

**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, April 24, 2014**  
**5:00 p.m., Umatilla County Justice Center, Media Room**  
**Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Randy Randall (Chair), Gary Rhinhart (Vice Chair), John Standley, Tammie Williams, Don Wysocki, Don Marlatt.  
**ABSENT:** David Lee, Suni Danforth, Cecil Thorne.  
**STAFF:** Tamra Mabbott, Shane Finck, Julie Alford, Gina Miller.

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

**CALL TO ORDER:**

Chairman Randall called the hearing to order at 5:04 p.m.

**APPROVAL OF MINTUES:**

Commissioner Rhinhart made a motion to approve the minutes from the March 27, 2014 hearing, as presented. Commissioner Williams seconded the motion and it passed by consensus.

Chairman Randall identified the continued hearing as Comprehensive Plan Amendment #T-14-052 and Zone Map Amendment #Z-300-14 and read the opening statement.

**Staff Report:** Planning Director Tamra Mabbott presented the staff report. She briefly summarized the items that she was asked to look into at the conclusion of the previous hearing. She spoke about blasting and off site impacts saying she consulted with Ben Mundie of DOGAMI (Department of Geology and Mineral Industries) who was present at this hearing. Many counties issue conditions of approval that require submission of a blasting plan be prepared by a certified engineer. Their plan requires that adjacent property owners are given notice prior to blasting. The other issue the Planning Commission asked for clarification on was the existing Conditional Use Permits at the Spence Pit; the applicant is A & B Asphalt but the rock quarry and the property is owned by the Spence family. Doug Olsen, County Counsel, was present to answer questions with regard to the status of the Conditional Use Permit. The county opinion is that the permit is valid. There is one pending violation for two occurrences of operating outside the hours of operation. A & B was issued a citation, and there have been no occurrences since then. They will appear in circuit court, tomorrow, April 25th.

Mrs. Mabbott said an attachment to her memo is a chronology of the record of the three existing permits on the Spence Pit put together by Code Enforcement Officer, Gina Miller. At the previous hearing, Planning Commission asked for clarification of the Goal

5 question relative to our county. Amanda Punton of DLCD (Department of Land Conservation and Development) submitted a letter questioning the status of a 2A aggregate site. Umatilla County planner, Shane Finck, created a memo summarizing the 2A sites and it is the county's belief that those sites are significant. Mr. Finck looked at the Conditional Use Permits for aggregate sites in our county. Each property is treated individually and we do our best to treat everyone fairly. There are 277 aggregate sites in the county; 122 are on DOGAMI's inventory and have been, or are currently active. The county does not have enough staff or resources to monitor all aggregate sites. Mr. Finck audited 10 aggregate sites and found that two had not been issued Zoning Permits but were in operation. If a yearly review is required as a condition of approval, the code enforcement officers go out to the sites to check them. The Spence Pit has had a yearly review for the past 15 years and no one noticed there was no Zoning Permit in the file. There has been no preferential treatment toward A & B as has been suggested, it was just a compliance piece that slipped through the cracks. Many existing quarries were grandfathered in before permits were required. The bulk of the quarries were permitted under division 15 rules. The process for reviewing new quarries, including the expansion of this one, is under Oregon Administrative Rule (OAR) Chapter 660, Division 23.

The Exhibit list has increased since the packets were mailed one week ago and the Planning Commission was given copies of the new exhibits. Commissioner Randall asked if County Counsel, Doug Olsen, had reviewed any of the new items, and he said he had not. Mrs. Mabbott stated that Mr. Olsen doesn't usually review hearing materials until they are being presented before the Board of Commissioners. At the hearing on March 27<sup>th</sup> there had been competing legal opinions about different aspects of this application and Mr. Olsen was here to answer questions the Planning Commission may have.

Commissioner Standley asked if there were any red flags or detail they should be aware of which might require more attention. Mrs. Mabbott said Exhibit #27 was an email correspondence from Scott Patterson of the Williams Company who owns the gas pipeline. The email said that A & B Asphalt has been good to work with and asked that the record show that the county was advising them not to work within the existing pipeline easement. Ben Mundie from DOGAMI submitted two examples of a reclamation plan for a rock quarry having a gas pipeline easement through it. The uses are not necessarily incompatible if the operation and the blasting are far enough from the pipeline. Mrs. Mabbott said there are no other red flags and the applicants and opponents will raise other issues as they come up.

Commissioner Standley asked about the existing Conditional Use Permits for this site and if it was staff's opinion that they were valid and whether or not the subject needed further discussion. Commissioner Marlatté said there should be more discussion and asked Mr. Olsen if a permit ever becomes invalid once it is issued. Mr. Olsen said when the permit is issued conditions are placed on the continuance of the permit and as long as the conditions are met the permit can continue to be renewed. The permit can be revoked if conditions are not met. Commissioner Standley asked if there had been any changes in the last few years. Mr. Olsen said there was nothing in the file that showed that the

conditions had not been met. Mr. Olsen advised there was a current violation for the site for hours of operation and was scheduled to be heard in court in June or July. Mr. Olsen he was told that there was no Zoning Permit in the file and while that is unusual it does not invalidate the permit. Commissioner Standley asked if the operator was responsible for completing the permit paperwork and Mr. Olsen answered yes but added that the property owner was required to application. Mrs. Mabbott read from section 152.025 of the Umatilla County Development Code and said that the county believes the current permit for the site is valid and if there is a question about whether it is or not the action of the Planning Commission would resolve any discrepancies. Chairman Randall asked if Mr. Mundie would be willing to answer some questions and he said he would.

