

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, March 22, 2018, 6:30 p.m.**  
**Albee Room, City of Milton-Freewater Public Library,**  
**8 SW 8th Avenue, Milton-Freewater, OR**

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**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

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

**CALL TO ORDER**

Chair Danforth called the meeting to order at 6:30 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 baling 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 be 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 Williams 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 March 24, 2018.