

# Umatilla County

Department of Land Use Planning



## AGENDA

**Umatilla County Planning Commission Public Hearing  
Thursday, January 26, 2023, 6:30PM  
Justice Center Media Room, Pendleton, Oregon**

**To participate in the hearing please submit comments before 4PM, January 26th to [planning@umatillacounty.gov](mailto:planning@umatillacounty.gov) or contact the Planning Department at 541-278-6252**

### Planning Commission

Suni Danforth, Chair	Sam Tucker
Don Wysocki, Vice-Chair	John Standley
Tammie Williams	Jodi Hinsley
Tami Green	Emery Gentry

### Planning Staff

Bob Waldher, Planning Director  
Carol Johnson, Senior Planner  
Megan Davchevski, Planner/ Transit Coordinator  
Tierney Cimmiyotti, Administrative Assistant

1. **Call to Order**
2. **Minutes Approval;** October 20, 2022 & December 16, 2022 meetings
3. **Continued Hearing**

**TEXT AMENDMENT #T-092-22, PLAN AMENDMENT #P-135-22 & ZONE MAP AMENDMENT #Z-322-22; GIRTH DOG LLC, APPLICANT/ OWNER**

The applicant requests to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan list of Goal 5 protected Large Significant Sites and apply the Aggregate Resource (AR) Overlay Zone to the entire quarry site. The property site is comprised of several tax lots located south of the Interstate 82/84 interchange. The site is identified on assessor's map as Township 4 North, Range 27 East, Section 36, Tax Lots 900, 1100, 1200, 1300 & 1800. The site is approximately 225 acres and is zoned Exclusive Farm Use (EFU).

4. **Other Business**
5. **Adjournment**

# DRAFT MINUTES

**CONDITIONAL USE PERMIT REQUEST #C-1351-22 SILVER CREEK CONTRACTING, LLC, APPLICANT/ WEST FLYING SERVICE, OWNER.**

Applicant, Silver Creek Contracting, LLC, seeks a conditional use permit for a “commercial activity in conjunction with farm use” in support of a construction firm. The subject property is zoned Exclusive Farm Use with a “Private Use Safety Airport” overlay. The property is located at 72837 Highway 207, Echo, OR, in Township 2N, Range 27E; Tax Lot 1202. The land use standards applicable to the applicant’s request are found in Umatilla County Development Code Section 152.060, Section 152.061, Section 152.615 and Section 152.617(I)(B).

**TEXT AMENDMENT #T-092-22, PLAN AMENDMENT #P-135-22 & ZONE MAP AMENDMENT #Z-322-22 GIRTH DOG LLC, APPLICANT/ OWNER**

The applicant requests to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan list of Goal 5 protected Large Significant Sites and apply the Aggregate Resource (AR) Overlay Zone to the entire quarry site. The property site is comprised of several tax lots located south of the Interstate 82/84 interchange. The site is identified on assessor’s map as Township 4 North, Range 27 East, Section 36, Tax Lots 900, 1100, 1200, 1300 & 1800. The site is approximately 225 acres and is zoned Exclusive Farm Use (EFU).

**UMATILLA COUNTY  
PLANNING COMMISSION HEARING  
October 20, 2022**

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

\*\*\*\*\*

**COMMISSIONERS**

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

**COMMISSIONERS**

**PRESENT VIA ZOOM:** Sam Tucker

**STAFF:**

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

\*\*\*\*\*

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

**CALL TO ORDER**

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

**NEW HEARING**

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

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. Commissioner Tucker stated that he represented Carla McLane’s (applicant’s consultant) mother’s estate as an attorney. The Planning Commission determined there is no conflict of interest in this matter. Commissioner Hinsley stated that she has done work with Mike Duncan and felt it would be best to abstain from voting on this matter.

Chair Danforth called for the Staff Report.

**STAFF REPORT**

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

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

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

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

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

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

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

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

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

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

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

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

Chair Danforth adopted the following exhibits into the record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

Chair Danforth closed the hearing for deliberation.

## **DELIBERATION & DECISION**

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

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

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

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

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

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

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

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

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

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

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

**Standard:**

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

**Planning Commission Findings:**

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

**Standard:**

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

**Planning Commission Findings:**

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

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

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

### **NEW HEARING**

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

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

Chair Danforth called for the Staff Report.

### **STAFF REPORT**

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

Mrs. Davchevski stated that applicant desires to excavate aggregate, batch that aggregate for various commercial and industrial projects, stockpile unused aggregate material for current and future use, and process the aggregate into both asphalt and concrete. The applicant provides both sand and gravel materials are available on this site.

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

Mrs. Davchevski explained that the process of approval by the County involves review by the County Planning Commission with a recommendation to the Board of County Commissioners (BCC). The decision includes a set of Precedent and Subsequent Conditions of Approval. The Planning Commission is tasked with determining if the application satisfies the criteria of

approval, based on the facts in the record. The BCC must also hold a public hearing and decide whether to adopt the proposed amendments. A public hearing before the BCC is scheduled for November 30, 2022 at 9am.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

Consulting Engineering Geologist at Evren Northwest Inc. to support his argument that the applicants inventory analysis is woefully inadequate. Mr. Green's opinion is that, "Without performing site-specific investigation into the nature and extent of these deposits on the subject site, there is no way to confirm that the quality and extent of these materials meets the definition of 'significant' as defined by LCDC (Oregon Land Conservation and Development Commission)." Mr. Stamp emphasized that the site-specific investigation should be completed by a geologist.

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

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

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

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

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

**Neutral Testimony:** Terry Clarke, 1325 NW Horn Avenue, Pendleton, Oregon. Mr. Clarke stated that he represents JTJ Enterprises, LLC which operates a mining site to the east of the subject property (Assessor's Map 4N2830, Tax Lots 2200, 2202 & 2203). He explained that it is an 80-acre site with Goal 5 protections and is leased to American Rock Products at this time.

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

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

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

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

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

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

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

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

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

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

Chair Danforth adopted the following exhibits into the record;

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

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

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

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

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

## **MINUTES**

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

## **ADJOURNMENT**

Chair Danforth adjourned the meeting at 10:08pm.

Respectfully submitted,

Tierney Cimmiyotti,

Administrative Assistant

# **DRAFT MINUTES**

**TEXT AMENDMENT #T-092-22  
PLAN AMENDMENT #P-135-22  
ZONE MAP AMENDMENT #Z-322-22**

**GIRTH DOG LLC,  
APPLICANT/ OWNER**

The applicant requests to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan list of Goal 5 protected Large Significant Sites and apply the Aggregate Resource (AR) Overlay Zone to the entire quarry site. The property site is comprised of several tax lots located south of the Interstate 82/84 interchange.

The site is identified on assessor's map as Township 4 North, Range 27 East, Section 36, Tax Lots 900, 1100, 1200, 1300 & 1800. The site is approximately 225 acres and is zoned Exclusive Farm Use (EFU).

**UMATILLA COUNTY  
PLANNING COMMISSION HEARING  
December 15, 2022**

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

\*\*\*\*\*

**COMMISSIONERS**

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

**COMMISSIONERS**

**ABSENT:** Tammie Williams & Tami Green

**PLANNING STAFF:**

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

\*\*\*\*\*

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

**CALL TO ORDER**

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

**CONTINUED HEARING**

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

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

Chair Danforth called for the Staff Report.

**STAFF REPORT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

Chair Danforth adopted the following exhibits into the record;

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

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

### **ADJOURNMENT**

Chair Danforth adjourned the meeting at 9:41pm.

Respectfully submitted,

Tierney Cimmiyotti,  
Administrative Assistant

# Umatilla County

## Department of Land Use Planning



DIRECTOR  
ROBERT WALDHER

### MEMO

LAND USE  
PLANNING,  
ZONING AND  
PERMITTING

TO: Umatilla County Planning Commission  
FROM: Robert Waldher, Director  
DATE: January 17, 2023

CODE  
ENFORCEMENT

RE: January 26, 2023 Planning Commission Hearing  
Text Amendment T-092-22,  
Zone Amendment Z-322-22 & Plan Amendment P-135-22

SOLID WASTE  
COMMITTEE

SMOKE  
MANAGEMENT

CC: Megan Davchevski, Planner

GIS AND  
MAPPING

### ***Background Information***

RURAL  
ADDRESSING

The applicant requests to establish a new aggregate site, add the site to the Umatilla County Comprehensive Plan list of Goal 5 protected Large Significant Sites, and apply the Aggregate Resource (AR) Overlay Zone to the entire quarry site. The property site is comprised of several tax lots located south of the Interstate 82/84 interchange. The site is approximately 225 acres and is zoned Exclusive Farm Use (EFU). The subject property is south of the Interstates 82 and 84 Interchange, southwest of the Westland Road Interchange and south of Stafford Hansell Road.

LIAISON, NATURAL  
RESOURCES &  
ENVIRONMENT

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

PUBLIC TRANSIT

### ***Criteria of Approval***

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

### ***Land Use Hearings***

The Umatilla County Planning Commission held a first evidentiary hearing on this matter on Thursday, October 20, 2022. The hearing was continued to Thursday, December 15, 2022. During the continued hearing, testimony was provided by the applicant and their consultant, and several project opponents (including neighboring and nearby aggregate operators). Several documents, not included in the original October and December hearing packets, were introduced into the record and are summarized as follows:

**Exhibit I** – December 12, 2022, Email Communication Between Bob Waldher (Planning Director) and Greg Silbernagel (OWRD)

**Exhibit J** – December 14, 2022, Email Communication submitted by Carla McLane

## **Memo**

Planning Commission Public Hearing – January 26, 2023

Text Amendment #T-092-22, Zoning Map Amendment # Z-322-22 and Comprehensive Plan Map Amendment P-135-22

Consulting, LLC (consultant for applicant). Email Submittal included the following: Response to Andrew Stamp's 11/23/22 letter, Coleman Response Letter, Hatley Application, Road Vacation Order and two pictures of rock source testing locations.

Upon request from Mr. Andrew Stamp, the Planning Commission agreed to leave the record open for a period of 21 days, outlined as follows; 7 days to allow for all parties to submit new evidence (deadline 12/22/22); then, 7 additional days for rebuttal (deadline 12/29/22); and finally, 7 days for the applicant to submit final legal arguments only – no new evidence (deadline 01/05/23). Deliberation and a decision (recommendation to the Board of County Commissioners) was announced for the hearing scheduled on January 26, 2023 at 6:30 pm at the Justice Center Media Room, 4700 NW Pioneer Place, Pendleton, OR.

### ***Additional Information***

Subsequent to the continued December hearing, additional information was submitted and received by the County Planning Department during the 21-day open record period. Additional Information is summarized as follows:

**Exhibit K** – *December 22, 2022*, Additional Evidence submitted by Craig Coleman and Representatives (Applicant)

**Exhibit L** – *December 22, 2022*, Additional Evidence submitted by Wade Aylett Sr. (Opponent)

**Exhibit M** – *December 22, 2022*, Additional Evidence submitted by Wade Aylett Jr. (Opponent)

**Exhibit N** – *December 22, 2022*, Additional Evidence submitted by Andrew Stamp (Attorney Representing Opponents)

**Exhibit O** – *December 29, 2022*, Rebuttal submitted by Craig Coleman and Representatives (Applicant)

**Exhibit P** – *January 5, 2023*, Final Legal Arguments submitted by Sarah Stauffer Curtiss (Attorney Representing Applicant)

In addition to the information included with this memo, relevant information pertaining to this agenda item can be found in the previous October and December 2022 hearing packets. Previous hearing packets can be found on the County's website at: <https://umatillacounty.net/departments/planning/plan-packets>.

### ***Conclusion***

The process of approval by the County involves review by the County Planning Commission with a recommendation to the Board of County Commissioners (BCC). The decision includes a set of Precedent and Subsequent Conditions of approval. The Planning Commission is tasked with determining if the application satisfies the criteria of approval, based on the facts in the record.

The BCC must also hold a public hearing(s) and make a decision whether or not to adopt the proposed amendments. A public hearing before the BCC will be scheduled upon a recommendation from the Planning Commission.

**Memo**

Planning Commission Public Hearing – January 26, 2023

Text Amendment #T-092-22, Zoning Map Amendment # Z-322-22 and Comprehensive Plan Map Amendment P-135-22

**PLANNING COMMISSION RECOMMENDATION OPTIONS**

**Motion to Recommend Approval Based on Evidence in the Record**

I, Commissioner \_\_\_\_\_, make a motion to recommend approval of the Girth Dog LLC Comprehensive Plan Text Amendment #T-092-22, Zoning Map Amendment # Z-322-22 and Comprehensive Plan Map Amendment P-135-22, to the Board of Commissioners based on the foregoing Findings of Fact and Conclusions of Law.

**Motion to Recommend Approval with Additional Findings**

I, Commissioner \_\_\_\_\_, make a motion to recommend approval of the Girth Dog LLC Comprehensive Plan Text Amendment #T-092-22, Zoning Map Amendment # Z-322-22 and Comprehensive Plan Map Amendment P-135-22, to the Board of Commissioners with the following additional Findings of Fact: \_\_\_\_\_.

**Motion to Recommend Denial Based on Evidence in the Record**

I, Commissioner \_\_\_\_\_, make a motion to recommend denial of the Girth Dog LLC Comprehensive Plan Text Amendment #T-092-22, Zoning Map Amendment # Z-322-22 and Comprehensive Plan Map Amendment P-135-22, to the Board of Commissioners based on the foregoing Findings of Fact and Conclusions of Law.



---

## Coleman Mining

2 messages

Mon, Dec 12, 2022 at 4:15  
PM

**SILBERNAGEL Greg M \* WRD** <Greg.M.SILBERNAGEL@water.oregon.gov>

To: Robert Waldher <robert.waldher@umatillacounty.gov>

Bob,

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

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

To summarize my conversation with the Colemans, there are some options of which none are guaranteed or timely.

Greg Silbernagel - Watermaster, District 5

Oregon Water Resources Department

116 SE Dorion Ave.

Pendleton, OR 97801

(541) 969-1677

Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

---

**Robert Waldher** <robert.waldher@umatillacounty.gov>

Thu, Dec 15, 2022 at 3:30 PM

To: Jodi Hinsley <jhinsley@papemh.com>, Suni Danforth <CDSJ@yahoo.com>, John Standley <bigjohnstandley@gmail.com>, Tami Green <tgreen4g@gmail.com>, Tammie Williams <tammiew75@gmail.com>, Emery Gentry <emerywentry@gmail.com>, Don Wysocki <dwysocki@oregonstate.edu>, "Cindy Timmons (cindy\_timmons2003@hotmail.com)" <cindy\_timmons2003@hotmail.com>, Sam Tucker <sam@mgtlegal.com>

Good Afternoon Commissioners - Please see the email I am forwarding from Greg Silbernagel from OWRD. This will need to be added to the record.

Also, as a reminder, please bring your hearing packets from last time. See you soon!

Bob

[Quoted text hidden]

--

**Robert Waldher, RLA**

*Director*

Umatilla County Department of Land Use Planning

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

216 SE 4th Street | Pendleton, OR 97801

<http://www.umatillacounty.gov/planning>



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



---

## Coleman Submittal - Response to 11232022 Stamp Letter

2 messages

mclane@eoni.com <mclane@eoni.com>

Wed, Dec 14, 2022 at 8:19 AM

To: Robert Waldher <robert.waldher@umatillacounty.net>, Megan Davchevski <megan.davchevski@umatillacounty.net>

Cc: Sarah Stauffer Curtiss <sarah.curtiss@stoel.com>, Craig Coleman <craig@ordnancebrewing.com>

Bob,  
Good morning!

Attached is the limited response to Mr. Stamp's 11232022 letter. You will find a letter and four items comprising three attachments. We are asking that these items be provided to the Planning Commission to be made a part of the record. They include our letter, the Hatley application, the Road Vacation Order, and two pictures of the rock source locations.

Please let me know if you have any questions or need additional information.

Cordially,  
Carla

---

### 5 attachments




**Coleman Response Letter II attachment 3a.jpg**  
6103K



**Coleman Response Letter II attachment 3b.jpg**  
4757K

 **Coleman Response Letter 12132022 signed.pdf**  
163K

 **Coleman Response Letter II attachment 1.pdf**  
1085K

 **Coleman Response Letter II attachment 2.pdf**  
80K

---



**Carla McLane Consulting, LLC**  
**170 Van Buren Drive**  
**Umatilla, Oregon 97882**  
**541-314-3139**  
[mclane@eoni.com](mailto:mclane@eoni.com)

---

December 13, 2022

Chair Danforth and Members of the Umatilla County Planning Commission  
Robert Waldher, Planning Director  
Umatilla County Planning Department (VIA EMAIL)  
216 SE 4<sup>th</sup> Street  
Pendleton, Oregon 97801

Chair Danforth and Umatilla County Planning Commission members:

Please accept this as the response to testimony provided by Andrew Stamp, legal counsel to the Aylett family, dated November 23, 2022, regarding the application for Goal 5 protections and approval of mining as represented by local file numbers Comprehensive Plan Map Amendment #P-135-22, Comprehensive Plan Text Amendment #T-092-22, and Zoning Map Amendment #Z-322-22 on property owned by Craig Coleman, or Girth Dog, LLC, and currently defined as Tax Lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36.

Addressed in this letter will be three arguments raised by Mr. Stamp: 1) adequacy of Mr. Coleman's application and consistency with the Aylett application; 2) access points for both farming and mining activities and information concerning the vacation of a portion of Center Street; and 3) the location of the rock submitted for testing. Attachments are provided for each of these items.

**Adequacy of Coleman Application and Consistency with the Aylett Application:** The application materials submitted by Mr. Coleman are like those submitted by Mr. Aylett. And the Aylett application is like three previous ODOT applications. And the Hatley expansion application looks very similar as well but was completed by a different land use planning consultant and is attached to provide additional information concerning overall consistency of recent aggregate applications submitted to the Umatilla County Planning Department leading to review and approval by the Planning Commission and Board of Commissioners. It should be noted that the ODOT applications were developed with the input of the Department of Land Conservation and Development Goal 5 Specialist Amanda Punton. Please see the attached Hatley application.