Ben Mundie, DOGAMI, 229 Broadalbin, Albany, OR 97321. Commissioner Wysocki asked if there was a legal aspect of blasting which would determine the distance from the structure to the quarry and how much movement can take place during a blast. Mr. Mundie said there was none that he was aware of. Commissioner Wysocki asked if there were ways to measure that and Mr. Mundie said there were. There are accepted industry standards based on geology and distance. Monitoring is not typically required during blasting unless there is a concern. Usually the figure of 1500 feet is an acceptable setback for structures but based on geology it could be 2500 feet. There are ground acceleration numbers and if those are exceeded, damage can be expected. Commissioner Marlatt asked Mr. Mundie if someone from his department reviewed specific blast plans when they are submitted. Mr. Mundie said they did not. The only enforcement for explosives in Oregon is for transport and storage and that is through the State Fire Marshall's Office. DOGAMI usually receives the blast plans after the blast to show what they did. Based on the monitoring they can determine if there is potential for off-site damage and future blasts would be redesigned if there were a problem. Commissioner Marlatt asked if he reviewed the blast that occurred in July, and he said no. Commissioner Standley asked why they did not and Mr. Mundie said that it was not a requirement of the operator. Commissioner Standley asked if they had received any concerns regarding that blast and he said that they did receive a complaint.

Commissioner Standley said they would appreciate any information Mr. Mundie could share with them that might help them as they worked their way through this application. Mr. Mundie said that a monitoring program put in place now would be important. Discussion followed. Mr. Mundie said if this application is approved by the county, A & B Asphalt would have to amend their permit with the state and concerns could be addressed through individual permit conditions and the operator would be held to those conditions by the state and any violation would be enforced by the state. Commissioner Wysocki asked what DOGAMI's process was for investigating complaints. Mr. Mundie said initially they contact the operator. After the complaint call they received with regard to the July blast he did a site visit within 4 days. He also interviewed officials from the City of Milton-Freewater, who had responded to repair a transformer to get their opinion on what had happened.

Mr. Mundie said their concern was the fly rock; when the blast occurs it creates projectiles of rock that leave the site. There were no documented instances except for

electrical damage that the City of Milton-Freewater repaired and they billed A & B. Commissioner Wysocki asked how the amount of fly rock could be minimized and Mr. Mundie said they would need to reduce the powder in each hole and increase the delays so fewer holes are going off at once. Commissioner Rhinhart asked how often DOGAMI visits aggregate sites. Mr. Mundie said it depends on the site; he has been to the A & B twice a year since they took over. Site visits are complaint driven but also the inspectors visit them when they are in the area. Commissioner Standley asked if DOGAMI shares their complaint information with the county. Mr. Mundie said a copy of all the reports they generate for a permitted site is sent to the county planning department. Mrs. Mabbott said there is a formal process through the Oregon Administrative Rule and DOGAMI won't issue a final approval until the LUCS (Land Use Compatibility Statement) has been signed by the county. Commissioner Williams asked if the operator or the contractor was responsible for blasting and the consequences of the blast. Mr. Mundie said the blasting is typically done by a third party but the operator is responsible. Commissioner Wysocki asked how the geology of the basalt rock affected the blasting. Mr. Mundie said the basalt rock is harder and denser. The seismic wave will move better through that type of rock better than an unconsolidated material. The unconsolidated material will shift more and potentially create more surface disturbance than the dense rock. Commissioner Standley asked if the proposed expansion of the pit would move the operation further away from potential conflicts and Mr. Mundie said yes.

Commissioner Marlatt asked if there was a standard for offsite ground movement; if a seismograph was in place and the limits were exceeded. Mr. Mundie said there is a number two feet per second per second of peak particle velocity, ground acceleration that appears in the literature he did not know if that was an accepted industry standard. With ground acceleration below that level there should not be any structural damage. Mrs. Mabbott said that a DOGAMI permit from another county required a blasting and monitoring plan be submitted and asked if that could be required by DOGAMI here or if the county had to list that as a condition. Mr. Mundie said DOGAMI can require that separately; their permits are unique to each site and some of the older sites don't have any conditions.

Commissioner Standley said they need to make sure that a bad blast doesn't happen again. Mr. Mundie said that is why there should be a required monitoring program for each production blast. Commissioner Wysocki asked how many blasts there are on an annual basis and Mr. Mundie said there are thousands. Some quarries blast twice a month. Mrs. Mabbott responded that someone in the aggregate business reported that blasting is directly related to the jobs the quarry has before them. Operators can't blast ahead of time because the rock settles and accumulates water.

**Applicant testimony:** Wendie Kellington the attorney representing A & B Asphalt began by introducing Larry Schwartz, a blasting expert who put together a blasting plan for the site and could answer questions regarding frequency and type of blast. She said that following his testimony Mike Raley, their noise consultant, would speak.



**Applicant Testimony:** Representing A & B Asphalt: Larry Schwartz from Barnes Inc., 4310 Hatwai Rd, Lewiston, Idaho. Mr. Schwartz submitted the resume of Barnes Inc. into the record and said the company had been in the business 40 years and he had worked for them for 33 years. He had a license in Oregon when they were required, and holds licenses in Washington, Idaho and Montana. The company does close in blasting; close to buildings, ditch lines and quarry work for crushing contractors. He said he has visited the site on several occasions and his company had worked there in the past but that was about 25 years ago. They are regulated under federal regulations through the Bureau of Mines and MSHA (Mine Safety and Health Administration). They are required to report fly rock to MSHA if it leaves the site or causes damage. In the past 10 years, blast plan paperwork has really increased due to insurance companies. Most counties require blast plans which he refers to as shot reports; it defines what the shot will look like. This is an onsite report submitted prior to the blast and if there is a problem with the blast, the owner has the information and can have an independent company review the report. A large part of his job responsibility is completing shot plans for different jobs.

