Dusty Pace, 91486 Gateway Ln., Pendleton, Oregon. Mr. Pace stated that he is the owner of South County Construction. They have built approximately 100 houses in Umatilla County in the last 12 years, including 5 subdivisions. Originally they did not plan to request a subdivision on this property but after reviewing the property they determined there are 4 home sites available. He stated

that Umatilla County is in need of more housing. These 4 lots will serve as personal residences for Mr. Pace's family. He added that the property is it's made up mostly of rock with very little soil.

Mr. Pace stated that he has been working with Umatilla County Environmental Health and has been approved for standard septic systems on all 4 lots. One community well will service all 4 homes and they will adhere to the building setbacks away from the river and ponds.

Commissioner Wysocki asked more about the 5 acre water right that is attached to the 17 acre parcel. Mr. Pace stated that they are working with the Oregon Water Resources Department to determine how to divide the water right. He stated that they will probably put 1 acre on each lot and they plan to run an easement down the 60 ft. right of way so the water can reach each property. There is a 65-70 pound low pressure pipeline in place at this time.

Public Agencies: No Comments.

Chair Danforth closed the hearing for deliberation.

DELIBERATION

Commissioner Williams made a motion to approve Subdivision Request #S-055-18, subject to the precedent and subsequent conditions listed on page 9 and 10 of the hearing packet. The motion was seconded by Commissioner Rhinhart. Motion passed with a vote of 6:0.

MINUTES

Chair Danforth asked the Planning Commission to review the minutes from the November 16, 2017 hearing. Commissioner Rhinhart moved to adopt the minutes. The motion was seconded by Chair Danforth. Motion carried by consensus.

ADJOURNMENT

Chair Danforth Adjourned the meeting at 8:37 P.M.

Respectfully submitted,

Tierney Dutcher
Administrative Assistant

Minutes Adopted by the Planning Commission on _____