*The applicant would ask that the Planning Commission find that the application is adequate for review and recommendation of approval to the Board of Commissioners.*

**Access for Farming and Mining Activities and Vacation of Center Street:** To provide additional clarity Mr. Coleman currently has access to Stafford Hansell Road for his farm operation. He will continue to use that road for farm purposes on both the subject property and on property he owns to the west. The application indicates that clearly and identifies that Center Street, to be renamed Noble Road, will be used for the mining activities exiting the subject property to access Colonel Jordan Road at a point

exceeding the distance requirements outlined in the Westland Road Interchange Area Management Plan. To best meet the needs of the mining operation and to allow for mining to be accomplished throughout the subject property, a petition was submitted to the Umatilla County Road Master for vacation of the portion of Center Street that abuts the subject property to both the north and south. That vacation was granted on November 9, 2023. Please see the attached Order No. RD2022-06.

*The applicant would ask that the Planning Commission find that the access for Mr. Coleman's farming activities will continue to use Stafford Hansell Road for ingress and egress. We would also ask that you find that access for the mining activities will use Colonel Jordan Road via Center Street, to be renamed Noble Road.*

**Location of the Rock Samples:** Mr. Stamp continues to assert, without providing any evidence, that the rock tested did not come from Mr. Coleman's property. That is not true with the attached pictures taken from the locations of two of the recent rock samples indicating the location within the subject property – test pit 3 and 6. Please see the attached pictures.

*The applicant would ask that the Planning Commission find that the rock samples were taken from Mr. Coleman's property.*

Thank you for the ability to further respond to the comments of Mr. Stamp. The applicant will be available at the Public Hearing to answer these and other questions that may arise. Your consideration and approval of the requests outlined in the proposal is appreciated.

Cordially,

*Carla McLane*

Carla McLane, MBA  
Carla McLane Consulting, LLC

Attachments:

1. Hatley Application
2. Road Vacation Order
3. Pictures of Rock Sample Locations

## APPLICATION NARRATIVE

**SUMMARY:** Application is to amend the Umatilla County Comprehensive Plan to expand an existing Goal 5 significant aggregate site known as the Scheuning Quarry. Application includes an amendment to the Goal 5 Inventory in the Comprehensive Plan and amendment to the Zoning map to expand the Aggregate Resource Overlay Zone and add 25.8 acres to the existing 8.8 Goal 5 site.

**Background:** In 2004, Umatilla County approved the application to add an 8.8-acre site to the Significant Aggregate Site inventory in the Comprehensive Plan. The quarry, known as the Scheuning Quarry, has been active since then, providing crushed rock and aggregate to private businesses and City of Pendleton. The source has proven to be a popular source and meets Oregon Department of Transportation (ODOT) asphalt specifications.

Since its operation, there have not been any nuisance or other complaints filed with county. Mining activity has been conducted in compliance with County Conditional Use. The landowner and quarry operator, Jim Hatley, Hatley Construction, work well with the neighbors and take precautions to minimize negative impacts of noise, dust, truck traffic.

The 8.8-acre site has some remaining material. However, the landowner and operator are seeking approval of a larger mining area to ensure the valuable source is available for years into the future. Thus, this request is to add 25.8 acres and provide the Goal 5 protection to limit conflicting uses to allow mining.

Letters of support from the City of Pendleton and neighboring landowner is attached. The owner and operator has been in good standing with the county permit (C-1063-04) and state mining permit (DOGAMI ID No 30-0122).

**Owner:** Rosemary Scheuning Estate  
1104 Old Airport Road  
Pendleton, OR 98801

**Applicant:** Jim Hatley  
Hatley Construction

**Location:** The property is located on the north side of Oregon Trail Highway (known as Westgate), approximately 500 feet east of the intersection of Old Airport Road and approximately one-half mile west of the Pendleton city center.

**Property:** Tax lot 400 of Assessor's May 2N 32 04. Total parcel acreage is 150.4 acres. Existing Goal 5 Significant Area is 8.8 acres.

**Zoning:** The parcel is Zoned Exclusive Farm Use. The existing 8.8 acres quarry also has the Goal 5 Significant Resources Overlay Zone. The parcel is within the City of Pendleton Urban Growth Boundary.

**Request:** The request is to expand the existing 8.8-acre Goal 5 Aggregate Resource and add 25.8 acres. The applicant intends to continue the mining and processing that was permitted in 2004.

Specifically, request includes:

- 1) Comprehensive Plan Text Amendment to add 25.8 acres to the Goal 5 Significant Resources Inventory.
- 2) Zoning Map Amendment to include the 25.8 acres in the Aggregate Resources Overlay Zone.

**Surrounding Uses:**

Land to the north and east is of similar terrain including steeper slopes and used for grazing. Adjacent land to the west contains rental houses. Multiple industrial and commercial businesses are in the vicinity.

**Required Review:**

- Oregon Administrative Rule (OAR) Chapter 660 Land Conservation and Development Department Division 23 Procedures and Requirements for Complying with Goal 5 is applicable, providing the procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. This application will specifically review 660-023-0180 Mineral and Aggregate Resources, 660-023-0040 ESEE Decision Process and 660-023-0050 Programs to Achieve Goal 5.
- Umatilla County Development Code for Establishing an Aggregate Resource (AR) Overlay Zone (OZ) as outlined in Sections 152.487 and 152.488.
- Statewide Planning Goals 1 through 14.

*Note: Where the Umatilla County Development Code has not been updated to include the Division 23 Rules for Aggregate Resources, the Oregon Administrative Rules 660-023-0180 to establish a Goal 5 Large Significant Site is directly applied per OAR 660-023-180 (9).*

**STANDARDS OF THE OREGON ADMINISTRATIVE RULES, DIVISION 23 FOR GOAL 5 LARGE SIGNIFICANT SITES** are found in OAR 660-023-0180 (3), (5), & (7), OAR 660-023-0040, and OAR 660-023-0050. The standards for approval are provided in **bold text** and the responses are indicated in standard text.

**OAR 660-023-0180 Mineral and Aggregate Resources**

**(3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:**

**(a) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley;**

**(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or**

**(c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule.**

**(d) Notwithstanding subsections (a) through (c) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:**

**(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or**

**(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule, unless the average width of the aggregate layer within the mining area exceeds:**

- (i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;**
- (ii) 25 feet in Polk, Yamhill, and Clackamas counties; or**
- (iii) 17 feet in Linn and Benton counties.**

The current 8.8-acre Scheuning Quarry has been active since 2004 when the 8.8 acres were added to the significant Goal 5 resource inventory and permitted with a Conditional Use Permit. This application is an expansion of an existing quarry. Attachments provide evidence that the material meets the ODOT specifications for base rock and the expansion area includes more than 100,000 tons of material.

Predominant Soil type according to the US Department of Agriculture Soil Conservation Service Soil Survey of Umatilla County, is Anderley silt loam, a class IIIe/IVe soil type. Slope is 7-12%.

Soil Samples show that material from the quarry meet ODOT specifications. Evaluation conducted by Jerry Odom, licensed engineer, estimates material to exceed quality and quantity requirements. See attached letter. The Scheuning quarry meets the criteria for a significant aggregate site in accordance with OAR 660-023-180 (3)(a).

**(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.**

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

This request is to expand an existing quarry. Evaluation of impacts therefore is directed at the expansion area. For purposes of this standard, evaluations of conflicting uses are to be based on the center of the expansion area. However, the applicant provides analysis of conflicts based on the exterior boundary of the expansion area. As noted above, the existing operation has resulted in no known impacts to neighboring properties. Operation in the expansion area can be expected to create the same results thus generating no negative impacts. The expansion area was designed so as to create an adequate buffer from the houses located on the parcel to the east. Dwellings are the only known land use where quarry operation may cause conflict. Again, the buffer provides assurance that the operation will not conflict with the dwellings. If county or neighbors identify potential conflicts that warrant limitations in order to protect the resource, applicant will respond.

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

**government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:**

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

There are not homes within the 1,500-foot impact area. The existing quarry has operated without conflicts to the existing dwellings since 2004. The owner of the adjacent parcel that has homes has provided a letter in support of the quarry expansion. There is not a school within the 1,500-foot impact area. No other conflicting land uses are known.

The adjacent homes may be modestly impacted by noise, dust, or other discharges from the proposed expansion however, based on historic compatibility, such impacts are expected to be minimal. The applicant will minimize impacts by employing best management practices and complying with conditions in the Conditional Use Permit.

The applicant acknowledges that the mining and processing operation can create noise, dust, and other discharges and will employ normal and customary practices to manage those impacts. Both noise and dust are regulated by the Oregon Department of Environmental Quality. Applicant has been in good standing with the General Air Contamination Discharge Permit for crushing and processing activities and will continue to do so with the expanded quarry area.

Blasting will be conducted as part of the mining process. The applicant and other contract operators will use best management practices when engaging in this activity. Blasting can create vibration and fly rock, but the use of best management practices will prevent off-site impacts. As like the earlier requirements the applicant will comply with requirements of DOGAMI.

With application of the sustainable management practices that have occurred to date, potential conflicts due to noise, dust, or other discharges will be minimized within the 1,500-foot impact area.

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

Traffic would not trigger a traffic impact analysis as it would be less than the 250 average daily trips as outlined at UCDC 152.019(B)(2)(a). Operator will utilize existing access from Westgate (Highway 30) which indirectly provides access thru two parcels owned by Jim Hatley, tax lot 1000 and 900. If a secondary access is warranted, applicant will secure an Access Permit for Old Airport Road from County Public Works.

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

The Pendleton Public Airport is located approximately 2 miles north and west of the parcel.

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

There are no known Goal 5 resource sites within the impact area except the existing 8.8 aggregate site.

**(E) Conflicts with agricultural practices; and**

There are no agricultural practices within the 1,500-foot impact area of the quarry.

**(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon DOGAMI regulations pursuant to ORS 517.780;**

Umatilla County does not have an ordinance that supersedes DOGAMI regulations.

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

The applicant has identified limited impacts from dust and stormwater that can be managed or mitigated through various voluntary measures and best management practices. During mining and processing, if approved on site, the applicant and its contractors will implement best management practices and, as necessary or required, obtain necessary permits in the management of dust, stormwater, or other identified discharges.

**(c) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:**

**(A) The degree of adverse effect on existing land uses within the impact area;**

**(B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and**

**(C) The probable duration of the mining operation and the proposed post-mining use of the site.**

The applicant has extensive experience with mining and rock crushing and other processing and heavy construction work. All identified potential conflicts can be minimized. Substantially based on the mining activities since 2004.

**(E)**

**Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e. g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:**

- (A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;
- (B) Not requested in the PAPA application; or
- (C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

The applicant will implement best management practices and will continue to maintain permits as necessary to ensure management of dust and stormwater. Applicant agrees to reasonable conditions county may require.

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

The applicant and landowner do not have plans for post-mining land use given that mining will occur into the foreseeable future. The land does not contain class I, II or unique farmland soils and therefore post-mining activities are not required.

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

Based on this state standard, Umatilla County should approve mining operation at the expanded area contiguous to the existing quarry.

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

The applicant has provided an ESEE analysis below. The analysis supports a decision to limit new conflicting uses within the impact area to assure protection of the aggregate site.

#### 660-023-0040 ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;



The subject property is zoned Exclusive Farm Use (EFU). Adjacent property to the north and east is of similar terrain and is not cultivated farm ground. Parcel to the east has two rental houses. Multiple industrial and commercial businesses are in the vicinity.

**(b) Determine the impact area;**

A 1,500-foot buffer extending from the center of the proposed 25.8-acre aggregate expansion area.

**(c) Analyze the ESEE consequences; and**

See the analysis below.

**(d) Develop a program to achieve Goal 5.**

See a full analysis below.

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

Based on the compatibility of the existing mining operation, and the fact that no complaints have been filed against the operator since 2004 and based on the landowner and operator's compliance with DEQ and DOGAMI mining permits, there are no conflicts expected.

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

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

The only known Goal 5 resource within the boundary of the mining area or within the 1,500 feet impact area is the existing 8.8-acre quarry.

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

The impact area for an aggregate site is 1,500 feet, as specified by OAR 660-023-0180(5)(a). While there are businesses and dwellings nearby, there are no known impacts within the 1,500-foot impact area.

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

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

The ESEE Analysis follows:

ESEE consequences related to review criteria for dwellings and gathering spaces in the 1,500-foot impact area surrounding the quarry				
	<i>Prohibit dwellings and gathering spaces</i>	<i>Condition the placement of new dwellings and gathering spaces</i>	<i>No change to review standards for dwellings and gathering spaces</i>	
Economic Consequences	<p><b>Consequences related to new use on neighboring properties.</b> There may be some negative economic impact to neighboring property owners if new dwellings or gathering places were not allowed within 1500 feet of the quarry boundary. Since only a portion of properties in the impact area are zoned for Exclusive Farm Use, all with a 160-acre minimum lot size, about half of the properties would be affected and some existing limits on dwellings are already in code, the negative impact would be small. Some uses that allow gathering spaces are also allowed either outright or conditionally.</p> <p><b>Consequences related to loss or interruption of quarry access.</b> The economic benefit of preserving the applicant's ability to access material from this site has economic impact through employment and by providing material to important private and public construction projects.</p>	<p><b>Consequences related to new use on neighboring properties.</b> The economic impact to neighboring property owners would be neutral given that dwellings already exist. Additional dwellings would not be permitted prior to land being annexed into city.</p> <p><b>Consequences related to loss or interruption of quarry access.</b> The economic benefit would be the same as that for a decision to prohibit uses since the proposed "limit" is to require that new uses would be permitted on the condition that the applicant except mining activity on this significant aggregate site.</p>	<p><b>Consequences related to new use on neighboring properties.</b> The economic consequence for property owners would be neutral. This decision would maintain the current approval criteria for new residences and gathering places in the impact area.</p> <p><b>Consequences related to loss or interruption of quarry access.</b> The economic impact would be negative. Interruptions in use of a quarry, due to complaints and nuisance lawsuits, have caused delays and increased costs for projects in the region. Expansion of this quarry supports economically efficient development and construction projects in the region. New noise sensitive uses locating within 1500 feet of the quarry will bring the possibility that limitations on quarry activity will be sought by people who are bothered by mining activity. The potential negative economic impact ranges from small to exceptionally large.</p>	
	<i>Prohibit dwellings and gathering spaces</i>	<i>Condition the placement of new dwellings and gathering spaces</i>	<i>No change to review standards for dwellings and gathering spaces</i>	

<p>Social Consequences</p>	<p><b>Consequences related to new use on neighboring properties.</b>          Removing the option to place a dwelling, which otherwise meets all existing review criteria, within 1500 feet of the quarry boundary, would have a negative social consequence. This would be similar if gathering spaces were also prohibited. The social consequences stem from a landowner's desire to have reasonable options and flexibility when making choices about what they can and cannot do on their land.</p> <p><b>Consequences related to loss of quarry access.</b>          Various development and construction projects in the region and in the Pendleton area in particular, could forestall important projects that are dependent upon a good source of aggregate.</p>	<p><b>Consequences related to new use on neighboring properties.</b>          The social impact to neighboring property owners would be neutral since the neighbor has already supported the project. New dwellings and gathering spaces that meet existing review criteria would be allowed, provided the applicant agreed to accept the mining activity approved by the county.</p> <p><b>Consequences related to loss of quarry access.</b>          Various development and construction projects in the region that would utilize the aggregate material from this quarry may not transpire.</p>	<p><b>Consequences related to new use on neighboring properties.</b>          The social impact to neighboring property owners would be neutral if new dwellings and social gathering spaces within 1500 feet of the quarry boundary were allowed under the existing review criteria.</p> <p><b>Consequences related to loss of quarry access.</b>          Various development and construction projects in Pendleton that would otherwise utilize the aggregate material in the quarry may have to forgo their development which could impact social activities including those that would benefit business.</p>
	<p><i>Prohibit dwellings and gathering spaces</i></p>	<p><i>Condition the placement of new dwellings and gathering spaces</i></p>	<p><i>No change to review standards for dwellings and gathering spaces</i></p>
<p>Environmental Consequences</p>	<p><b>Consequences related to new use on neighboring properties.</b>          There are no environmental consequences identified that stem from prohibiting new dwellings or social gathering spaces in the impact area.</p> <p><b>Consequences related to loss of quarry access.</b>          Efficient development practices include obtaining aggregate material from a quarry close to the project site. There will be significant environmental benefit from fewer vehicle emissions given hauling distance is minimized.</p>	<p><b>Consequences related to new use on neighboring properties.</b>          There could be a negative environmental consequence from noise if new dwellings or business were limited in the impact area. New dwellings and businesses in the impact area could be authorized on the condition that the applicant accept the mining activity approved by this decision. This approach assures that a property owner will make an informed decision when locating a new use. If they decide to locate within the impact area, they will be exposed to noise impacts when mining activities are conducted on the site.</p>	<p><b>Consequences related to new use on neighboring properties.</b>          There could be a negative environmental consequence from noise if new dwellings and social gathering spaces were allowed in the impact area.</p> <p><b>Consequences related to loss of quarry access.</b>          There may be some negative environmental consequence if new uses in the impact area oppose mining activity and pose an obstacle to the use of this site. Efficient development practices include obtaining aggregate material from a quarry close to the project site. Vehicle emissions will increase if trucks must travel further to access material.</p>

		Consequences related to loss of quarry access. Efficient development practices include obtaining aggregate material from a quarry close to the project site. There will be environmental benefit from fewer vehicle emissions when truck travel is minimized.	
	<i>Prohibit dwellings and gathering spaces</i>	<i>Condition the placement of new dwellings and gathering spaces</i>	<i>No change to review standards for dwellings and gathering spaces</i>
Energy Consequences	<p>Consequences related to new use on neighboring properties. There are no energy consequences identified that stem from prohibiting new dwellings or social gathering spaces in the impact area.</p> <p>Consequences related to loss of quarry access. Efficient development practices include obtaining aggregate material from a quarry close to the project site. There will be some negative energy consequences from additional fuel use if truck travel is increased due to loss of access to this quarry.</p>	<p>Consequences related to new use on neighboring properties. There are no energy consequences identified that stem from limiting new dwellings or social gathering spaces in the impact area.</p> <p>Consequences related to loss of quarry access. Efficient development practices include obtaining aggregate material from a quarry close to the project site. There will be some negative energy consequences from additional fuel use if truck travel is increased due to loss of access to this quarry.</p>	<p>Consequences related to new use on neighboring properties. There are no energy consequences identified that stem from allowing new dwellings or social gathering spaces in the impact area.</p> <p>Consequences related to loss of quarry access. Efficient development practices include obtaining aggregate material from a quarry located in close proximity to the development. There will be some negative energy consequences from additional fuel consumption if truck travel is increased due to loss of access to this quarry.</p>

**(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:**

- (a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.**
- (b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.**
- (c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.**

The applicant requests that Umatilla County determine that the additional 25.8-acre aggregate resource site is significant. Based on the ESEE analysis, the identified conflicting uses, dwellings, should be allowed. The protection sought from potential conflicting uses would be within the 1,500-foot impact area and for the life of the Scheuning quarry. Specifically, local authorization of new residential development or social gathering places should be limited to achieve that goal.