Mr. Schwartz continued. Blast plans are vague until they get to the site and see what they need to blast, but most companies are requiring that plans be submitted before blasting. He believes blasting can be done at the A & B Asphalt quarry that will fall within federal guidelines. Seismographs record noise and pressures from the air blast and there is a federal regulation for that; ground vibration can be monitored as well. They submitted in their blast plan a chart which is standard in the industry. The technology for measuring vibration is changing and improving, using electronic blasting caps and different timing patterns, which can help decrease the vibration levels. He described a blast he was at today, and how the body registers air blast. There are regulations to follow, and if they exceed them they have to report to MSHA.

Ms. Kellington asked Mr. Schwartz if there was anything about the blast plan he had for this site that was different from any other mine and he answered that there was not. Ms. Kellington asked if his company had blasted on a site that has a gas pipeline easement and he answered that they had. Commissioner Marlatt asked where seismographs are placed when they blast and Mr. Schwartz said they normally set them at the nearest structure. They prefer to set them in different locations instead of side by side so they can get the best reading. Seismographs record the readings on paper so the results can be viewed instantly. Ms. Kellington asked if they could avoid problems with ground water wells when blasting. Mr. Schwartz said ground well water was a concern to people due to the vibration issue but the vibration from the blast comes out of the ground and does not necessarily transfer into the ground so he didn't think the blast would damage the wells. An earthquake of 2.0 has a low frequency and would cause more damage than their blasts which have a much higher frequency and the sound travels quickly. Ms. Kellington asked how often they expect to blast at the A & B site and he said 2-3 times a year depending on the jobs they had and the product that was needed. Commissioner Rhinhart asked how often they had flying rock with their blasts which left the blast zone. Mr. Schwartz said not very often, 1-2 times a year. They try to control their blasts and it depends on how large the blast zone is. If the rock goes beyond 300 feet it is considered fly rock but within 300 feet it is not.

Commissioner Rhinhart asked what factors went into controlling the blast and Mr. Schwartz said it was experience, hole placement and size, how the column is loaded in the hole, and the hole spacing. He explained the process of how rock had to be lifted and displaced during a blast. Commissioner Wysocki recalled the hearing in March when they described one of the blasts as a "bad blast" and asked what he would consider a bad blast. Mr. Schwartz said, in his opinion, it was when they hit something with fly rock. Commissioner Standley said they had listened at the last hearing to many complaints from people about structural damage to their homes due to blasting done by A & B. He added that even if it was a mistake or a bad shoot, it cannot be allowed to happen again and asked Mr. Schwartz to explain why they did not need to be concerned about that happening with his company doing the blasting. Mr. Schwartz said an incident like that is not good for the industry as a whole and difficult to fix with the public. What needs to be done is to alert the homeowners prior to the blast; that makes a big difference. Commissioner Standley asked if they visited with the neighbors prior to the blast and he said they do that often; it was called a pre-blast survey and is usually done by a third party which eliminates the conflict of interest. They try to give a 24-hour notice. Mr. Schwartz said they make contact lists of the people and agencies that want to be notified. Commissioner Standley said he would like to make the pre-blast notification of the public a precedent condition for the permit and Mr. Schwartz agreed.

Ms. Kellington said their blast plan was Exhibit 13 of the packet of materials they submitted on April 14. Commissioner Williams asked if Mr. Schwartz recommended a third party pre-blast notification system and he responded that he did and said it did not reflect well on them if they did it themselves. Ms. Kellington asked if most mines have third party pre-blast surveys and Mr. Schwartz answered that it depended on where you were.

Commissioner Rhinhart asked what kind of liability insurance they have to carry and Mr. Schwartz said right now they were carrying a \$10 million policy. They don't want to have to submit claims. They are very cautious and take fly rock seriously. They want their reputation to stay in tack and it is in their best interest to be careful. Commissioner Wysocki confirmed that they were licensed in Washington and Montana and asked what was required to get a license. Mr. Schwartz said there are classes and safety training. It is similar to the way it used to be Oregon except it was more for storage for explosives. Even after taking the class and getting a license in Washington you could still have someone who does not know what he is doing. It's mostly about following regulations and knowing that the one doing the blasting knows what the regulations are. Commissioner Wysocki asked how the federal regulations were enforced and Mr. Schwartz said it was through MSHA. All contractors with rock crushers are under that jurisdiction. Commissioner Wysocki asked if they were reviewed by inspectors and Mr. Schwartz said yes. He didn't know with what frequency but they would do an inspection once a month if a pit was out of compliance. As mining operations were growing, inspections by MSHA were becoming more frequent.

Mr. Schwartz said the normal pre-blast survey area for quarry work is 1000 feet and anything beyond they don't do it because they keep the vibration levels very low. Commissioner Standley said pre-blast surveys should be done, especially since there has already been a bad blast and they are in the position of having to protect the public. He suggested that Mr. Schwartz might feel more comfortable notifying the public, knowing that there was some animosity about the damage and it could be carried over to his company, Mr. Schwartz agreed. Mr. Schwartz said the MSHA regulations are strict and they intentionally try to keep their levels below those standards. Ms. Kellington said they were talking about what is proposed, and under those mining plans, they do not expect to have vibrations over the regulations or to transcend 1000 feet. Mrs. Mabbott pointed out that the "bad blast" last July was not done by Mr. Schwartz and his company.