#### **660-023-0050 Programs to Achieve Goal 5**

**(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5) (b) and (c)).** The applicant requests that Umatilla County take action to facilitate protection of this aggregate site by mapping the 1,500-foot impact area within the Comprehensive Plan map and acknowledge that conflicting residential and social gathering space uses identified previously will be limited and require that activities approved through a land use permit process will be required to waive rights to remonstrate against normal aggregate mining activities allowed by this decision. This would be consistent with current Umatilla County Development Code provisions found at 152.063(D) that are applicable to permitted mining activities. The intent of this request is not to disallow these activities but that applicants for these types of uses be made aware of the mining operation and waive their rights to remonstrate against aggregate mining activities allowed by this decision.

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

- (a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;**
- (b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or**
- (c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).**

The applicant has requested protection consistent with OAR 660-023-0040(5)(b) seeking that identified conflicting uses be limited within the buffer area as discussed above.

**(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:**

- (a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and**
- (b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).**

These provisions would not be applicable as the request is related to aggregate resources.

**STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE FOR ESTABLISHING AN AR OVERLAY ZONE** are found in Sections 152.487 and 152.488. The standards of approval are shown in **bold type** with the response in normal text.

**152.487 CRITERIA FOR ESTABLISHING AR OVERLAY ZONE:**

**(A) At the public hearing the Planning Commission shall determine if the following criteria can be met:**

**(1) The proposed overlay would be compatible with the Comprehensive Plan;**

The Umatilla County Comprehensive Plan currently includes the existing 8.8-acre significant site. Expansion of the site is consistent with the Comprehensive Plan and applicable Administrative Rules.

Comprehensive Plan Findings and Policies are also applicable. Finding 38 states, "Extraction of non-renewable aggregate and mineral resources requires ongoing exploration, reclamation, separation from adjacent incompatible land uses and access." The accompanying policy would also be applicable:

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

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

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

The applicant is seeking protection of the aggregate site by the application of the Aggregate Resource Overlay Zone and protection from encroaching and conflicting uses by mapping of the impact area to best achieve both this Finding and Policy.

**Comprehensive Plan Finding 41 "Several aggregate sites were determined to be significant enough to warrant protection from surrounding land uses in order to preserve the resource."**

Based on the findings in this application the applicant requests that the Scheuning Quarry Expansion be added to the list of Significant Resources Sites.

The applicant's request for limitations of conflicting residential and social gathering space uses is reasonable under the Goal 5 protection program. Placement of an overlay zone or mapping the site as part of the Comprehensive Plan with provisions to limit those conflicting uses within the impact area is a reasonable request and accommodation.

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

The applicant has determined that the inventory of aggregate material at the Scheuning quarry is more than 3 million tons that meet or exceed ODOT specifications. See attached letter from Engineer Jerry Odom.

**(3) The proposed overlay is located at least 1,000 feet from properties zoned for residential use or designated on the Comprehensive Plan for residential;**

The proposed overlay is located at least 1,000 feet from property zoned R2. There are two houses just outside the impact area. Those houses are located on land zoned R2 and located in the Pendleton Urban Growth Area.

**(4) Adequate screening, either natural or man-made, is available for protecting the site from**

**surrounding land uses.**

The configuration of the 25.8-acre expansion was designed to provide a barrier to the R2 zoned parcel to the east. This man-made feature will provide adequate buffer and protection.

**(5) The site complies with Oregon Administrative Rules (OAR) 660-023-0180.**

The required analysis for OAR 660-023-0180 is above.

**152.488 MINING REQUIREMENTS:**

**(A) All work done in an AR Overlay Zone shall conform to the requirements of DOGAMI or its successor, or the applicable state statutes.**

The applicant complies with DOGAMI mining permit requirements and will continue to do so relative to the 25.8-acre expansion area.

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

**(1) For each operation conducted in an AR Overlay Zone the applicant shall provide the Planning Department with a copy of the reclamation plan that is to be submitted under the county's reclamation ordinance;**

The applicant will complete the necessary reclamation plan required by DOGAMI and submit the same to Umatilla County. As noted above, the applicant and landowner does not have any immediate plans for reclamation given the longevity of mining in the 25.8-acre area. Any future reclamation activity would be compliant with the Exclusive Farm Use zone. Applicant will submit a reclamation plan for post-mining use upon request by county.

**(2) Extraction and sedimentation ponds shall not be allowed within 25 feet of a public road or within 100 feet from a dwelling, unless the extraction is into an area that is above the grade of the road, then extraction may occur to the property line;**

The applicant has and will continue to mine the aggregate resource leaving a 25-foot buffer area around the perimeter of the subject property.

**(3) Processing equipment shall not be operated within 500 feet of an existing dwelling at the time of the application of the Overlay Zone. Dwellings built after an AR Overlay Zone is applied shall not be used when computing this setback.**

The dwellings currently located to the east of the quarry are more than 500 feet from the proposed expansion area. The landowner has provided a letter in support of the expanded quarry. Processing equipment will be sited in such a way as to retain this 500-foot setback requirement for the processing equipment.

**(4) All access roads shall be arranged in such a manner as to minimize traffic danger and nuisance to surrounding properties and eliminate dust.**

Applicant will continue to use roadway from Highway 30 (Westgate). If access from the north is warranted, applicant will obtain an Access Permit from Umatilla County Public Works and applicant will provide water or other dust abatement to prevent dust.

**Analysis of the Statewide Planning Goals 1 through 14 follows.**

**Goal 1 Citizen Involvement: To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.**

Response: Umatilla County's Comprehensive Plan and development codes outline the County's citizen involvement program that includes the activities of the Planning Commission and provides for the public hearing process with its required notice provisions. These notice provisions provide for adjoining and affected property owner notice; notice to interested local, state, and federal agencies; and allows for public comment to the process. More specifically this request will be publicly noticed and discussed at a public hearing and will be subject to input from citizens.

**Goal 2 Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

Response: Goal 2 establishes the underlining process that a county or a city needs to utilize when considering changes to their Comprehensive Plans and development codes. This application meets those requirements for this request.

**Goal 3 Agricultural Lands: To preserve and maintain agricultural lands.**

Response: Goal 3 requires counties to preserve and maintain agricultural lands for farm uses. Counties must inventory agricultural lands and protect them by adopting exclusive farm use zones consistent with Oregon Revised Statute 215.203 et. seq. Mining is allowed as a condition use per ORS 215.283 and has been permitted at this location since 2004.

Goal 3 is relevant to this application as the proposal is on land currently zoned Exclusive Farm Use. While the primary purpose of this zone is to allow and protect farm operations there are many other uses that are allowed on farmland that are outlined in Oregon Revised Statute and codified in the Umatilla County Development Code. In this instance there is an intersection of Goal 3 and Goal 5 because an aggregate source has been identified, is determined to be significant, and the applicant is requesting protection for the site and for mining to be allowed.

**Goal 4 Forest Lands: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

Response: There are no forest lands impacted by this request. The Umatilla National Forest is significantly south of the subject property.

**Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources: To protect natural resources and conserve scenic and historic areas and open spaces.**

Response: This application is to protect the subject property under Statewide Planning Goal 5 as a significant aggregate site. The subject property does not have any overlays or other known cultural resources or historical sites. There are no mapped wetlands on the subject property and no floodplain has been mapped.

This application for a Comprehensive Plan amendment to protect an aggregate resource has been reviewed under Oregon Administrative Rule 660-023-0180, the process required under Goal 5.

**Goal 6 Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water and land resources of the state.**



Response: Goal 6 addresses the quality of air, water, and land resources. In the context of comprehensive plan amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

The request to protect the subject property under Goal 5 and to allow mining, based on the analysis above can and will be compliant with Goal 6. The objective of this process is to protect an aggregate resource. Required measures protecting water are required under Oregon law and will be implemented during mining, processing, and stockpiling of aggregate material. Any mining or processing of aggregate material will be required to meet Oregon Department of Environmental Quality requirements for air quality through the imposition of air quality standards with some activities having to obtain an Air Quality Permit. The use of mining and processing techniques that include temporary and permanent Best Management Practices for erosion and sediment control and spill control and prevention can achieve compliance with both clean air and water standards.

**Goal 7 Areas Subject to Natural Hazards and Disasters: To protect people and property from natural hazards.**

Response: Goal 7 provides for the planning and response to natural hazards and disasters. Given compliance with state DOGAMI mining requirements the quarry operation will not create any natural hazards. There are no known natural hazards on the subject property.

**Goal 8 Recreation Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.**

Response: No recreation components are included in this application.

**Goal 9 Economy: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**

Response: Umatilla County has a comprehensive plan that has been acknowledged to comply with Goal 9. The proposed quarry expansion has general economic benefit to construction and development in the Pendleton area as well as the region.

**Goal 10 Housing: To provide for the housing needs of citizens of the state.**

Response: Housing is not being proposed and the expansion area will be conducted in a manner that does not negatively impact housing in the vicinity.

**Goal 11 Public Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

Response: Goal 11 requires local governments to plan and develop a timely, orderly, and efficient arrangement of public facilities and services. The goal provides that urban and rural development be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the area to be served. The approval of this request would support the local economy that provides for the employment of residents, delivery of goods, and allows for recreation and tourism in the region.

**Goal 12 Transportation: To provide and encourage a safe, convenient and economic transportation system.**

Response: Rock from this quarry is used for transportation projects in and around the greater Pendleton area. City of Pendleton relies on this aggregate resource and has submitted a letter in support of the Plan Amendment and application.

**Goal 13 Energy: To conserve energy.**

Response: Approval of this quarry expansion will continue to make aggregate material available for municipal and private construction activities in the Greater Pendleton area, thus minimizing and reducing hauling distance. Hauling of aggregate is perhaps the largest energy consumption and therefore reducing hauling reduces energy consumption.

**Goal 14 Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.**

Response: Proposed uses are not considered urban and therefore Goal 14 is not specifically applicable. The expansion area is configured so as to not limit urban development on nearby lands within the city of Pendleton Urban Growth Area and City Limits.

**Conclusion:**

The applicant has provided within this narrative and with other information provided as part of the application package evidence and testimony in support of protection for the Scheuning Quarry. Applicant and landowner request county approval. The applicant requests approval of the additional 25.8 acres significant aggregate resources, adoption of the Aggregate Resources Overlay Zone and approval of a Conditional Use Permit.

**Attachments:**

- Map of Scheuning Quarry and expansion area
- Letter from Engineer
- Authorization letter from landowner
- Assessor Tax Lot Map 2N 32 04

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

STATE OF OREGON

In the Matter of Vacation of )  
Center Street, Meadow Valley, ) Order No. RD2022-06  
an Unimproved Public Road )

WHEREAS, in accordance with ORS 368.341(1)(c), the Umatilla County Board of Commissioners received and accepted a petition to vacate a portion of Center Street, an unimproved Public Road, dedicated as part of the Meadow Valley Plat in 1910, located on the North line of Northwest Quarter of Southwest Quarter of Section 36, Township 4 North, Range 27, between Lot 3, Block 2, and Lot 2, Block 3, Meadow Valley Addition, which petition had been signed by all of the owners of the property abutting the road, and

WHEREAS, the Public Works Department has prepared a report on the petition, and

WHEREAS, the Director of Public Works, after reviewing the proposed action, has recommended that approximately 1,300 feet of the road be vacated, and

WHEREAS, ORS 368.351 allows a county governing body to vacate public property without holding a public hearing if the petition to vacate contains signatures of 100 percent of owners of property abutting a proposed vacation.

NOW THEREFORE, the Board of Commissioners finds and orders that:

1. It is in the public interest to vacate a portion of Center Street, an unimproved Public Road, 40 feet in width, dedicated as part of the Meadow Valley Plat in 1910, as described below.

2. The following portion of the Public Road identified as Center Street is vacated:

Commencing at the Northwest corner of Lot 2, Block 3, Meadow Valley; thence North 40 feet to the South line of Lot 3, Block 2, Meadow Valley; thence East along the said South line of Lot 3 to the Southeast corner of said Lot 3; thence South 40 feet to the Northeast corner of Lot 2, Block 3, Meadow Valley ; thence West along the North line of said Lot







**DECEMBER 22, 2022**

**EVIDENCE**

**SUBMITTED BY:**

**CRAIG COLEMAN & REPRESENTATIVES  
(APPLICANT)**

**Carla McLane Consulting, LLC**  
**170 Van Buren Drive**  
**Umatilla, Oregon 97882**  
**541-314-3139**  
**[mclane@eoni.com](mailto:mclane@eoni.com)**

**RECEIVED**

**DEC 22 2022**

**UMATILLA COUNTY  
PLANNING DEPARTMENT**

December 22, 2022

Chair Danforth and Members of the Umatilla County Planning Commission  
Robert Waldher, Planning Director  
Umatilla County Planning Department (VIA EMAIL)  
216 SE 4<sup>th</sup> Street  
Pendleton, Oregon 97801

Chair Danforth and Umatilla County Planning Commission members:

Please accept this as the response to testimony provided by Andrew Stamp, legal counsel to the Aylett family, and other testimony from the December 15, 2022, Public Hearing regarding the application for Goal 5 protections and approval of mining as represented by local file numbers Comprehensive Plan Map Amendment #P-135-22, Comprehensive Plan Text Amendment #T-092-22, and Zoning Map Amendment #Z-322-22 on property owned by Craig Coleman, or Girth Dog, LLC, and currently defined as Tax Lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36.

Submitted with this letter are the following:

1. An email from Bill Porfily concerning the availability of water on the subject property with water rights and their associated maps as further evidence of the availability of water. We want to also reiterate that a water availability letter (email) from the Port of Morrow has already been submitted to the record.
2. An updated map from IRZ Engineering and Consulting with the calculations included indicating how the estimated 1.2 million tons was arrived at. This calculation is only capturing the top 10 feet of a portion of the property. When the available area is considered to a depth of between 40 and 60 feet, average for most aggregate sites, the available rock is closer to 13 million tons.
3. Oregon Standard Specifications for Construction pages 1111 and 1112.

Questions continue around the geology of the area and the ability of the rock to meet the quantity and quality requirements. To further address quantity a revised map from IRZ Engineering and Consulting is included (see #2 above). As to quality the applicable Oregon Department of Transportation (ODOT) requirements are found in Section 02630.11(c) of the Oregon Standard Specifications for Construction (2021) and indicate that Abrasion can be up to 35% maximum, Coarse Degradation can be up to 30% maximum, and Sediment Height should be 3.0 inches maximum (see attached pages identified as #3 above).

For abrasion, with an ODOT standard to not exceed 35% the two Atlas tests identify the rock to test at 14%, significantly below the standard. For Coarse Degradation with a standard not to exceed 30% the



Atlas test shows the rock testing at 1.9%, exceeding the standard. The earlier test completed for Course Degradation has several results looking at different aspects with results between .98 and 2.8, again exceeding the ODOT standards. Sediment Height was identified at .4 inches. For sulfate soundness the two Atlas tests identify the rock to test at 2.1 and 1.4 percent, below the 12% sought by ODOT.

In all cases the rock removed from the test pits identified on the IRZ map meets and significantly exceeds the identified ODOT standards.

Also addressed in this letter will be several arguments raised by Mr. Stamp along with other testimony from December 15: 1) Goal 5 Resources in the vicinity and to the west; 2) is equity a standard; 3) analysis of Goal 12; 4) water availability as a standard; and 5) why a Conditional Use Permit is not required.

**Goal 5 Resources in the Vicinity and to the West:** The standard for review found at Oregon Administrative Rule (OAR) 660-023-0180(5)(b) states that “the local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following...” with (D) stating that “conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated.” This would require the applicant to address those listed in the acknowledged Comprehensive Plan which none were at the beginning of the application process. Once the Aylett site was added to the Comprehensive Plan the following was submitted to address the Goal 5 site:

There are no known other [meaning non-aggregate] Goal 5 resource sites within the impact area for the aggregate site. There is a recently approved aggregate site that was approved under these same standards and criteria. The approval rendered by Umatilla County earlier this year has added the Rock It #2 aggregate site and operation to the list of Goal 5 Aggregate Sites in Umatilla County and provided it protections under the Goal 5 program not dissimilar to what is being requested in this application.

This standard seeks to identify if there would be a conflict with this or other Goal 5 resource sites. The applicant asserts that there would not be a conflict. Both aggregate sites have similar impacts related to noise, dust, or other discharges that are evaluated and regulated as customary. We would anticipate conditions aligned with those applied to the Rock It #2 operation.

First Street, as shown on Assessor’s Map 4n 27 36 and as platted on the 1910 Meadow Valley Addition plat, provides a barrier between the two operations on the north/south boundary line. That road, dedicated at 60 feet, when considered in addition to the required setback provides over a 100-foot separation between the two operations.

As the operations would be mining similar material in a similar manner with a barrier provided by a road right-of-way no conflicts are anticipated.

The acreage to the west that was identified as significant in the mid- to late-1990s is not on the list of significant sites, although Planning staff has indicated that they are working to rectify that oversight. The applicant's narrative however would not change. There are no conflicts under Goal 5 with either sites designation of significance. The potential impacts of dust, noise, or other discharges are the responsibility of the respective operators and should be considered in the same manner for this application as they were for the Aylett request.

*The applicant would ask that the Planning Commission find that 1) there are no other, non-aggregate, Goal 5 Resources in the impact area, 2) that the Coleman/Girth Dog site is significant for the purposes of Goal 5, and 3) that the Goal 5 protected resource to the west is not a consideration of this approval.*

**Is Equity a Standard:** Mr. Andrew Stamp, the attorney for the Aylett family and Rock It #2, has asked the Planning Commission to take a political position and determine that equity should be considered and either deny the request before you or compel Mr. Coleman to allow the Aylett to mine on property owned by him. There is nothing in the applicable OAR to base that request upon. In fact, Oregon Revised Statutes (ORS) 517.790(3), which governs mining and mining claims, states that:

(3) The department may not issue an operating permit to an operator other than the owner or owners of the surface and mineral interests of the lands included within the surface mining area unless the operator:

(a) Has written approval from the owner or owners of all surface and mineral interests of the lands included within the surface mining area; and

(b) Maintains a legal interest in the lands that is sufficient to ensure that the operator has the authority to operate and reclaim the lands as provided in the operating permit and reclamation plan.

*The applicant would ask that the Planning Commission find that the property to the west of the proposed mining site is not available for mining purposes and that there are no provisions that would compel Mr. Coleman to mine those acres.*

**Analysis of Goal 12:** OAR Chapter 660 Division 12 is the Transportation Planning Rule and states in the Purpose statement that "This division implements Statewide Planning Goal 12 (Transportation) to provide and encourage a safe, convenient, and economic transportation system." The Department of Land Conservation and Development website states on its Goal 5 page that the OARs that implement Goal 12 are Division 12 Transportation Planning and Division 34 Airport Planning. During the application process, Planning staff asked that a Traffic Impact Analysis be submitted to address both the Westland Road Interchange Area Management Plan and the Transportation Planning Rule. Also as part of the original application Goal 12 was analyzed with the following:

Goal 12 requires local governments to provide and encourage a safe, convenient, and economic transportation system, implemented through the Transportation Planning Rule. In 2006 Umatilla County adopted an Interchange Area Management Plan (IAMP) for the Westland Interchange which does discuss the intersection of Stafford Hansell Road to Westland Road, identifying concerns with the spacing of Stafford Hansell Road

from the interstate eastbound on- and off-ramps. This request is for a use that is allowed conditionally and improvements to the Stafford Hansell Road intersection, while needed, are not appropriately required of this application. Connection for the proposed aggregate site is proposed to be from Center Street at the current intersection of Noble Road and Colonel Jordan Road, which is nearly 1,000-feet more than the 1320-feet required by the IAMP.

Mr. Andrew Stamp continues to assert that the applicant has not addressed Goal 12 but has not stated what provisions of Goal 12 would be applicable.

*Therefore, the applicant would ask that the Planning Commission find that the requirements of the Transportation Planning Rule, which implements Goal 12, have been satisfied through the analysis accomplished in the Traffic Impact Study and that the connection of the mining operation to the transportation network along Center Street, to be renamed Noble Road, with access to Colonel Jordan Road is sufficient for the mining operation.*

**Water Availability as a Standard:** Mr. Stamp is asking for you to apply OAR 660-023-0180(5)(b)(A), which states, "Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e. g., houses and schools) that are sensitive to such discharges," in such a way that water availability, or lack thereof, would compel you to deny the request. He is making this connection because the applicant has indicated as a response that "dust will be managed on site through the application of water or other dust abatement mechanisms." Even with water available an operator of the site could still choose to use other dust abatement mechanisms, reserving water for other uses within the mining operation. And there are aggregate sites that do operate without water available. The applicant continues to assert that water is available and to support that included with this submittal and identified at the beginning of this letter is an email from Bill Porfily, a local Water Rights Examiner, and several water rights documents with associated maps. As was stated at the December 15, 2022, public hearing once the land use approvals are in hand the applicant will be making application with the Oregon Water Resources Department for necessary and appropriate water rights transfers to support the proposed mining operation.

*Based on this the applicant would ask that the Planning Commission find that water availability, while not a standard for approval, is feasible as demonstrated by the information provided by Bill Porfily, an Oregon Water Rights Examiner.*

**Why a Conditional Use Permit is Not Required:** OAR 660 Division 23 provides the necessary Procedures and Requirements for Complying with Goal 5 and addresses a broad spectrum of Goal 5 resources and provides the processes for a local government to use to inventory those resources. Section 0180 deals with Mineral and Aggregate Resources and allows for two paths to significance. The first is the large significant site as outlined in the application found under (3) which requires tonnage over 500,000 in eastern Oregon and a statement that the materials meet ODOT specifications for base rock. The second option is found in (4) and is for sites mining less than 500,000 tons in eastern Oregon that are on farmland.

Each of these subsections of the Mineral and Aggregate Resources Section are paired with standards found at (5) and (6). The application under review is seeking the protections offered by (3) and (5) while the standards at (4) and (6) do not provide those same protections with (6) identifying that the local

jurisdiction will allow mining through the issuance of a Conditional Use Permit and shall limit mining to not exceed 500,000 tons in eastern Oregon.

*Based on this the applicant would ask that the Planning Commission find that the applicant and staff are using the correct provisions in OAR 660-023-0180 to approve a Goal 5 significant site and allow mining.*

Thank you for the ability to provide further comment. The applicant will be available at the Public Hearing on January 26 should any questions arise. Your consideration and recommendation of approval of the requests outlined in the proposal is appreciated.

Cordially,

## Carla McLane

Carla McLane, MBA  
Carla McLane Consulting, LLC

**Attachments:**

1. Email from Bill Porfily with Water Rights and Maps.
2. Updated map from IRZ Engineering and Consulting.
3. Standards from the Oregon Standard Specifications for Construction (2021) pages 1111 and 1112.

STATE OF OREGON  
COUNTY OF UMATILLA  
CERTIFICATE OF WATER RIGHT

RECEIVED  
DEC 22 2022  
UMATILLA COUNTY  
PLANNING DEPARTMENT

THIS CERTIFICATE ISSUED TO

HANSELL BROTHERS, INCORPORATED  
ROUTE 1 BOX 1710  
HERMISTON, OREGON 97838

confirms the right to use the waters of THREE WELLS in the UMATILLA RIVER BASIN for IRRIGATION OF 320.0 ACRES AND SUPPLEMENTAL IRRIGATION OF 258.3 ACRES.

This right was perfected under Permit G-3822. The date of priority is FEBRUARY 15, 1968. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 4.0 CUBIC FOOT PER SECOND, BEING 2.2 CFS FROM WELL 8 FOR PRIMARY IRRIGATION WITH ANY DEFICIENCY IN WELL 8 TO BE MADE UP BY DIVERSION FROM WELLS 3 AND 4; AND 1.8 CFS FROM WELL 3 FOR SUPPLEMENTAL IRRIGATION WITH ANY DEFICIENCY IN WELL 3 TO BE MADE UP BY DIVERSION FROM WELLS 4 AND 8, or its equivalent in case of rotation, measured at the well.

The wells are located as follows:

WELL 3: SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SECTION 27, T 4 N, R 27 E, WM; 2740 FEET NORTH AND 1890 FEET EAST FROM THE SW CORNER, SECTION 27.

WELL 4: SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SECTION 27, T 4 N R 27 E, WM; 230 FEET NORTH AND 1210 FEET EAST FROM THE W $\frac{1}{2}$  CORNER, SECTION 27.

WELL 8: SW $\frac{1}{4}$  SW $\frac{1}{4}$ , SECTION 26, T 4 N, R 27 E, WM; 1160 FEET NORTH AND 370 FEET EAST FROM THE W $\frac{1}{2}$  CORNER, SECTION 26.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

PRIMARY IRRIGATION FROM WELL 8;  
WITH ANY DEFICIENCY TO MADE UP FROM WELLS 3 AND 4

NW $\frac{1}{4}$ NE $\frac{1}{4}$	28.1 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$	31.4 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$	9.3 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$	31.4 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$	31.4 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$	31.4 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$	31.4 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$	31.4 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$	31.4 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$	31.4 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$	31.4 ACRES

SECTION 35  
TOWNSHIP 4 NORTH, RANGE 27 EAST, W.M.

V54 p136  
T-8425  
Jmp

SUPPLEMENTAL IRRIGATION FROM WELL 3;  
WITH ANY DEFICIENCY TO BE MADE UP FROM WELLS 4 AND 8

SE¼ SE¼ 10.1 ACRES  
SECTION 26

SW¼ NW¼ 9.8 ACRES  
SE¼ NW¼ 8.9 ACRES  
NE¼ SW¼ 35.9 ACRES  
NW¼ SW¼ 39.4 ACRES  
SW¼ SW¼ 13.5 ACRES  
SE¼ SW¼ 12.6 ACRES  
SW¼ SE¼ 16.6 ACRES  
SE¼ SE¼ 14.7 ACRES  
SECTION 27

NE¼ NE¼ 37.5 ACRES  
NW¼ NE¼ 39.5 ACRES  
SW¼ NE¼ 10.1 ACRES  
SE¼ NE¼ 7.1 ACRES  
NE¼ NW¼ 2.6 ACRES

SECTION 34

TOWNSHIP 4 NORTH, RANGE 27 EAST, W.M.

The wells shall be maintained in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon.

This certificate describes that portion of the water right confirmed by Certificate 74107, State Record of Water Right Certificates, NOT modified by the provisions of an orders of the Water Resources Director entered FEB 20 1997, approving Transfer Applications 7496 and 7499

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

WITNESS the signature of the Water Resources Director,  
affixed FEB 20 1997

/s/ MARtha O. PAGEL

Martha O. Pagel, Director

RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

Temp. F 8114  
V53 P58

Recorded in State Record of Water Right Certificates numbered 74133.

T-7496 & 7499.LHN

T-8114 F 7729

Temp. F 8114 V53 P58

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

STATE OF OREGON  
COUNTY OF UMATILLA  
CERTIFICATE OF WATER RIGHT

RECEIVED  
DEC 22 2022  
UMATILLA COUNTY  
PLANNING DEPARTMENT

THIS CERTIFICATE ISSUED TO

CRAIG COLEMAN  
33896 E. WALLS ROAD  
HERMISTON, OREGON 97838

confirms the right to use the waters of TWO WELLS [THE SOURCE OF WATER GRANTED HEREIN INCLUDES EFFLUENT FROM THE HOG RAISING OPERATION] in the UMATILLA RIVER BASIN for IRRIGATION OF 266.7 ACRES.

This right was perfected under Permit G-2672. The date of priority is JUNE 5, 1964. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed a total of 3.33 CUBIC FEET PER SECOND (CFS), being 2.92 CFS from Well #1 and 3.33 CFS from Well #1a in any combination, or its equivalent in case of rotation, measured at the wells.

The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water available from the original point of appropriation; Well 1.

The wells are located as follows:

WELL #1: NE 1/4 SE 1/4, SECTION 27, T 4 N, R 27 E, W.M.; 1420 FEET NORTH AND 490 FEET WEST FROM THE SE CORNER, SECTION 27.

WELL #1a: NE 1/4 SE 1/4, SECTION 27, T 4 N, R 27 E, W.M.; 1350 FEET NORTH AND 430 FEET WEST FROM THE SE CORNER, SECTION 27.

RECEIVED

DEC 22 2022

PAGE TWO

UMATILLA COUNTY  
PLANNING DEPARTMENT

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet for each acre irrigated during the irrigation season of each year; PROVIDED FURTHER THAT THE RIGHT TO THE USE OF THE EFFLUENT FROM HOG RAISING FOR IRRIGATION IS EXEMPT FROM THOSE LIMITS AND CONTINUES THROUGHOUT THE YEAR AS REQUIRED FOR DISPOSAL PURPOSES. SUCH WATERS WILL BE IMPOUNDED AT TIMES IN THE SEWER LAGOONS TO PROVIDE TEMPORARY SYSTEM STORAGE.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

SE 1/4 SE 1/4      10.1 ACRES  
SECTION 26

SW 1/4 NW 1/4      9.8 ACRES  
SE 1/4 NW 1/4      8.9 ACRES  
NE 1/4 SW 1/4      35.9 ACRES  
NW 1/4 SW 1/4      39.4 ACRES  
SW 1/4 SW 1/4      13.5 ACRES  
SE 1/4 SW 1/4      12.6 ACRES  
SW 1/4 SE 1/4      16.6 ACRES  
SE 1/4 SE 1/4      23.1 ACRES  
SECTION 27

NE 1/4 NE 1/4      37.5 ACRES  
NW 1/4 NE 1/4      39.5 ACRES  
SW 1/4 NE 1/4      10.1 ACRES  
SE 1/4 NE 1/4      7.1 ACRES  
NE 1/4 NW 1/4      2.6 ACRES  
SECTION 34

ALL IN TOWNSHIP 4 NORTH, RANGE 27 EAST, W.M.

The well shall be maintained in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon.



RECEIVED

DEC 22 2022

PAGE THREE

UMATILLA COUNTY  
PLANNING DEPARTMENT

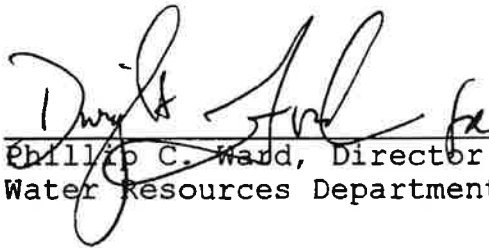
The water user shall maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated.

This certificate is issued to confirm an ADDITIONAL POINT OF APPROPRIATION approved by an order of the Water Resources Director entered NOVEMBER 24, 2004, and supersedes Certificate 74111, State Record of Water Right Certificates.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

WITNESS the signature of the Water Resources Director, affixed

JUN 29 2007

  
Phillip C. Ward, Director  
Water Resources Department

Recorded in State Record of Water Right Certificates numbered 83417.

T-9275.RA

STATE OF OREGON  
 COUNTY OF UMATILLA  
 CERTIFICATE OF WATER RIGHT

**RECEIVED**

DEC 22 2022

UMATILLA COUNTY  
 PLANNING DEPARTMENT

THIS CERTIFICATE ISSUED TO

CRAIG COLEMAN  
 33896 E WALLS RD  
 HERMISTON OR 97838

confirms the right to the use of water perfected under the terms of Permit G-10505. The amount of water used to which this right is entitled is limited to the amount used beneficially, and shall not exceed the amount specified, or its equivalent in the case of rotation, measured at the wells. The specific limits and conditions of the use are listed below.

SOURCE OF WATER: NINE WELLS IN UMATILLA RIVER BASIN

PURPOSE OR USE: IRRIGATION AND SUPPLEMENTAL IRRIGATION OF 1174.6 ACRES

MAXIMUM RATE: 14.68 CUBIC FEET PER SECOND (CFS); FURTHER LIMITED TO 1.40 CFS FROM WELL 3, 1.37 CFS FROM WELL 4, 1.39 CFS FROM WELL 5, 2.18 CFS FROM WELL 6, 4.22 CFS FROM WELL 7, 2.69 CFS FROM WELL 8, 0.33 CFS FROM WELL 9, 6.92 CFS FROM WELL 10 AND 2.74 CFS FROM WELL 11

DATE OF PRIORITY: JANUARY 9, 1970

The wells are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	27 E	WM	26	SW NW	WELL 6 (ORIGINAL) - 1130 FEET NORTH AND 60 FEET EAST FROM W1/4 CORNER, SECTION 26
4 N	27 E	WM	26	SW NW	WELL 7 (ORIGINAL) - 1130 FEET NORTH AND 60 FEET EAST FROM W1/4 CORNER, SECTION 26
4 N	27 E	WM	26	SW NW	WELL 8 (ORIGINAL) - 1160 FEET NORTH AND 370 FEET EAST FROM W1/4 CORNER, SECTION 26
4 N	27 E	WM	27	NE NE	WELL 11 (ADDITIONAL) - 1300 FEET SOUTH AND 1215 FEET WEST FROM NE CORNER, SECTION 27
4 N	27 E	WM	27	SW NW	WELL 10 (ADDITIONAL) - 2880 FEET NORTH AND 1310 FEET EAST FROM SW CORNER, SECTION 27
4 N	27 E	WM	27	SW NW	WELL 4 (ORIGINAL) - 230 FEET NORTH AND 1210 FEET EAST FROM W1/4 CORNER, SECTION 27
4 N	27 E	WM	27	SE NW	WELL 5 (ORIGINAL) - 960 FEET NORTH AND 1850 FEET EAST FROM W1/4 CORNER, SECTION 27
4 N	27 E	WM	27	SE NW	WELL 3 (ORIGINAL) - 2740 FEET NORTH AND 1890 FEET EAST FROM SW CORNER, SECTION 27
4 N	27 E	WM	36	SW NW	WELL 9 (ORIGINAL) - 1884 FEET SOUTH AND 1315 FEET EAST FROM NW CORNER, SECTION 36

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482. Pursuant to ORS 183.482, ORS 536.075 and OAR 137-003-0675, you may petition for judicial review and petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall be subject to the provisions of the question of determination of a critical ground water area in the ordinance area, Morrow and Umatilla counties, Oregon, by special order recorded at Volume 27, Pages 40 through 79, dated the 2<sup>nd</sup> day of April 1976.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use is as follows:

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells
4 N	27 E	WM	26	SE NW	4.7	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	26	NE SW	9.2	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	26	SE SW	22.1	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	26	SW SE	18.0	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	26	SE SE	1.2	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	27	NE NW	10.3	5, 3, 4, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	NW NW	15.2	5, 3, 4, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SW NW	3.5	5, 3, 4, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SE NW	9.2	5, 3, 4, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SE SW	0.5	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	27	NW SE	3.4	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	27	SW SE	10.5	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	NE NE	27.1	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	NW NE	4.9	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	SE NE	22.1	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	NE NW	2.1	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	NE SE	31.4	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	NW SE	31.4	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	SW SE	31.4	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	SE SE	31.4	7, 3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	36	NE NW	33.9	9, 3, 4, 5, 6, 7, 8, 10, 11
4 N	27 E	WM	36	NW NW	3.9	9, 3, 4, 5, 6, 7, 8, 10, 11
4 N	27 E	WM	36	SW NW	23.0	9, 3, 4, 5, 6, 7, 8, 10, 11
4 N	27 E	WM	36	SE NW	28.3	9, 3, 4, 5, 6, 7, 8, 10, 11
4 N	27 E	WM	36	NW SW	30.2	9, 3, 4, 5, 6, 7, 8, 10, 11

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells
4 N	27 E	WM	26	SW NW	30.3	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	26	SE NW	14.0	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	26	NE SW	9.8	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	26	NW SW	24.9	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	26	SW SW	40.0	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	26	SE SW	13.5	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	26	SE SE	16.1	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SW NW	9.8	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SE NW	8.9	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	NE SW	35.9	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	NW SW	39.4	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SW SW	13.5	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SE SW	12.6	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	NE SE	2.8	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	27	SW SE	16.6	3, 4, 5, 6, 7, 8, 9, 10, 11

RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells
4 N	27 E	WM	27	SE SE	31.6	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	34	NE NE	37.5	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	34	NW NE	39.5	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	34	SW NE	10.1	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	34	SE NE	7.1	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	35	NE NE	5.8	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	35	NW NE	3.3	3, 4, 5, 6, 8, 9, 10, 11
4 N	27 E	WM	35	NW NE	28.1	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	SW NE	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	SE NE	9.3	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	NE NW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	NW NW	2.6	3, 4, 5, 6, 7, 8, 9, 10, 11
4 N	27 E	WM	35	NW NW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	SW NW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	SE NW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	NE SW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	NW SW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	SW SW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	35	SE SW	31.4	3, 4, 5, 6, 7, 9, 10, 11
4 N	27 E	WM	36	NW NW	14.8	3, 4, 5, 6, 7, 8, 10, 11
4 N	27 E	WM	36	SW NW	5.3	3, 4, 5, 6, 7, 8, 10, 11

RECEIVED  
 DEC 22 2022  
 UMATILLA COUNTY  
 PLANNING DEPARTMENT

The wells shall be maintained in accordance with the General Standards for the Construction and Maintenance of water wells in Oregon.