**Applicant testimony:** Representing A & B Asphalt: Mike Raley, Acoustical Consultant for Daly Standlee & Associates, Inc., 4900 SW Griffith Drive, Suite 205, Beaverton, Oregon 97005. Mr. Raley referred to documents in the materials submitted by Ms. Kellington showing that the sound testing and modeling they did occurred at a distance of 1900 feet in some cases from the nearest point in the proposed site expansion area. They generated the DEQ (Department of Environmental Quality) noise compliance boundary, and they anticipate noise levels will be below the DEQ noise criteria. They have addressed noise models over residences, Grove Elementary School and the river. These noise levels are for both ripping the fractured rock and operating equipment to crush the rock. Another concern brought up was in regard to the noise from the haul trucks. Because this was a pre-existing site, haul trucks are exempt from the OAR noise regulations for industry and commerce. To address any other issues and to show that they were in compliance with other regulations he went to the school with a sound level meter and did sound measurements for A & B and Konen Rock trucks and other vehicles. Haul trucks are governed by noise regulations for motor vehicles. He compared the noise levels that were measured for the haul truck and other vehicles to those noise regulations in OAR 340.035-0030 and they were well within compliance. Ms. Kellington asked which was the loudest vehicle that went by and he answered that it was a Dodge Van 2500 with a high-flow exhaust.

Mr. Raley said there are noise criteria for blasting and when those criteria are met, the shaking and rattling of houses does not occur. At the last hearing there were comments from people who said they can hear the operation of the quarry but audibility is not a standard for a Goal 5 application. People will hear the operation at times, especially when the wind is still. He explained the graph being displayed which showed the predicted ambient levels at the school where the measurements were taken. The sound levels were in the lower ambient range, similar to distant traffic on Hwy 11. Chairman Randall asked when the measurements were done and Mr. Raley said the measurements were done the day after the last hearing and graph was done later.

Chairman Randall called for a break at 6:37 p.m. The hearing resumed at 6:57 p.m.

Ms. Kellington continued her testimony saying the evidence in the record establishes that the rock at the site is of the requisite quality and quantity in the 33.96 acres for the site to

be considered significant and that the area proposed to be mined is not more than 35% Class 2 soils; there are no Class 1 soils. She quoted from the OAR regarding the impact analysis and pointed out the area they are proposing to mine; the asphalt plant was not in that area and had nothing to do with this application.

The conflicts the rule allows to be examined are with the proposed mining area due to noise, dust or other discharges. They are concerned about the blasting and treating the vibration that comes from the blast as a discharge. The evidence in the record shows the complaints to DOGAMI to have come mostly from their competitors. When DEQ goes out to investigate dust complaints, the evidence in the record shows that A & B are in compliance with dust control. The water A & B uses to control dust was evaluated and found to be legal, appropriate and effective to control dust. There is substantial evidence in the record that noise within the 1500-foot impact area falls within regulations. Commissioner Standley asked where the letter for the water evaluation was located. Ms. Kellington said it was Exhibit #11 of the letter they submitted on April 14<sup>th</sup>. There was other paperwork filed so they asked Ms. Pagle to take another look and the results from that are in the packet of materials that Mrs. Mabbott referenced. Chairman Randall said he had read the letter. Commissioner Standley asked about the water source being adequate and if the providers of the water had a contract with A & B. Ms. Kellington said they submitted a contract sheet with the City of Milton-Freewater and Ms. Pagle's letter explains that. DEQ has confirmed that dust control has complied with all standards. Testimony from the blasting expert said that so long as the blasts are in compliance with the blast plan, the significant vibration impacts would be limited to 1000 feet from site of blast. They are agreeable to the condition of approval for following the blast plan that would include notification of neighbors within 1500 feet and anyone else who let them know they would like to be notified would be added to the list. They do not believe that pre-blast surveys are warranted per OAR, but if the Planning Commission is concerned, they agree to do pre-blast analysis the first time they blast and then look at the way things look afterwards.

Ms. Kellington reminded them that there were other things to keep in mind; this mine has been blasted since the 1940's; Konen Rock blasts about one mile away; Humbert's blast and there is a quarry across Hwy 11 that blasts. Recently the state has been rebuilding the bridge across the Walla Walla River and used rock hammers near residences. The evidence shows compliance with the blast plan will not result in any adverse impacts to nearby residences.

Ms. Kellington continued by saying that the OAR requirement for traffic with regard to the mine is that there be no significant conflicts to local roads used for access and egress to the mine within one mile of the entrance to the site, unless a greater distance is needed. Conflicts shall be determined by site distance, road capacity, cross-section elements, horizontal and vertical alignment and similar items in the transportation plan and implementing ordinances. A & B hired a traffic-engineering firm to complete a traffic impact study. The traffic engineer said traffic would not change, as the operation would stay the same. The only question is whether or not the expansion area moving away from

the affected residences and roads will have a substantial traffic impact that would be of concern and the engineer said it would not.

Ms. Kellington said there were no impacts to Goal 5 resource sites in the area. Nothing about the proposed expansion of the mining operation would affect Grove Elementary School's playgrounds or ball fields. In her letter written on March 14<sup>th</sup> Ms. Kellington explained that the city of Milton-Freewater wanted to protect their views, but also understood economic development and would be protecting their views by limiting building heights.

Ms. Kellington said there is evidence in the record that when the Conditional Use Permit that covers the site now was approved in 1984 the county made findings that there were no adverse impacts to agricultural practices. Opponents said their expansion will impact vineyards up Couse Creek and Ms. Kellington said Konen Rock would affect that vineyard, not A & B. She referred to a letter from a wine growers association about allowing an asphalt plant to be sited; the asphalt plant was not a part of this application and had nothing to do with it so it should not be considered.