Water shall be acquired from the same aquifer (water source) as the original points of appropriation.

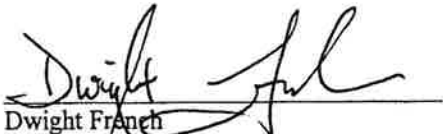
The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.

The water user shall maintain in-flow meters or other suitable devices for measuring and recording the quantity of water appropriated.

The right to the use of the water for the above purpose is restricted to beneficial use on the place of use described.

This certificate is issued to confirm a change in ADDITIONAL POINT OF APPROPRIATION approved by an order of the Water Resources Director entered February 7, 2006, at Special Order Volume 68, Page 52, approving Transfer Application T-9996, and together with Certificate 81634, supercedes Certificate 80915, State record of Water Right Certificates.

Issued MAR 03 2017

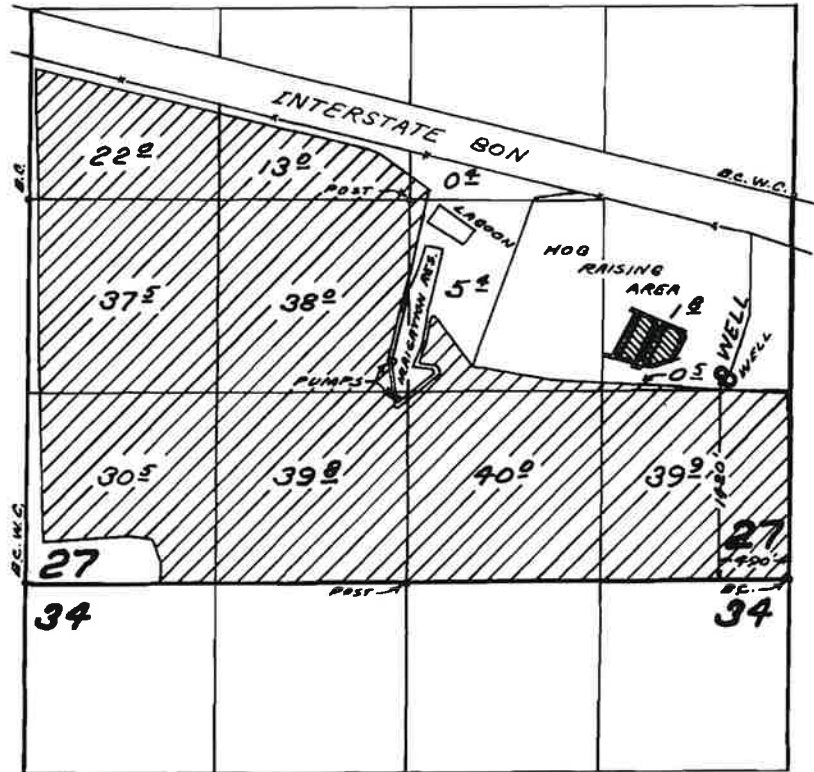
  
 Dwight French  
 Water Right Services Division Administrator, for  
 Thomas M. Byler, Director  
 Oregon Water Resources Department

RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

T.4N.R.27E.W.M.



 G-1778       G-2881

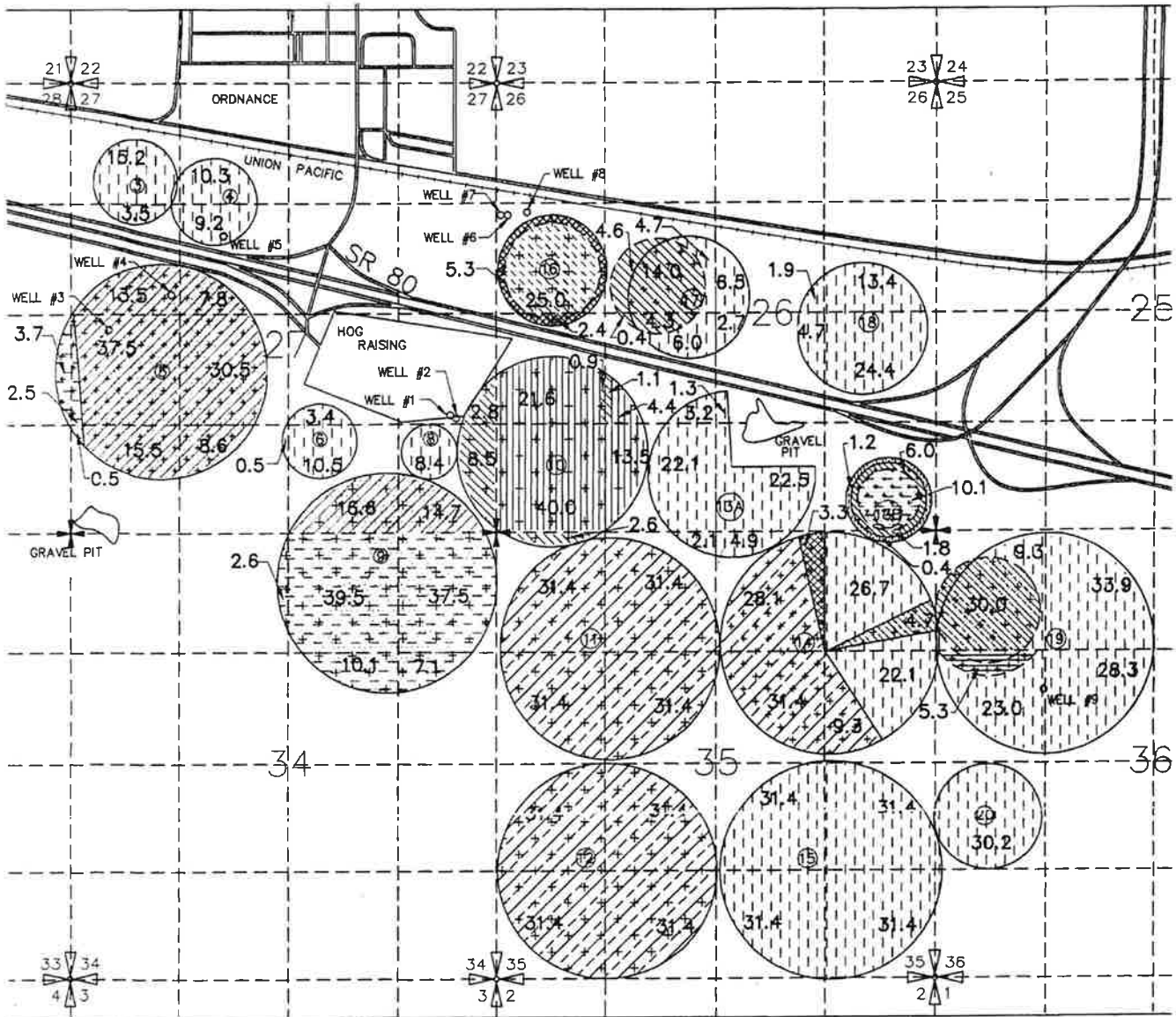
**FINAL PROOF SURVEY**  
UNDER

Application No. G-1778      Permit No. G-1671  
G-2881      G-2672  
IN NAME OF

HANSELL BROTHERS, INC.

Surveyed JUN 20 1967, by L. GOULD

T. 4N., R.27E., W.M.  
HANSELL BROTHERS INC. FINAL PROOF



WELL 1 LOCATED 1420'N & 490'W FROM SE COR. SEC.27 BEING WITHIN NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>  
 WELL 2 LOCATED 1390'N & 430'W FROM SE COR. SEC.27 BEING WITHIN NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>  
 WELL 3 LOCATED 2450'N & 460'E FROM SW COR. SEC.27 BEING WITHIN NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>  
 WELL 4 LOCATED 230'N & 1210'E FROM W<sup>1</sup>/<sub>4</sub> COR. SEC.27 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>

WELL 5 LOCATED 960'N & 1850'E FROM W<sup>1</sup>/<sub>4</sub> COR SEC.27 BEING WITHIN SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
 WELL 6,7 LOCATED 1130'N & 60'E FROM W<sup>1</sup>/<sub>4</sub> COR. SEC.26 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
 WELL 8 LOCATED 1160'N & 370'E FROM W<sup>1</sup>/<sub>4</sub> COR. SEC.26 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
 WELL 9 LOCATED 1884'S & 1315'E FROM NW COR. SEC.36 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>

- T-4152
- PERMIT NO. U-649
- PERMIT NO. G-3822 SUPPLEMENTAL
- G-3822 PRIMARY
- PERMIT NO. G-2672
- PERMIT NO. G-10505 SUPPLEMENTAL
- PERMIT NO. G-10505 PRIMARY

- PERMIT NO. G-2694
- T-4928
- PERMIT NO. G-2335
- T-4926
- PERMIT NO. G-1671
- T-4927

- CIRCLE NUMBER
- 31.4 IRRIGATED ACREAGE

RECEIVED

MAY 30 1995

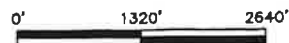
SALEM, OREGON



RECEIVED

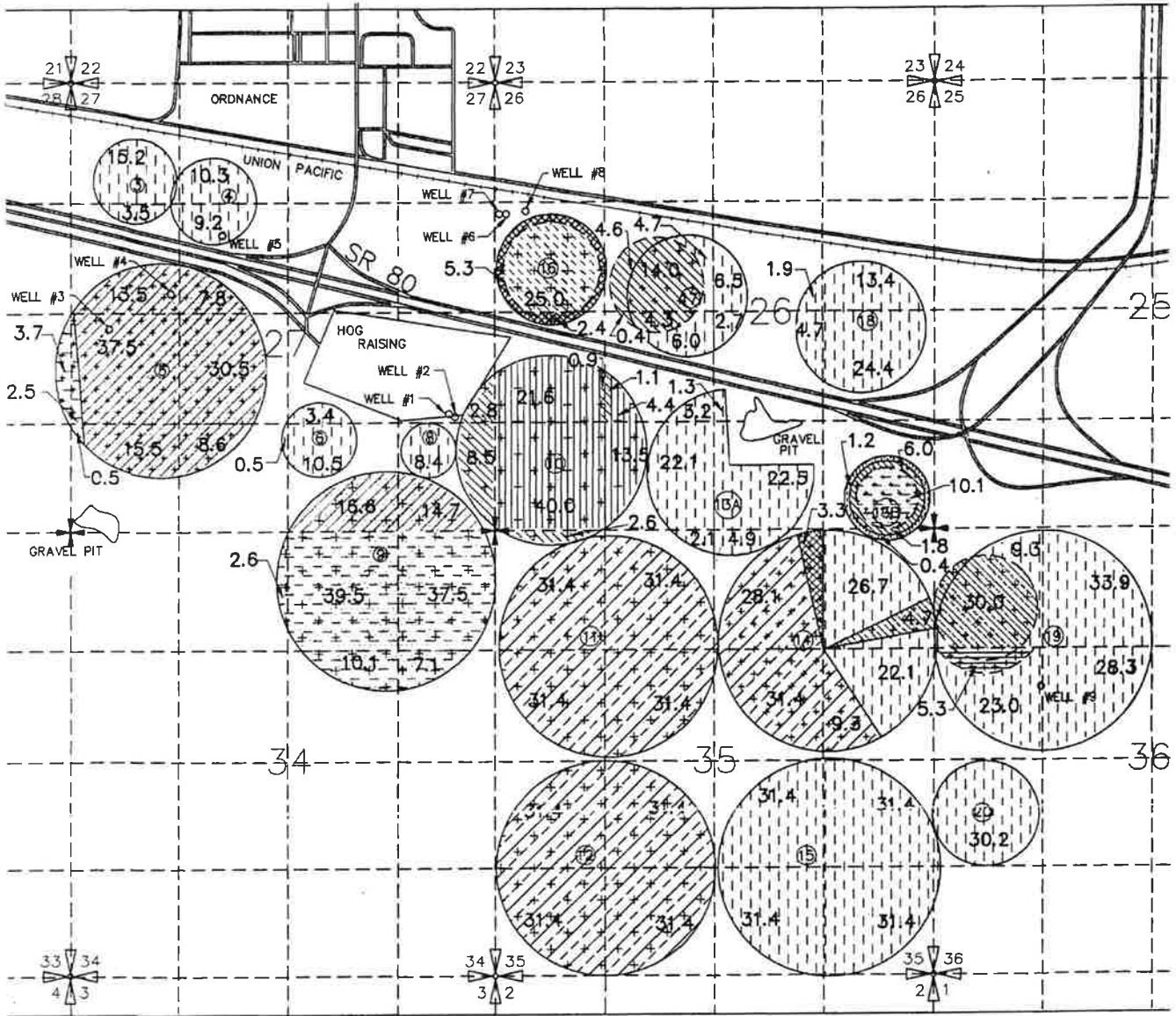
DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT



NOTE: THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

T. 4N., R.27E., W.M.  
HANSELL BROTHERS INC. FINAL PROOF



WELL 1 LOCATED 1420'N & 490'W FROM SE COR. SEC.27 BEING WITHIN NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>  
 WELL 2 LOCATED 1390'N & 430'W FROM SE COR. SEC.27 BEING WITHIN NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>  
 WELL 3 LOCATED 2450'N & 480'E FROM SW COR. SEC.27 BEING WITHIN NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>  
 WELL 4 LOCATED 230'N & 1210'E FROM W<sup>1</sup>/<sub>4</sub> COR. SEC.27 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>

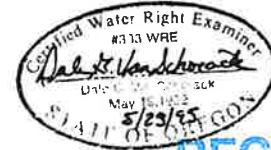
WELL 5 LOCATED 960'N & 1850'E FROM W<sup>1</sup>/<sub>4</sub> COR SEC.27 BEING WITHIN SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
 WELL 6,7 LOCATED 1130'N & 60'E FROM W<sup>1</sup>/<sub>4</sub> COR. SEC.28 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
 WELL 8 LOCATED 1160'N & 370'E FROM W<sup>1</sup>/<sub>4</sub> COR. SEC.28 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>  
 WELL 9 LOCATED 1884'S & 1315'E FROM NW COR. SEC.36 BEING WITHIN SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>

- |  |                                 |  |                        |      |                   |
|--|---------------------------------|--|------------------------|------|-------------------|
|  | T-4152                          |  | PERMIT NO. G-2694      | ①    | CIRCLE NUMBER     |
|  | PERMIT NO. U-649                |  | App. 9-28-95<br>T-4928 | 31.4 | IRRIGATED ACREAGE |
|  | PERMIT NO. G-3822 SUPPLEMENTAL  |  | PERMIT NO. G-2335      |      |                   |
|  | G-3822 PRIMARY                  |  | T-4926                 |      |                   |
|  | PERMIT NO. G-2672               |  | PERMIT NO. G-1671      |      |                   |
|  | PERMIT NO. G-10505 SUPPLEMENTAL |  | T-4927                 |      |                   |
|  | PERMIT NO. G-10505 PRIMARY      |  |                        |      |                   |

RECEIVED

MAY 10 1995

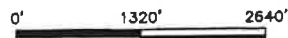
WATER RESOURCES DEPT.  
SALEM, OREGON



RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

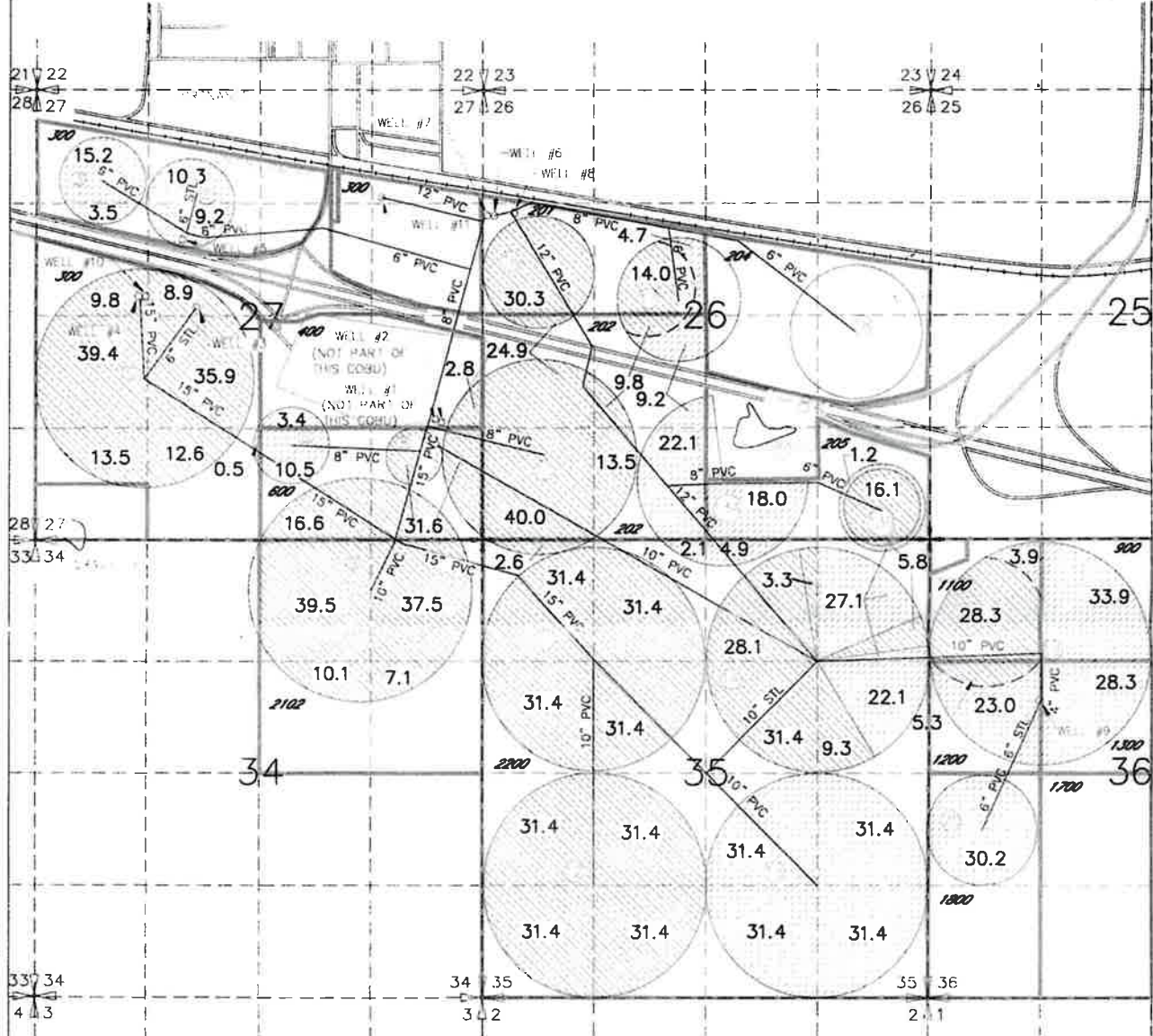


NOTE: THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

0414

CLAIM OF BENEFICIAL USE MAP  
FOR TRANSFER T-9996  
IN THE NAME OF CRAIG COLEMAN  
SECTIONS 26, 27, 34, 35 & 36  
T4N, R27E, WM  
UMATILLA COUNTY

0414



LOCATION OF POINTS OF APPROPRIATION AND FLOW METERS

WELL 3 LOCATED 2740'N & 1890'E FROM SW COR. SEC.27 BEING WITHIN SE 1/4 NW 1/4

WELL 4 LOCATED 230'N & 1210'E FROM W 1/4 COR. SEC.27 BEING WITHIN SW 1/4 NW 1/4

WELL 5 LOCATED 960'N & 1850'E FROM W 1/4 COR. SEC.27 BEING WITHIN SE 1/4 NW 1/4

WELL 6,7 LOCATED 1150'N & 60'E FROM W 1/4 COR. SEC.26 BEING WITHIN SW 1/4 NW 1/4

WELL 8 LOCATED 1160'N & 370'E FROM W 1/4 COR. SEC.26 BEING WITHIN SW 1/4 NW 1/4

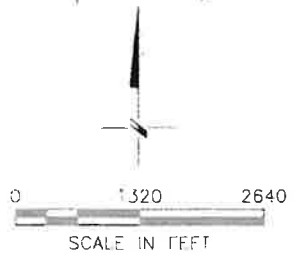
WELL 9 LOCATED 1884'S & 1315'E FROM NW COR. SEC.36 BEING WITHIN SW 1/4 NW 1/4

WELL 10 LOCATED 2880'N & 1310'E FROM SW COR. SEC. 27 BEING WITHIN SW 1/4 NW 1/4

WELL 11 LOCATED 1300'S & 1215'W FROM NE COR. SEC. 27 BEING WITHIN NE 1/4 NE 1/4

- HATCHING LEGEND
- PERMIT NO. G-10505 PRIMARY
  - PERMIT NO. G-10505 SUPPLEMENTAL
  - TAX LOT

NOTE: THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.



RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT



Subject **Fwd: Irrigation Water Rights Available to Transfer to Other Uses**  
From Craig Coleman <craig@ordnancebrewing.com>  
To <mclane@eoni.com>  
Date 2022-12-19 10:52 am



RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

Craig Coleman  
Ordnance Brewing  
Girth Dog LLC  
541-314-8568

Begin forwarded message:

**From:** mclane@eoni.com  
**Date:** December 19, 2022 at 10:39:05 AM PST  
**To:** Craig Coleman <craig@ordnancebrewing.com>  
**Cc:** Sarah Stauffer Curtiss <sarah.curtiss@stoel.com>, Bob Coleman <bob@ordnancebrewing.com>, Jeff Hines <jffhines3@gmail.com>, Janna Coleman <janna.l.coleman@gmail.com>  
**Subject: Re: Fwd: Irrigation Water Rights Available to Transfer to Other Uses**

We can make this work. Forward again without any message from you. I want to capture just his email.  
Carla

On 2022-12-19 10:18 am, Craig Coleman wrote:

Carla, this is what Bill sent last week. Will it work or should I reach back out to him? Thanks,

Craig Coleman  
Ordnance Brewing  
Girth Dog LLC  
541-314-8568

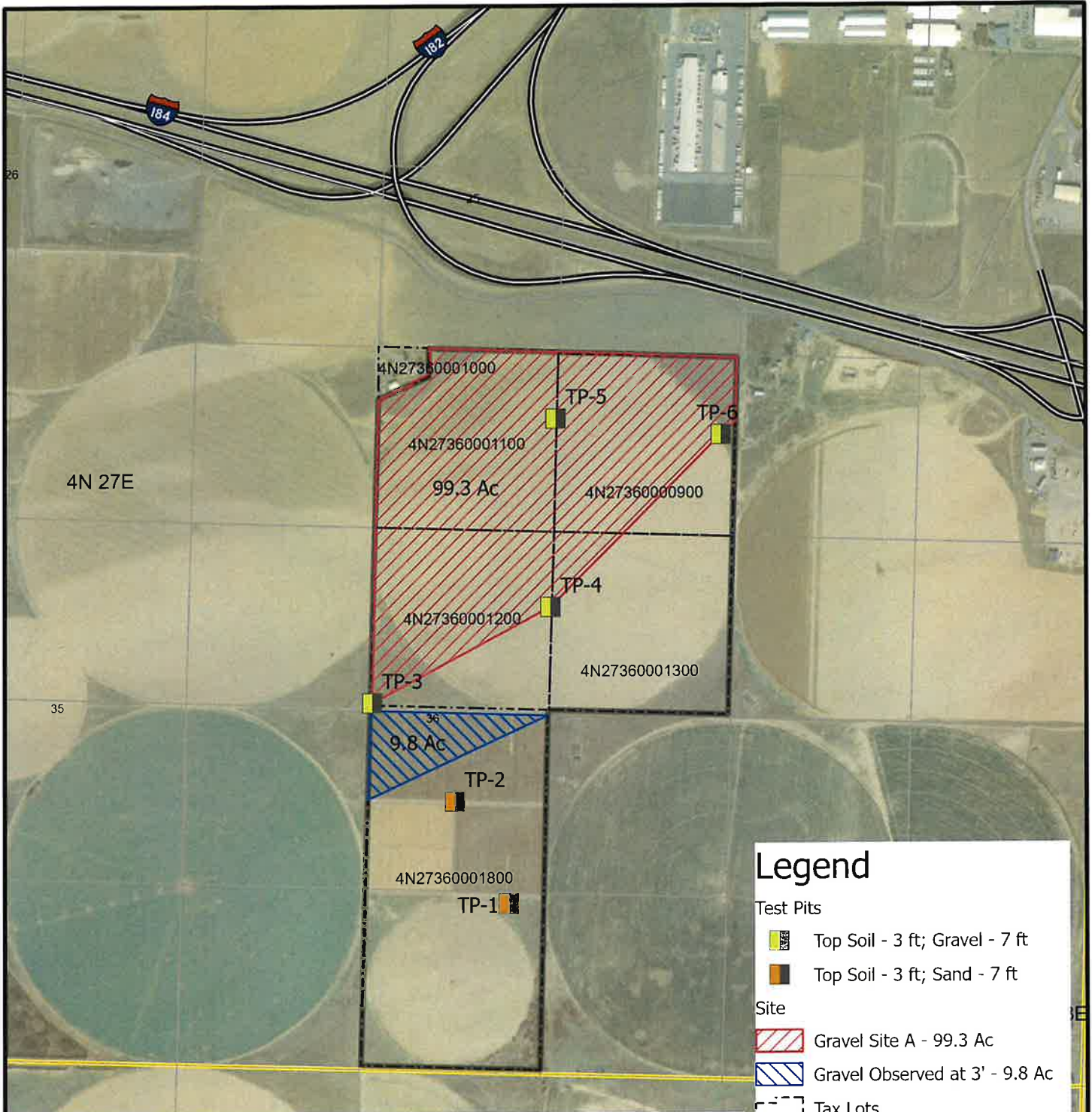
Begin forwarded message:

**From:** wporfily@gmail.com  
**Date:** December 16, 2022 at 1:41:58 PM PST  
**To:** Craig@ordnancebrewing.com  
**Subject:** Irrigation Water Rights Available to Transfer to Other Uses

Morning Craig

I am response to your question what water rights you have on your ownership available for use for Industrial gravel mining operation.



I have used my experience of 10 years as an Oregon State Watermaster, 13 years manager of three irrigation District and 33 years as a Water Rights Consultant to research your question and find there are three water rights associated with your ownership. A 40-acre(250 gpm) portion of any one of these three water right could be transferred from Irrigation to provide enough water for Industrial to use. I have attached copies of these three water right Certificates and their associate map. As an consultant, I have assisted 5 other clients with similar transfer.






Estimated Total Tons of Gravel (tons) = (Depth of Gravel (ft)) \* (Gravel Site Area (acres)) \* (43560 (ft<sup>2</sup>) / 1 (acre)) \* (1 (yd<sup>3</sup>) / 27 (ft<sup>3</sup>)) \* (Assumed Gravel Density (1.1 (tons) / (yd<sup>3</sup>)))

### Legend

#### Test Pits

-  Top Soil - 3 ft; Gravel - 7 ft
-  Top Soil - 3 ft; Sand - 7 ft

#### Site

-  Gravel Site A - 99.3 Ac
-  Gravel Observed at 3' - 9.8 Ac
-  Tax Lots

Estimated Gravel at Site A: 1,233,100 Tons (using 1.1 Ton/cu-yds)



Projection: UTM Zone 11  
Datum: NAD 1983  
Date 12/21/2022  
Data Sources: Aerial Photography - NAIP Imagery 2014

*This map was prepared for the purpose of identifying the location of specified subject matter and it is not intended to provide legal dimension or locations of property ownership lines.*

RECEIVED

DEC 22 2022

TIMATILLA COUNTY  
ENGINEERING DEPARTMENT



Craig Coleman

Map of Gravel Zone  
November 2022



Date Saved: 12/21/2022 11:13 AM

**Section 02630 - Base Aggregate****Description**

**02630.00 Scope** - This Section includes the requirements for Aggregates in Base.

**RECEIVED**

DEC 22 2022

**Materials**UMATILLA COUNTY  
PLANNING DEPARTMENT

**02630.10 Dense-Graded Aggregate:**

(a) **Grading** - Dense-graded base Aggregate shall be crushed Rock, including sand. Uniformly grade the Aggregates from coarse to fine. Sieve analysis shall be determined according to AASHTO T 27. The Aggregates shall conform to one of the grading requirements of Table 02630-1 as identified in the Special Provisions or indicated by the Pay Items in the Contract Schedule of Items.

**Table 02630-1**  
**Grading Requirements for Dense-Graded Aggregate**  
**Separated Sizes**

Sieve Size	2 1/2" - 0	2" - 0	1 1/2" - 0	1" - 0	3/4" - 0
	<b>Percent Passing (by Weight)</b>				
3"	100				
2 1/2"	95 - 100	100			
2"	—	95 - 100	100		
1 1/2"	—	—	95 - 100	100	
1 1/4"	55 - 75	—	—	—	
1"	—	55 - 75	—	90 - 100	100
3/4"	—	—	55 - 75	—	90 - 100
1/2"	—	—	—	55 - 75	—
3/8"	—	—	—	—	55 - 75
1/4"	30 - 45	30 - 45	35 - 50	40 - 55	40 - 60
No. 4 <sup>1</sup>	—	—	—	—	—
No. 10	2	2	2	2	2

<sup>1</sup> Report percent passing sieve when no grading requirements are listed

<sup>2</sup> Of the fraction passing the 1/4 inch sieve, 40 percent to 60 percent shall pass the No. 10 sieve

(b) **Fracture Of Rounded Rock** - Fracture of rounded Rock shall be determined according to AASHTO T 335. Provide at least one fractured face based on the following percentage of particles retained on the 1/4 inch sieve for the designated size:

**Minimum Percent of Fractured Particles**  
**(by Weight of Material)**

Designated Size	Retained on 1/4 inch Sieve
1 1/2" - 0 and larger	50
Smaller than 1 1/2" - 0	70

(c) **Durability** - Dense-graded Aggregate shall meet the following durability requirements:

Test	Test Method	Requirements
Abrasion	AASHTO T 96	35.0% maximum
Degradation (coarse Aggregate) Passing No. 20 sieve	ODOT TM 208	30.0% maximum
Sediment Height	ODOT TM 208	3.0" maximum

(d) **Sand Equivalent** - Dense-graded Aggregate shall be tested according to AASHTO T 176, and shall have a sand equivalent of not less than 30.

**02630.11 Open-Graded Aggregate:**

(a) **Grading** - Open-graded Aggregate shall conform to the following grading requirements:

**Table 02630-2  
Aggregate Gradation for Open-Graded Aggregate**

Sieve Size	Percent Passing (by Weight)
1"	100
3/4"	80 - 98
1/2"	60 - 85
3/8"	30 - 65
No. 10	5 - 20
No. 40	0 - 6
No. 100	0 - 3 (Dry Sieve)

**RECEIVED**

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

(b) **Fracture of Rounded Rock** - Fracture of rounded Rock shall be determined according to AASHTO T 335. Open-graded Aggregate fracture requirements shall conform to the following:

**Percentage of Fracture (by Weight)**

Material Retained on 3/4", 1/2", and 1/4" Sieves (two fractured faces) .....	90
Material Retained on No. 10 Sieve (one fractured face) .....	75

(c) **Durability** - Open-graded Aggregate shall meet the durability requirements of 02630.10(c).

**DECEMBER 22, 2022**

**EVIDENCE**

**SUBMITTED BY:**

**WADE AYLETT SR.**



Rock Solid Sand & Gravel LLC,  
28598 Stafford Hansel Rd  
Hermiston, OR 97838

RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

December 22, 2022

Umatilla County Planning Commission  
c/o Robert Waldher and Megan Davchevski  
Umatilla County Dept of Land Use Planning  
216 SE 4<sup>th</sup> Street  
Pendleton, OR 97801

Re: **TEXT AMENDMENT #T-092-22. PLAN AMENDMENT #P-135-22 and ZONE  
MAP AMENDMENT #Z-322-22: GIRTH DOG LLC. APPLICANT / OWNER**

Dear Members of the Planning Commission:

My name is Wade Aylett. I am the owner of Rock It, LLC and Rock Solid Sand & Gravel, LLC. As you know from my testimony, I am opposed to the idea of locating a new aggregate site right next to my three existing mining operations.

1. The County Should Deny the Application Because There is a 1000+ Acre Site Next Door that is Already on the Inventory.

Rather than add a new mine to the Goal 5 inventory of "Significant Sites," the Planning Commission should deny this application and let the applicant work with us to mine the 1000(+) acre site next door which is already on the Goal 5 inventory.

As we discussed at the hearing, my father Jedediah Aylett (7-A's, Inc.) applied to get the 1000(+) acre site located directly west of the subject property permitted in 1997. The County agreed that the site was "significant" as that term is used in the Goal 5 law, and added it to the Goal 5 inventory. But at the same time, it turned around and denied my father the right to mine that property. The County gave three reasons for the denial:

First, the County concluded that there was a conflict with residential uses in the area, and that DEQ noise standards would be violated. Second, the County found that the dust impacts could not be mitigated and would cause conflicts with nearby residents as well as the state highway. Third, the County found that the owner of the surface rights, Hansell Brothers, Inc. ("HBI"), vigorously oppose the application. The County found that HBI's farm, which would necessarily be destroyed by the mining, was a "conflicting use." The County found that it was

more important to keep irrigated farmland in farm production rather than to mine that property. My father's attorneys told the County that this was not a valid basis for denying, but they did not listen. Unfortunately, my father had already spent over \$500,000.00 on the project and he decided not to appeal. Recently, my lawyers told me that LUBA decided a case two years later that vindicated the position my father's lawyers had taken at the hearing. LUBA said that the County cannot consider the farm above the proposed mine as a "conflicting use."