Ms. Kellington talked about possible mitigations. The issue of blasting has already been discussed in the blast plan. With respect to hours of operation, A & B would accept restrictions on its rock crushing and excavation operation for the same as Konen Rock has, which is 6:00 a.m. to 7:00 p.m. with a caveat that if that changes countywide, statewide or industry-wide they would be open to reevaluating it for A & B.

There has been talk about the A & B Asphalt's operation being unlawful but Ms. Kellington said that when going through county records she discovered a Zoning Permit for Conditional Use Permit #333 and she shared a letter written by Humbert's to the county on June 6, 1984 saying they were submitting their completed Zoning Permit application for final approval, as they had completed the necessary conditions listed. The county responded with a letter dated August 17<sup>th</sup> saying they were happy with the work that had been done.

Ms. Kellington referred to a letter written on June 5, 1984 to inform them that one of the conditions for their permit had been met. On March 15, 2006 the county wrote to Humbert's saying they were discontinuing their annual reviews. Umatilla County issued a Zoning Permit for this site signed in 2006 for replacement of an office structure and a name change for the permit applicant. The fact that the county issued that permit is evidence that it is a lawful site. Exhibit #4 is a letter dated May 12, 2012 from Ms. Mabbott to Nita Stocke regarding a complaint she had with regard to the asphalt plant. The letter stated that the permittee had maintained compliance with the conditions and had paid the annual renewal fee. It also said that Conditional Use Permit #C-479 allowed for the operation of an asphalt batch plant.

Ms. Kellington submitted a letter from OCAPA (Oregon Concrete & Aggregate Producers Association) that clarified DLCD mining sites regulations. She asked that the documents regarding the previous land use approvals and the letter from OCAPA be

submitted into the record. They have hired many experts including blasting experts and agreed to blast plans that are not required by Administrative Rule in order to help make Planning Commission feel comfortable approving this application and that the record is solid.

Commissioner Rhinhart asked about the expansion of the site going into high value farmland and how the location was chosen. Ms. Kellington said they were trying to avoid the gas pipeline easement on the left and the Schultz property on the right to be good neighbors. Commissioner Rhinhart said Umatilla County tries to protect high value farm ground and he is concerned about taking it out of production. Ms. Kellington said the OAR says that if the area proposed to be mined is less than 35% Class 2 soils and as long as the rock quantity and quality standards are met the land can be used for mining. She said there will be no further expansion on this site after this. She added that she had read something recently that said the discontinuation of a mining operation for a certain period of time meant the mining use was lost but ORS 215.130 (7) says that if the mine was not inactive for 12 consecutive years, the operation can be continued; and that did not happen.

Mrs. Kellington showed some photos of Konen Rock's mine site and a vineyard 300 yards away. She also showed a video of Konen's operation creating dust. Commissioner Rhinhart asked how far away they were from Konen's and she answered that they were 1.6 miles away up Couse Creek.

**Opposition testimony:** Peter Mohr, 2 Centerpoint Drive, 6<sup>th</sup> Floor, Lake Oswego, OR 97035 said he was representing three aggregate companies, Pioneer Asphalt, Inc., Konen Rock Products and Humbert Asphalt, Inc. Mr. Mohr explained that the first paragraph of a letter he had submitted today made a statement of opposition to this application. All of his clients are in the same business as the applicant. They are neutral on the Goal 5 considerations and whether or not they are approved, their concerns, as he had indicated at the hearing on March 27<sup>th</sup>, are with the validity of the CUP (Conditional Use Permit). When the 1987 CUP, modified in 1992, was issued there were terms and conditions which had to be met for that permit to be maintained. There have been comments that permit #C-479 that governs the batch plant is invalid for the purposes of this proceeding. Staff has taken position that the CUP is valid, and the opposition believes that it is not valid so they are challenging that. His clients have had to obtain new CUP's and do annual reviews and so should A & B.

Mr. Mohr went on to say the county did a pretty good job of the Spence Pit permitting history. He referred to a letter from Dan Humbert, which was an attachment to materials he had provided to the Commissioners. By 1987, Humbert Asphalt had not located an asphalt batch plant there so the county said they would have to get a new CUP for the approval of the plant. Permit #C-479 was issued solely for locating an asphalt plant on the Spence Pit. In 1989 Humbert Asphalt moved off the Spence pit. In 1992, Humbert Excavating wanted to assume the applicant status for permit #C-479. That permit was issued for locating an asphalt plant. In subsequent correspondence from the county that permit is treated as both for the approval of an asphalt plant and a crusher. Mr. Mohr said

he found that to be confusing. When they went to amend that permit the county said they had to change the name and meet the terms and conditions of the 1987 approval. Humbert Excavating was the new permittee and they had to meet the precedent conditions. Page three of his letter lists the precedent conditions to be met including the statement that all conditions listed above, excepting annual review fees, shall be completed prior to the issuance of a zoning permit; a zoning permit must be obtained prior to the operation of the batch plant. Between 1992 -2009 Humbert Excavating never located a batch plant at the Spence Pit. In 2010, the applicant located an asphalt plant on the site and began operation. He claims that the precedent conditions prior to locating a plant on that site were never met. From what he heard earlier it appeared to be the county's position that for purposes of its regulatory authority, as long as the annual review fee was paid and the permit is renewed every year and maintained, that is what is needed for the validity of that permit. All predecessors to A & B had to obtain a CUP to locate a plant when they had not met all the necessary conditions in a timely manner. In the documents under Exhibit #4, there is a DOGAMI document stating that the permit went from Humbert Excavating and was assumed by Birch Creek Construction. The DOGAMI document said permittee Birch Creek Construction did not pay renewal fees for 5-31-2006 through 5-31-2009. The county records have no documents confirming compliance by Humbert Excavating and Birch Creek Construction. Annual renewal obligation was not paid so they never satisfied precedent conditions to locate a plant at that site. The law is the law, regardless of whether or not the county had a lot of sites to monitor. This issue has been brought before the county a number of times, and complaints were made in 2010. The county responded that the opportunity to appeal or comment had expired.