Ironically, the applicant in this case has submitted no expert evidence regarding dust and noise, so it seems really unfair that an applicant can now get an approval but my father could get denied for those reasons.

I have reached out to Craig Coleman at least three times to try to work together on the 1000-acre land that he owns the surface rights to. I think Craig Coleman is a hard worker and a good man, and I think we could work well together. I would like to start barging rock to the Portland Metro region, and that would be a big operation that we could work on together.

2. Jeff Hines Should Not Be Relied on to Provide Expert Testimony.

One of the things that deeply disturbs me about this case is that Craig Coleman has apparently decided to join forces with Jeff Hines. I sat at the hearing and listened to Mr. Hines' testimony and had to roll my eyes. I believe that Mr. Hines is not a man to be trusted because he is not credible. I also question his knowledge, proficiency, and competence as a mine operator. I would like to convey some of my experiences with Mr. Hines to you, so you can make up your mind about him and his testimony.

Back when I did not know Jeff Hines as well as I do now, I partnered with him as a joint venture to take on a project for the Port of Morrow. Jeff has been telling me that he was down on his luck, and he had experienced some deaths in family. I felt sorry for him, so I gave him a good recommendation to the Port of Morrow. The job involved providing rock for railroad tracks. The job called for both railroad basalt rock and ¾- top rock. We don't sell basalt, but Mr. Hines did have a source for that type of rock product, so I thought we could team up and complete the job together. But Mr. Hines cut me out of the deal once we got the job, by providing the ¾- top rock from another source.

Well, even though that experience bothered me, it wasn't that big of a deal so I brushed it off. I had another opportunity to work with Mr. Hines when I introduced him to Krome Trucking, who has a truck shop and wash next to the Space Age Truck Stop. I was supposed to supply the rock for the project and Mr. Hines was supposed to perform the dirt-work and the truck hauling. Mr. Hines worked behind my back and ended up cutting me out of the deal. I found out after the job was done that he had provided the rock himself.

I had another case when I had been hired to provide rock for a client. I hired Jeff Hines to do the trucking for the job. Halfway through the job I got a phone call from the client, asking me why they had received an invoice directly from Jeff Hines for the rock. They said that Mr. Hines had told them that I was out of rock, product even though I had 10,000 tons of rock in a big pile that I set aside for precisely that job. After that incident, I finally learned my lesson, and I will not do any work with Jeff Hines again.

Ltr: Planning Commission

December 22, 2022

Page 3

Beyond my personal experience, Jeff Hines has continued to cause problems in the industry. Delhur is a large company that, among other things, provides heavy civil construction services for a wide variety of customers. Not too long ago, Delhur was working on the Finley Butte disposal cell project. Jeff Hines somehow finagled his way into that project by giving owner of the project a low-ball bid on roughly 25,000 tons total of round rock for all phases. The owner forced Delhur to hire Jeff Hines as a sub-contractor. It turned out that Mr. Hines could not deliver on the project, because he has junk equipment which constantly breaks down. Delhur got frustrated and called us to provide 5,000-6,000 tons of round rock on short notice. Delhur needed to finish that phase of the job in a hurry. Delhur and the owner agreed to our prices, which were much more in line with industry standards, and we completed the job on short notice. This is an example of how unreliable Jeff Hines can be, and we had to bail him out.

Recently, we heard through the grapevine that Jeff Hines was seeking jobs and was quoting \$8.00 per ton delivered for crushed rock. We honestly can't verify that this is true, but if it is true, that quote is well below industry standards. Typical pricing in the current market is closer to \$12.00 to \$13.00 a ton, and if delivery is included, it is \$17-18 a ton. This is a problem because if Mr. Hines low-balls contracts and can't deliver, then that creates an emergency for us and we end up working too much overtime to help out the contractors.

I could say more but I think you can get the idea. He talks a good game, but he can't deliver the goods and has no credibility. The experiences that I and others have had demonstrate his inability to perform and he that he lacks credibility.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wade Aylett', written in a cursive style.

Wade Aylett  
Member Rock Solid Sand & Gravel LLC.



**DECEMBER 22, 2022**

**EVIDENCE**

**SUBMITTED BY:**

**WADE AYLETT JR.**



Rock Solid Sand & Gravel  
LLC

28556 Staffetti Hansel Rd

Hermiston, OR 97838

December 22, 2022

Umatilla County Planning Commission  
c/o Robert Waldher and Megan Davchevski  
Umatilla County Dept of Land Use Planning  
216 SE 4<sup>th</sup> Street  
Pendleton, OR 97801

**RECEIVED**

**DEC 22 2022**

**UMATILLA COUNTY  
PLANNING DEPARTMENT**

**Re: TEXT AMENDMENT #T-092-22. PLAN AMENDMENT #P-135-22 and  
ZONE MAP AMENDMENT #Z-322-22: GIRTH DOG LLC. APPLICANT /  
OWNER**

Dear Members of the Planning Commission:

I am writing in regards to the application for a proposed mining operation submitted by Girth Dog, LLC. I manage a gravel mining operation directly adjacent to the proposed mining site. My knowledge, skill, experience, training, and education acquired over a lifetime of work in gravel mining allow me to offer viable insight into the viability of the plans proposed by Girth Dog.

I have been involved in gravel mining and rock crushing my entire life, starting with my family's small mining operation where I received my Mine Safety and Health Administration (MSHA) safety certification at the age of 10. I have been working officially for the family mining company, now "Rock Solid Sand & Gravel LLC," since my junior year of high school in 2010. Since June of 2017, I have been a part of company management. Along with my extensive, lifelong experience in gravel mining, rock washing, and dust mitigation, I trained under Troy Hewett, supervisor at American Rock Products, on large rock washing water systems to increase our own capacity. I manage our operations, train our employees, set up water systems, and handle sampling, air quality tests, and noise monitoring. I believe that my combined expertise in not only gravel mining generally but also in the immediate area set forth in Girth Dog's proposal allow me to provide accurate opinion evidence as to the feasibility of the operation they have proposed.

### **Sampling**

When our company conducts sampling prior to opening a new mining site, we always hire an outside, third-party licensed geologist. We hired a third-party to conduct sampling for our mining permit application. We always hire an outside party for any sampling we provide for current or potential clients. We do this for one primary reason: an independent licensed geologist will always be more accurate and trustworthy. This practice ensures that any sampling is representative of the full potential mining area and paints an accurate picture of the quality and density of the rock material.

A third-party geologist can also verify where and when samples were taken and show how they were handled throughout the sampling and testing process. This attention to detail and chain of custody for samples allows us to keep accurate records of our samples in the event that a client or other group were to challenge our product's quality. Ultimately our goal is to provide a quality product, and enlisting a third-party to conduct sampling is an industry standard method to add a layer of trust to the process.

Girth Dog's in-house sampling for their application opens them up to questions regarding whether their samples are accurate or representative of the proposed mining area. They will not be able to prove where a given sample was actually taken from, or whether a given sample is representative of the quality, quantity, and hardness of the rock at the proposed mining location; we can only go by their word. Mining is an all-or-nothing business, and it is my opinion that the lack of third-party sampling in this instance is indicative of the likelihood that Girth Dog will continue to cut corners here and elsewhere.

### **Water Usage – Dust Mitigation**

Girth Dog's proposal suggests that they will truck water in to support rock washing and dust mitigation while they transfer their irrigation water right to mining/industrial use (itself a process that will take years and not provide a year-round water source once perfected). It is my expert opinion that their plan is not feasible on a number of levels; even if it were, there is not nearly enough information in their application for approval.

At our operation, with water on-site, dust mitigation alone is a full-time job for one of our employees. Dust is a serious problem that we contend with; in Eastern Oregon, we consistently see winds at 10-20 mph. If not addressed, that wind kicks up dust that creates both pollution and hazards to any road or highway activities. This affects not only our mining activities, but the surrounding community as well – what we do affects everyone else around us, and it is imperative that we keep dust controlled as much as possible.

We use a 10,000-gallon water truck that takes 20 to 25 minutes to fill. Once filled, that water is applied to the road to combat dust pollution. Once applied, it is immediately filled again; the next truckload is used to combat dust pollution in the yard, mining site, and haul roads. Once applied there, it is filled again and returns to water the road. This cycle repeats constantly throughout the day. Additionally, mining rock creates byproducts that must be hauled away.

These are generally taken along haul roads and either put into berms or stockpiles, which must be watered until growth appears to control dust and sand. This process further stresses water resources.

This dust mitigation is in constant operation during standard weather and wind conditions; it is common to see much more severe wind in Eastern Oregon, especially during springtime. 30 mph winds occur often and require much more dust mitigation activity. During severe windstorms, we use a 10,000-gallon truck, another 5,000 gallon truck, and sometimes rent an additional 4,000 gallon truck. These trucks operate around the clock, 24 hours a day, in order to keep dust pollution levels manageable.

Failure to properly mitigate dust can lead to a number of dangerous scenarios for both the mining site and the community at large. One particular area of concern is the potential for dust to create hazardous conditions along Interstate 84. If Girth Dog fails to properly contain the dust on its site, prevailing winds will carry the dust over my site and across the highway, which could lead to accidents and injuries. Because my site lies in between Girth Dog's proposed site and the highway, this would likely put me in the position of having to defend my operation against any legal claims brought by injured motorists – they will assume that the dust came from my operation, as it is the closest site to the highway and they will not be able to immediately tell where the dust came from.

#### Water Usage – Rock Washing

Another aspect of their operation that will require water beyond their capacity is rock washing. A rock washing operation takes a large up-front investment in time and money and requires significant amounts of water to get up and running. Once in operation, rock washing requires 200 to 250 gallons of water per minute; at the lowest rate, that will empty a standard 5,000 gallon water truck in 25 minutes. Though water used in rock washing circulates through holding ponds that allow sediment to settle and the water to be re-used, enough water is lost through evaporation and into the ground that these operations require consistent replenishment.

I fail to see how Girth Dog's proposal will allow them to successfully manage dust pollution from their operation. A standard 4-axle water truck holds 5,000 gallons, half of what we use on an hourly basis. It is not feasible for them to truck in enough water to successfully mitigate dust from their operation; they will either allow dangerous levels of dust to migrate over the surrounding community, including our operations as well as nearby highways, or they will have to bring a steady stream of trucks along the road far in excess of what they have proposed. Their proposal does not provide for haul roads and stockpiles that will have to be watered for dust mitigation, so their estimates are even further off. Rock washing will take an additionally large amount of water. Their proposal is incomplete as it does not address how many trucks they will employ, where the water will come from, how long the trip will take back and forth between the water supply and mining location, and how they plan to make it all work. It is my opinion that what Girth Dog has proposed is not feasible, and they have not included enough detail in their application to show how the might make it workable.

Ltr: Planning Commission

December 22, 2022

Page 4

At my mining operation, we have set everything up in a certain way to make everything work together – our sampling is conducted in a way that allows for clients and regulators to trust that our material is of the highest quality, and our onsite water allows us to conduct our operations in manner that does not affect the surrounding community and gives us control and flexibility to handle the numerous challenges associated with this type of mining project. This is a basic requirement for running such a mining operation; you have to be fully committed to make it work. As I have stated above, it is my opinion that the proposal submitted by Girth Dog is not feasible; even if they have a plan to make the operation workable, they have not included enough detail in their application to show that they can do so. Their failure to successfully manage this mining operation would have negative impacts on the surrounding community, including my own operation, and cannot be allowed to move forward as proposed.

Please let me know if I can provide additional clarification to the above comments. I appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Wade R. Aylett Jr.", written in a cursive style.

Wade Aylett Jr.

Manager, Rock Solid Sand & Gravel

LLC

**DECEMBER 22, 2022**

**EVIDENCE**

**SUBMITTED BY:**

**ANDREW STAMP**

**ANDREW H. STAMP, P.C.**  
**ATTORNEY AT LAW**  
**Kruse-Mercantile Professional Offices, Suite 16**  
**4248 Galewood St.**  
**Lake Oswego, OR 97035**

Admitted in Oregon.

Tele: 503.675.4318  
Fax: 503.675.4319  
andrew@stamlaw.com

22 December 2022

Umatilla County Planning Commission  
c/o Robert Waldher and Megan Davchevski  
Umatilla County Dept of Land Use Planning  
216 SE 4<sup>th</sup> Street  
Pendleton, OR 97801

**RECEIVED**  
DEC 22 2022  
UMATILLA COUNTY  
PLANNING DEPARTMENT

*Re:* **TEXT AMENDMENT #T-092-22. PLAN AMENDMENT #P-135-22 and ZONE MAP AMENDMENT #Z-322-22: GIRTH DOG LLC. APPLICANT / OWNER**

Dear Members of the Planning Commission and Staff:

This office represents Wade Aylett Sr., "Rock Solid Sand & Gravel LLC," and Rock It, LLC. Please include this letter in the record of the above consolidated matter.

The applicant summarized his application best when he said that he did not know what he is dealing with. Mr. Coleman stated at the December 15, 2022 hearing that he "can't answer definitively what we will do" with regard to the rock crushing operation. Basically, he admitted that he did not have a plan. We knew going into that hearing that the application was half-baked, but the applicant proved it beyond a shadow of a doubt.

As we previously discussed, the Planning Commission can't adequately evaluate the impacts of the proposal unless and until there is a plan in place. The applicant was essentially making up the plan on the fly as he discussed the proposed operations at the hearing. Denial is required in that situation.

**I. Analysis.**

**A. There is no Vested Right to a Zone Change or Permit Based on Past Decisions.**

Both the applicant's consultant and the applicant's attorney made it a point of emphasis to state that their application "just as good" as applications that had been approved by the County in the past. However, it is well understood that a local government's quasi-judicial land use decision does not set precedent for future applications. Stated another way, there is no vested right to a zone change or permit based on past local precedent. In *Reeder v. Clackamas County*, 20 Or LUBA, 238, 242-3 (1990), LUBA stated:

We have explained on several occasions that when this Board reviews land use decisions for compliance with relevant approval standards, it does not matter whether the challenged decision is consistent with prior decisions, if those prior decisions applied incorrect interpretations of the applicable approval standards. As we explained in *Okeson v. Union County*, 10 Or LUBA 1, 5 (1983) in rejecting petitioner's arguments that the county's decision in that case should be remanded for failure to follow prior decisions:

“The issue here is whether [the challenged decision] meets all the applicable criteria based upon the facts in the record. There is no requirement local government actions must be consistent with past decisions, but only that a decision must be correct when made. Indeed, to require consistency for that sake alone would run the risk of perpetuating error.”

*See also BenjFran Development v. Metro Service Dist.*, 17 Or LUBA 30, 46-47 (1988); *S & J Builders v. City of Tigard*, 14 Or LUBA 708, 711-712 (1986).

It may well be the case that the County's past decisions were approved on relatively incomplete records which would not have survived LUBA review. However, that is not legally relevant. The County needs to follow the law, even if that means setting a new higher standard for this and future cases.

**B. The Rock Samples Submitted by the Applicant Lack Any Sort of Chain of Custody.**

Speaking of past decisions, we will note that Mr. Aylett actually hired a licensed Geologist to dig his rock samples and maintain a chain of custody of those samples as they traveled to the testing lab. Here, the applicant admits he dug his own samples and states that delivered them to a lab. No proof of that is offered, other than self-serving verbal testimony.

The industry standard for proving the quality of rock samples involves the use of chain of custody forms. See Letter from Mr. Lynn Green, P.G./R.G./L.G./C.E.G./ L.E.G. CWRE/ CESCL, Evern Northwest, Inc. dated 22 Dec. 2022. Chain-of-custody procedures have been established throughout the sand & gravel industry. Accurate reporting starts at the beginning with the collection of the sample and a properly completed Chain of Custody (COC) form. The COC is a hard copy trail of the history of the sample collection including customer information, testing to be performed, and the date and time of sampling. It is important to always follow chain-of-custody procedures whenever environmental samples and data are collected, transferred, stored, analyzed, or destroyed. A secure chain of custody, combined with the use of proper analytical methods and techniques, is necessary for a legally-defensible reporting of the sample. In addition, it is also good scientific practice to guarantee the identity and integrity of the sample and data from collection through reporting of the test results.

The issue presented here is one of substantial evidence. Does a reasonable decisionmaker rely on the applicant to deliver his own rock samples, knowing that is not the industry standard, or does a



reasonable decisionmaker insist on the applicant using a legally-defensible chain of custody? It is our recommendation that the Planning Commission insist that the applicant do things in a correct & legally-defensible manner, and deny any application that tries to cut corners.

**C. The Applicant's Evidence Related to Dust Suppression is Inadequate.**

At the continued hearing held on December 15, 2022, we heard for the first time that the applicant was planning to truck in water to run its wash plant and for dust suppression purposes. This appears to be a considerable change in plan from the original application.

The applicant has not demonstrated that it can wash rock on site, or effectively accomplish dust suppression as required by OAR 660-023-0180(5)(b). It states in its application that it will use water to suppress dust, but that is just a conclusionary statement. We need to know the "who, what, where, and when."

Frankly, we don't even know how the mining operation is feasible, since Girth Dog has to send its trucks to Boardman to pull water from one of the urban water hydrants owned by the Port of Morrow. As the Planning Commission undoubtedly is fully aware, the Port of Morrow has had a lot of problems with its nitrogen-rich wastewater. Our understanding is that the Port is no longer applying that wastewater to farmer's fields, and Girth Dog cannot use that type of wastewater on its mine site. On the other hand, the Port's urban potable water supply apparently meets drinking water standards, but that water is a long way away from the subject property. The applicant needs to provide more details about its plan to truck in water from the Port of Morrow before the County approves its mining operation.