Commissioner Standley stated he was lost and asked if this was going to affect the Goal 5 application. Mr. Mohr said it does affect this application because they feel the permit being considered is not valid. They are not challenging the Goal 5 application; they are challenging the validity of the permit currently in use. Commissioner Standley said they have been instructed to consider only the Goal 5 application and nothing else. Discussion followed regarding why these issues were tied together. Commissioner Standley asked if they were dealing with an issue besides the Goal 5 expansion and Mrs. Mabbott said they were not making a decision about an asphalt plant tonight. The opponents filed a brief with Mr. Olsen yesterday asking the county to pursue enforcement on the asphalt plant. Mr. Mohr said if the asphalt plant was not valid it does trigger a Goal 5 consideration because they don't have to consider the impacts or conflicting uses associated with the plant. His clients had to go through that process and everyone should have to follow the same rules. Humbert Asphalt had to go through new a CUP to operate an asphalt plant just last fall.

Commissioner Standley asked about the Zoning Permit #ZP-09-081 from 2009. Mr. Mohr said that permit doesn't address the batch plant; it changes the name on the permit and locates an office building. The asphalt plant was not placed on the site until after that permit was issued. Commissioner Rhinhart asked Mr. Mohr if he was saying that the permit was invalid so Planning Commission should not be considering the Goal 5 application and he said yes. Commissioner Standley said they were told that the permit is valid by County Counsel, Doug Olsen. Mr. Mohr said county attorney takes the position

that permit is valid but the annual renewals were not maintained for many years so the permit became invalid. Mr. Mohr said there are inconsistencies and everyone should have to do the same thing; the applicant is not the target.

Mr. Mohr said there was document identified as Exhibit #23 prepared by staff which refers to a site plan for a plant. The document said "AC plant" and he was unclear what that referred to but he wanted to go on the record as saying that would not satisfy the requirements for a plot plan for an asphalt plant. He added that those conditions should have been met in the early 1990's with the issuance of the 1992 CUP as amended. Mr. Mohr commented on the discontinuance of the annual review for the site. There was a period of years when DOGAMI was not paid and neither was the county. DOGAMI initiated the process to trigger reclamation at which time the permittee got a bond in place to prevent reclamation and the closure of the pit. Mr. Mohr requested that the Planning Commission consider how these issues have been dealt with regarding other mining operations. LUBA (Land Use Board of Appeals) has made decisions where if a single criterion of approval is not met; it is enough to deny a permit application. There are a variety of issues associated with the validity of this permit. If the language with regard to the asphalt plant is withdrawn from consideration and the application is modified with the understanding that the permit is deemed invalid then they can get an approval like the other companies have had to do. If not, they will continue to challenge this application and they contend that there must be a new Conditional Use Permit. Chairman Randall said there are a lot of competitors here; there are a lot of rules and regulations and this could create a lot of new rules for all of them. It's important for everyone to understand that.

Commissioner Williams said what she heard from Mr. Mohr were doubts that the CUP was valid but nothing factual. County Counsel, Doug Olsen told the Planning Commission that the permit is valid. Mr. Mohr said he has provided information of non-payment of annual renewal fee and no plot plan. They did not complete all precedent conditions. There is no record of a plot plan or zoning permit being filed with the county for this asphalt batch plant. Commissioner Standley said in May of 2010 a letter from Mrs. Mabbott to Nita Stocke states that the batch plant was lawfully permitted. Mr. Mohr said he doesn't see anything to uphold that.

Chairman Randall said the request letter from Joe Humbert in 2000 states that they were intending to crush gravel that year and place a batch plant for asphalt production. Every year since then, the site was inspected up until 2010 and review letters show it was valid. Mr. Mohr said that the county's opinion is that it is a valid permit but history does not support that decision. Commissioner Rhinhart said county started going thru a process to update mine siting standards but had staff changes and that has been stalled. It needs to be updated and made so that everyone has to go through the same process. Commissioner Standley said the county and Planning Commission doesn't want to be unfair and treat any operator differently than others are treated.

**Opponent Testimony:** Seth King, Attorney with Perkins Couie, 1120 NW Couch Street, 10<sup>th</sup> Floor, Portland, OR 97209. Mr. King said he was a colleague of Mike Robinson, and



was here representing Brad Humbert, a land owner near the site that was being discussed. Chairman Randall asked if his client lived within the 1500 feet impact area and Mr. King said no, but he can hear the mine operations at his property. Mr. King said they are opposed to the application because the applicant has not met the criteria in several areas under the Goal 5 rules that have to be met.

The first issue is whether or not the site is significant. The applicant needed to demonstrate that a representative set of samples of aggregate material in the deposit on the site met ODOT specifications for different tests. The applicant took different samples but combined the results into one and used that to show they met the ODOT specifications. Mr. King said he does not believe that is consistent with the rule. By using only one sample instead of three, it masks the individual samples that may fail the test. For this reason they believe the applicant has not met their burden of proof that the material on the site is significant.

The second issue is with regard to the water supply. The A & B application said their water came from the City of Milton-Freewater; they also said they got water from the city of Walla Walla. They said at the last hearing that there was an onsite well. The first letter from Ms. Pagle said the well allowed them 5000 gallons of water per day and they would not exceed that usage. The new letter from Ms. Pagle states that they will be using about 6000 gallons per day which would be their well water and the rest from the City of Milton-Freewater. They have not demonstrated that they are able to supply adequate water to the site to provide dust control. The dust is an issue because of the impacts to vineyards.

The vineyards were discussed earlier, and the applicant's logic seems to be that a little more dust won't hurt anything because they are in a dusty area anyway. The letter submitted into the record from the Oregon Wine Growers Association states that an increase in dust due to rock crushers and vehicle traffic increases spider mites. A study done at Oregon State University shows that an increase of dust in an area lead to an increase in spider mites which was a damaging factor to vineyards. Addressing that issue increases the costs for the vineyards and forces a change of operations to the local growers. The applicant has not adequately responded to this information.

The traffic impact analysis presented by the applicant has been reviewed by Lancaster Engineering; that has been submitted into the record. The engineer who did the review has taken issue with the results of the applicants' analysis and believes it to be flawed. The study doesn't consider a reasonable worst case scenario of the traffic generated by the new area; they just trust what the applicant has told them. There is no trip cap that controls that. The safety analysis is flawed because it doesn't address the impacts along 15<sup>th</sup> Avenue adjacent to Grove Elementary School. There are pedestrians, children crossing streets and bicyclists. There are many potential conflicts in that area.

Another issue is storm water. To their knowledge, the applicant did not submit a storm water discharge control plan into the record and storm water could be discharged from the site from the proposed expansion area.

There is the issue of conflicts with Goal 5 resources. The applicant contended that the City of Milton-Freewater resources were not applicable. The rule requires consideration of inventoried Goal 5 resources regardless of the inventory they are on. Mr. King submitted the Comprehensive Plan for the City of Milton-Freewater and said that pages A1-13 and A1-1 show the two city resources are inventoried in that plan; one is Grove Elementary School, open spaces and the other is the views of the Blue Mountains. The concern is that dust generated from the site will obscure the view of the mountains.

In the event that the Planning Commission decided to approve this application they would like conditions of approval placed on the application that are clear and objective so the burden of enforcement would be on the county. Commissioner Standley said the aggregate pit has been there for a long time and the dust problem was mitigated by their water source. He asked Mr. King if he was expecting the dust to be increased due to the expansion of the pit and he said yes. Chairman Randall said the applicant is storing water on non-operation days for use on days where there is more dust.

**Opponent Testimony:** Samuel Ostronik, 1538 Wilkenson Street, Milton-Freewater, OR 97862. Mr. Ostronik said for 24 years he has lived across the river from this pit and until recently have never had a problem with it. The fact that they want to expand the pit is the reason he came to the hearing. The operation from the pit impacts his home and family. He was awakened at 6:20 this morning by back up alarms from the pit. For two weeks last summer they had an air drill drilling in the pit 24 hours a day, 7 days a week with flood lights shining in the pit. His home is about 150 feet outside the 1500 foot impact area but he can hear the noise of the crusher running over the sound of the river. It hasn't always been this way. The previous operator had an asphalt plant on the hill not in the middle of the pit. That noise travels down the canyon to his neighborhood. He has worked in construction for 25 years and has worked with many of the people who work for A & B and has no ill will toward them. Mr. Ostronik said he has felt every blast that has taken place at the pit if he was at home when it happened; it rattles his windows and cracks his drywall. He can also feel the blasts from the Konen Rock pit and it is two miles away. Over the past three weeks he has been monitoring decibel levels coming from pit and 4 occasions the readings were over 50 decibels. When he took the readings they were never below 50 decibels.

Mr. Ostronik concluded that this has all been done with total disregard for his or his neighbor's property or concern for their way of life. He has been awakened at 5:15 a.m. by back-up alarms from the pit. He referred to earlier testimony that there was no impact to people living outside the 1500 foot area but that is not true. Commissioner Standley asked what was causing high decibel readings and Mr. Ostronik answered that it was the asphalt plant and truck loaders. Commissioner Standley asked if he could offer any suggestions to help mitigate the noise. Mr. Ostronik said his concern was that expansion of the pit would increase the cone inside the crusher area making even more sound come from it and would increase the truck traffic and its noise. Commissioner Wysocki asked if Mr. Ostronik kept the data on the decibel readings and he said he did. Commissioner Wysocki asked if curtailing the hours of operation in the morning would solve some of

the problem and Mr. Ostronik said he thinks the start time for the operation should be 7 a.m. at the earliest and should end at 7:00 p.m.

**Opponent testimony:** Bill Luisi asked to speak about Konen Rock and Chairman Randall said that was not a part of this hearing.

**Rebuttal:** Mike Raley responded to Mr. Ostronik's testimony by saying there are a number of factors that affect levels on a sound level meter and there are a number of different measurement metrics that are important in terms of how the meter responds to the sound. Frequency ratings will affect the levels depending on which frequency is chosen. Another factor is the average length of time the study is done. The calibration of the meter is a factor, as well. The DEQ has measurement standards for the way industry noise is to be measured. Our measurements and predictions are based on those standards and noise metrics. It can be difficult to isolate particular noise sources that are generating the levels. Their predictions were based on sound levels from the quarry. Seasonal water flows from the river can generate a lot of noise. Back-up alarms on equipment are exempt from sound standards because they are warning devices and necessary for the safety of the workers.

**Rebuttal:** Ms. Kellington said the Administrative Rule says that noise is dealt with under state law; it is governed by the DEQ rules. Construction noise is generally exempt between the hours of 7:00 a.m. and 10:00 p.m. from the standards.

Ms. Kellington responded to Mr. Mohr's comments by saying the CUP for the asphalt plant was irrelevant to this process. With regard to CUP #C-479 there were no precedent or subsequent conditions, there were simply conditions. The conditions are: 1. A requirement to locate the batch plant at least 500 feet from the nearest residence; 2. Contact the county road department concerning road access and the condition of interior roads; 3. Prove 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. 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. She said there was a complaint about the asphalt plant in 2010 and the county contacted Brad Humbert who formerly worked for A & B Asphalt. He said the equipment was new, there would be minimal smell and the wind blows away from Walla Walla River Road. She said she had provided material showing that the conditions had been met on multiple occasions. Ms. Kellington stated that the Administrative Rule says if there is an existing site that is already on the inventory, you don't re-justify the existing processing activities on that existing significant site.

Ms. Kellington responded to Mr. King's comments by saying they asked the lab that tested the rock samples if three bore holes was enough for a relative sample and also why the rock samples were tested together. The lab said three borings at random locations in the expansion area were adequate using standard geologic and engineering practices. The rock was tested together to mimic the work practice of the future pit operation. There is

evidence in the record which shows material in the pit meets the quality and quantity requirements. Ms. Kellington said both of the letters from Martha Pagle with regard to the water are consistent and there is nothing that undermines her credibility. With regard to the vineyards, there is no evidence that there is a problem within 1500 feet and or two miles away. All the evidence shows that the dust is adequately controlled. They performed a reasonable worst case analysis for the traffic study. Nothing is changing they are just moving to a different area of the pit. The Goal 5 rules are specific about the way to do the traffic analysis and they followed the rules exactly. Their traffic analysis was adequate and met standards. DOGAMI inspected their site and said that a storm water permit was not required. Ms. Kellington encouraged the Commissioners not to impose hours of operation beginning at 7:00 a.m. because it would significantly affect their operation. They have provided evidence that they meet the Goal 5 standards and she recommended that the Commissioners approve this application. She added the only condition that should be considered is compliance with the blasting plan and possibly a one-time pre-blast survey.

Chairman Randall called for comments from public agencies; there were none.

There was no request for a continuance so Chairman Randall closed the hearing and they began deliberations.

Mrs. Mabbott asked for a motion to adopt all exhibits entered into record. Chairman Randall asked if all the Commissioners were in agreement for adopting all 49 Exhibits into the record. The Exhibits were entered into the record by consensus.

Commissioner Standley said the conditions he would like to see placed on this application are the hours of operation and a pre-blast survey; that would help the neighbors. Chairman Randall said the hours of operation should be reasonable; a business needs to be able to work sufficient hours to stay in business.

Commissioner Standley asked if there was a reason they shouldn't go ahead with this application. Commissioner Rhinhart said he had a lot of questions but they would not be answered tonight. Commissioner Randall said that as far as doing the pre-blast inspection, he didn't think that was enforceable but thought the blasting company would be crazy not to do one; that was up to them and their insurance. Commissioner Marlatt said he was probably in the minority but he had a problem. He said although they were told that the CUP was not an issue, to him it was. John said he felt better about that part after reading the response letter from Mrs. Mabbott to Mrs. Stocke.

Commissioner Williams asked what the hours of operation were for other aggregate pits. Mrs. Mabbott directed her to the memo that had been prepared by Planner, Shane Finck; some sites operated during daylight hours; another is 6:00 a.m. to 7:00 p.m.; another one is 7:00 a.m. to 7:00 p.m. and two quarries don't have any limitations. Discussion followed.

Commissioner Standley said he thought the hours of 7:00 a.m. to 7:00 p.m. were reasonable. Commissioner Williams disagreed, saying they were told that they had not been fair and if Konen Rock's hours were 6:00 a.m. to 7:00 p.m., A & B should have the same hours. Discussion followed.

Commissioner Rhinhart said he thought they should do a pre-blast inspection and there should be a blasting plan on every blast submitted to the county and to DOGAMI. He said the hours of operation should be 6:00 a.m. to 7:00 p.m. He also thought that planting trees for a buffer zone to mitigate dust, noise and improve the view for the neighbors was a good idea. There should also be a flow meter installed on the well.

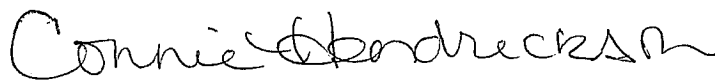
Commissioner Wysocki asked if the blasting plan included monitoring and they said that it did. Commissioner Marlatt said in the interest of fairness, there should be a 24-hour notice and the pre-blast notification area should be 2500 feet, the same as Konen Rock. Discussion followed. Commissioner Williams made a motion that they recommend to the Board of Commissioners the approval of Comprehensive Plan Amendment #T-14-052 and Zone Map Amendment #Z-300-14 with the following additional conditions of approval: following the blast plan which includes a notification area of 2,500 feet; one pre-blast analysis within the 1,500 foot impact area; the hours of operation should be 6:00 a.m. to 7:00 p.m.; plant a buffer zone of trees to mitigate noise and dust; a flow meter from the watermaster should be placed on the well; all DEQ and DOGAMI permits should be in place. Mrs. Mabbott suggested the pre-blast analysis and the flow meter should be precedent conditions and the others will be subsequent conditions. Commissioner Standley seconded the motion.

Chairman Randall called for question. The vote for approval was:  
Commissioner Standley, yes; Commissioner Wysocki, yes; Commissioner Williams, yes;  
Commissioner Marlatt, no; Commissioner Rhinhart, no; Chairman Randall, yes.

The motion passed 4-2.

Chairman Randall adjourned the hearing at 9:21p.m.

Respectfully submitted,



Connie Hendrickson  
Administrative Assistant

*Adopted by the Planning Commission on May 22, 2014*