As a related matter, the applicant states that it does not need to apply for the transfer of water rights until after it has its mining authorization. Zoning codes sometimes require compliance with standards that ultimately can only be determined by a state agency (*i.e.* water rights, wetlands and highway access). In these situations, it is permissible for the local government to condition the land division approval upon the applicant successfully obtaining a state permit. The lead case is *Bouman v. Jackson County*, 23 Or LUBA 628, 645 (1992).

In *Bouman*, the county's land use code contained a standard that required the applicant to demonstrate that adequate water service is available. LUBA held that the county would demonstrate compliance with the criterion by first adopting a finding that, based on evidence in the record that it is feasible to obtain water for the site, and (2) conditioning the final permit on the applicant successfully obtaining a water right permit from the Water Resources Department (WRD). *See also, Thomas v. Wasco County*, 30 Or LUBA 302, 311 (1996); *Burghardt v. City of Molalla*, 29 Or LUBA 223, 236 (1995); *Miller v. City of Joseph*, 31 Or LUBA 472 (1996); *McArthur v. Lane County*, 31 Or LUBA 309 (1997).

Nonetheless, a local government cannot defer to a state agency the responsibility to ensure compliance with its own approval criteria. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997) (When criteria required that the applicant show that it had an adequate water supply, the County was required to affirmatively find that water was available to serve the proposed subdivision by adopting a "feasibility" finding); *Vizina v. Douglas County*, 16 Or LUBA 936 (1988) (when local code requires that a permit for aggregate extraction meet all applicable DSL and DOGAMI regulations, it is

improper for county to merely impose a condition requiring compliance with DSL and DOGAMI regulations.

The applicant has simply not met its burden in this regard because it has not shown it is feasible to provide water to the site in the quantities needed for rock washing and for dust suppression.

**D. In Light of the New Information Regarding Water Trucks, the Kittelson Transportation Assessment Needs to Be Redone.**

The applicant's change in plan (regarding the use of trucked-in water) demands that the remainder of the application be revisited. For example, The applicant's Transportation Assessment provided by Kittelson & Associates did not factor in the trips needed to accommodate water trucks. the Transportation Assessment estimated the anticipated traffic as follows:

- ❖ Rock Crusher: 40 truckloads of aggregate per day.
- ❖ Concrete Batch Plant: 15 truck loads of concrete mixture per day.
- ❖ Asphalt Batch Plant: 15 truck loads of asphalt per day.
- ❖ 15 staff / employees.

Kittelson estimated that the Average Daily Trips (ADT) daily trip count will be 170. (40+15+15+15=85, 85x2=170). Keep in mind that when a truck enters and leaves a site, that counts as two trips (one trip for the arrival, and another trip for the exit). No trips are factored in for water trucks. For this reason, the TA does not constitute substantial evidence that a reasonable decisionmaker would rely on to support an approval. Based on the applicant's new half-baked proposal to truck in water from Boardman, the TIA needs to be revised.

Wade Aylett Jr. testified that he runs three water trucks during the peak summer season. See Letter from Wade Aylett Jr., dated Dec. 22 2022. Based on his experience running three water trucks non-stop all day long, we believe that the Girth Dog pit will need more than 200,000 gallons a day to keep the dust adequately suppressed on the site and the ½ haul road. None of this is factored into the application from a trip generation standpoint.

Aside from that, the applicant has still not provided any findings that demonstrate compliance with Goal 12. The applicant views Goal 12 as being one-and-the-same with the TPR (OAR 660, Div. 012) but that is not true, as previously discussed.

**E. There is no Evidence To Demonstrate a Lack of Impacts to Sensitive Receptors such as Dwellings.**

The applicant states that it will abide whatever requirements are contained in the Umatilla Development code related to impacts of a mine operation on a home. Unfortunately for the applicant, a mere promise to do something (or not do something, as the case may be), is not the same as demonstrating compliance with an approval standard. Here we have a "no impact standard at issue, OAR 660-023-0180(5)(b), and the applicant does nothing to demonstrate compliance with that standard other than make empty promises. Also, conditions of approval cannot substitute for findings demonstrating compliance with an approval criterion. *Sigurdson v. Marion County*, 9 Or LUBA 163, 170 (1983); *Vizina v. Douglas County*, 16 Or LUBA 936 (1988); *Gilson v. City of Portland*, 22 Or

LUBA 343 (1992); *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). For this reason, a condition of approval alone does not solve the problem.

For example, in the case of noise, a simple condition of approval does not substitute for a finding of compliance with a noise standard. The only way to meet a noise standard is to perform a noise study, which requires expert testimony. The applicant has still not met its burden of proof to show compliance with impact criteria such as noise and dust as it relates to the two homes in the impact area.

**F. There is No Evidence To Demonstrate a Lack of Impacts to Goal 5 Resources.**

The applicant testified at the hearing that their proposed mine will have no impacts on other mines. This is simply not true. First, the dust impacts could be quite significant, especially given that the prevailing winds run from the southwest to the northeast. Also, the Transportation Assessment proposed by Kittelson & Associates did not factor in the trips from the 1000+ acre significant site, nor did it consider the heavy truck traffic from the Rock-It 2 site or the Hermiston Rock Product site. All of these sites will be operating concurrently in the future, and the TA is inadequate to address how all of the truck traffic can co-exist and not cause problems on key intersections. Furthermore, the TA does not factor in the fact that heavy rock-laden trucks are slower than cars when moving from a stop, thereby allowing less traffic to flow through an intersection as compared to typical urban traffic.

**G. Mr. Jeff Hines' Testimony Should Not Be Relied on Because His Past Actions Indicate a Lack of Credibility.**

I don't know Jeff Hines personally, but Wade Aylett Sr. has dealt with him on numerous occasions. Mr. Aylett does not have a high opinion of Mr. Hines ethics and competence. Mr. Aylett says that Jeff Hines is not a man to be trusted and no business giving expert testimony because he can't complete jobs. See Letter from Wade Aylett Sr., dated Dec. 22 2022.

**II. Conclusion.**

The theme for this application is "half-baked." In his own words, the applicant states that he is not a rock guy and that "can't answer definitively what [he] will do" on site. The applicant proves that to be the case. He does not have an adequate plan, and until he gets one, we can't assess impacts. Until then, the application must be denied.

Sincerely,

**ANDREW H. STAMP, P.C.**

*Andrew H. Stamp*

Andrew H. Stamp

AHS/rs

cc: Client

Lynn D. Green  
Consulting Engineering Geologist

PO BOX 14488, Portland, Oregon 97293  
503-849-5895

December 22, 2022



Umatilla County Planning Commission  
Attn: Robert Waldher and Megan Davchevski  
Umatilla County Dept of Land Use Planning  
216 SE 4th Street, Pendleton, OR 97801

RECEIVED  
DEC 22 2022  
UMATILLA COUNTY  
PLANNING DEPARTMENT

**Site Locations**

Tax Lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36,  
Umatilla County, Oregon (see attached Site Vicinity Plan)

Re: TEXT AMENDMENT #T-092-22. PLAN AMENDMENT #P-135-22 and  
ZONE MAP AMENDMENT #Z-322-22: GIRTH DOG LLC. APPLICANT /  
OWNER

Dear Members of the Umatilla County Planning Commission:

The principals of Rock Solid Sand & Gravel LLC have ask me to discuss the issue of best management practices as it related to rock sample testing.

In my experience, when companies involved in the Aggregate / Sand & Gravel business are required to provide legally-defensible documentation that their product meets certain specified quality standards, they will use "Chain of Custody" ("COC") protocol. This protocol is designed to provide a paper trail, so an operator has a defensible way of documenting when, how and by whom the rock samples the laboratory has tested came from the mining site in question to the laboratory. Such procedures have been established throughout the sand & gravel industry and are particularly important when accurate reporting of the quality of rock is required.

Once a sample is collected, a COC form is filled out by the consulting Geologist. The COC form is typically a hard copy trail of the history of the sample collection including customer information, testing to be performed, and the date and time of sampling. A COC then records the movement of a sample through

the collection process, safeguarding, and laboratory analysis lifecycle by documenting each person who handled the sample, and the date/time it was collected or transferred or destroyed. A secure chain of custody, combined with the use of proper analytical methods and techniques, is necessary for the legally-defensible reporting of the sample data. In addition, it is also good scientific practice to guarantee the identity and integrity of the sample and data from collection through reporting of the test results.

There are times when Aggregate / Sand & Gravel operators will not use strict COC procedures; however, this is usually done when the information they are seeking is only for internal consumption or edification. However, in a case such as this, where there is a need to prove with legal certainty that a standard is met, a prudent operator would engage a consulting Geologist to ensure the chain of custody of the rock product.

Thank you for allowing me to comment in this most important matter.

Sincerely,



Lynn D. Green, Ph. D.  
P.G./R.G./L.G./C.E.G./L.E.G./CWRE/CESCL  
Consulting Engineering Geologist



**Port of Morrow continued to pollute after January fine, now faces \$2.1 million fine, state says**

The Oregon Department of Environmental Quality found the port continued to dump excess nitrogen-rich water onto area farms atop a critical aquifer

BY: ALEX BAUMHARDT - JUNE 17, 2022 11:11 AM



RECEIVED  
DEC 22 2022  
UMATILLA COUNTY  
PLANNING DEPARTMENT

The Port of Morrow is surrounded by four industrial parks with data processing centers, an ethanol plant and food processors. It produces tons of nitrogen-rich water that it sends out to area farms to use on crops, but over the years, too much nitrogen has been spread, contributing to groundwater contamination. (Kathy Aney/Oregon Capital Chronicle)

Following a record fine in January for illegally dumping wastewater, the Port of Morrow continued to pump nitrogen-rich water onto northeast Oregon farms, according to a revised penalty from the Oregon Department of Environmental Quality.

On Friday, the department announced it is raising the port's fine, to more than \$2.1 million, for violations that took place during the winter of 2020, and the winter of 2021 into February 2022. The new enforcement action increases the pending penalty by about \$800,000.

DEQ estimates the additional eight months of violations added 96 tons of excess nitrogen to area farmland above an already contaminated aquifer that is the drinking supply for portions of Morrow and Umatilla counties.

The initial \$1.3 million fine DEQ issued the port was for allowing 165 tons of excess nitrogen to be pumped onto northeast Oregon farms from 2017 through 2020.

The port is currently contesting this fine.

The nitrogen-rich water is free for farmers – a vital commodity to help grow their onions, potatoes, corn and more. Once applied to the farmland, nitrogen transforms into nitrate that in turn can make drinking water unsafe.

An investigation earlier this year by the Capital Chronicle found the port's contamination had persisted far longer than three years, and with little enforcement from DEQ until this January.

Water high in nitrates consumed over long periods can lead to stomach, bladder and intestinal cancers, according to the National Cancer Institute, as well as miscarriages and “blue baby syndrome,” inhibiting oxygen from moving through an infant’s bloodstream.

According to the amended enforcement notice sent from DEQ to the port’s executive director, Lisa Mittelsdorf, the port’s violations “are likely to cause additional adverse impacts to nitrate-nitrogen levels in the Lower Umatilla Basin Groundwater Management Area.”

The conduct was cited as Class 1 violations – the most serious possible from DEQ.

In an email, Mittelsdorf wrote, “the Port of Morrow recognizes groundwater contamination is a serious problem, and has been for decades. The Port believes this is a community problem that will require a community solution. By the DEQ’s own analysis, the Port’s industrial wastewater reuse program is responsible for less than 5 percent of the area’s nitrates. We will continue to work with DEQ to collaborate on a solution that will address what happens to industrial wastewater during winter months without shutting down the industries generating that wastewater.”

The basin has become increasingly contaminated by nitrogen during the last 30 years from farm fertilizers, animal manure and wastewater from the port and area food processors. There are about 1,300 private domestic wells drawing water from that basin in Morrow County. Many who rely on those wells for their drinking water are low income and Latino.

In the notice, DEQ reiterates its interest in working with the port to find a solution to the port’s wastewater management issues, but notes that since its first enforcement in January, “The port has not submitted to DEQ for review and approval a plan to achieve compliance with the nitrogen loading limits in the permit.”

The port may divert up to 80% of its penalty to funding instead an environmental project to address the pollution. In the letter to the port, DEQ said it “encourages the port to collaborate with local partners” to find a project that “addresses high nitrate concentrations in drinking water.” Last week, Morrow County declared an emergency over the groundwater nitrate contamination, and has launched an effort to get people’s taps tested and get state and federal funding for essential home filters. Next week, neighboring Umatilla County, where hundreds also rely on the Lower Umatilla Basin for their well water, will begin a tap-water testing campaign.

Laura Gleim, a public affairs specialist at DEQ, wrote in an email that, “While these are very serious violations, Port of Morrow is one of many sources of nitrate pollution in the basin.” She said the port alone can’t solve the nitrate contamination in the area.

“It’s going to take work from everyone who uses water or land in this area, including farmers, ranchers, businesses and homeowners,” she wrote.

*This story has been updated to include a statement from the Port of Morrow’s executive director.*



## SCIENCE & ENVIRONMENT

# Groundwater pollution puts drinking water at risk in Eastern Oregon counties



By **Monica Samayoa** (OPB)

Boardman, Ore. May 5, 2022 1:32 p.m.

RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

## **More than 30 years after nitrate contamination was recognized as a problem, it's still making well water unsafe to drink in Morrow and Umatilla counties.**

Silvia Hernandez has been living in a small home near the outskirts of Boardman for the past ten years with her husband and 8-year-old child. Since her home is near the city limits, she has no access to public water services — just a private well for water.

When she moved in, her realtor told her the well water was safe to drink straight from the faucet, but she never felt comfortable drinking it that way.

And it's a good thing she didn't.

Recently, the local health department tested Hernandez's well water for nitrates, a naturally occurring chemical that's also a common ingredient in fertilizer. The results came in at nearly five times the federal safe drinking water limit.

When used properly, nitrates are beneficial nutrients that help crops grow. But when excess amounts of nitrates seep down into the groundwater — the primary source of drinking water in Morrow and Umatilla counties — they become pollutants that can cause respiratory infections, thyroid dysfunctions and bladder cancer.



Morrow County Commissioner Jim Doherty is showing Silvia Hernandez her well water test results for nitrates which exceeded the federal safe drinking water limits by nearly five times on April 15, 2022.

*Monica Samayoa / OPB*

When Hernandez saw her results, she was left speechless. She was not aware that homeowners like herself needed to maintain their private wells to flush out harmful contaminants, so she never had a filter system that would have removed excess nitrate.

For a while, Hernandez used her well water for cooking, but lately she has been buying bottled water for that.

“About 10 gallons a week,” she said in Spanish. “We use the well water for everything else, like showering, laundry and washing dishes.”

Nitrates seeping through the soil and contaminating the groundwater is a national problem that’s often seen downstream from large agricultural operations and industrial food processors. In Morrow and Umatilla counties, where both of those industries play a big role in the economy, widespread groundwater contamination has steadily increased over the last 30 years, according to data collected by the Oregon Department of Environmental Quality.

The agency says irrigated agriculture makes up the majority of excess nitrate to the area’s groundwater. But federal and state governments rely on voluntary measures to reduce nitrate contamination from agriculture.

A committee made up of state and local governments, farmers and Oregon State University has been working for decades to reduce nitrate contamination in the Lower Umatilla Basin groundwater, but the problem persists and continues to put the area’s drinking water at risk.

Critics say it’s only getting worse because federal and state agencies are relying too heavily on voluntary measures while falling behind on enforcement of pollution permits. Earlier this year, DEQ flagged two major wastewater violations that added more than 254 tons of excess nitrate to the area’s groundwater over a six-year period.

With no clear path to solving the problem, nitrates are continuing to affect local communities, especially private well owners like Hernandez.

## **30-year effort falls short**

Morrow County Commissioner Jim Doherty has been visiting homes in the outskirts of Boardman to collect drinking water samples from private wells for nitrate testing. He’s checking to see how many homes have water filter systems installed and telling people who don’t know about the high nitrate issue.

Doherty took about 15 samples from one neighborhood and noted only about half of the homes had filter systems for their wells that would protect them from drinking contaminated water. He said the test results were astounding.

“Every single one of them was high enough to cause horrific health concerns, and I have a feeling if I test another hundred, 90% of them are going to be the same,” he said.

About 30 years ago, Doherty was part of a committee that was formed to address the nitrate contamination problem in the Lower Umatilla Basin Groundwater Management Area after groundwater samples from 1989 showed the area exceeded the federal safe drinking water standard. According to the Environmental Protection Agency, nitrate levels exceeding 10 milligrams per liter in drinking water can cause serious health risks if consumed.



Silvia Hernandez's private well on the outskirts of Boardman, Oregon on April 15, 2022  
*Monica Samayoa / OPB*

The Lower Umatilla Basin Groundwater Management Area groundwater committee is made up of members representing state agencies, local governments, water districts and farmers. Their task was to identify what's causing the high levels of nitrate in the groundwater and develop recommendations for reducing them.

Early on, DEQ sampled nearly 200 wells in the area to better understand the extent of the groundwater contamination. Using that data, the committee identified five sources of contamination: irrigated agriculture, food processing wastewater, animal operations like dairies and feedlots, sewage from septic tank systems and the U.S. Army Umatilla Chemical Depot's bomb washout lagoons.

But without regulatory power, the committee could only go so far. Doherty, who is a cattle rancher and was representing both ranchers and farmers at the time, said he found no one was taking responsibility for their contributions of nitrate. At the time, he said, everyone on the committee including himself was trying to protect the agricultural and industrial business interests.

"I was on it for a half a dozen years," Doherty said. "And we didn't do anything other than try and float it past DEQ and try and talk nice to them and keep them from coming out here, so we could continue doing what we're doing."

## State regulators face criticism

Doherty, who stepped away from the committee and is now a commissioner in Morrow County, said he doesn't know why state agencies still haven't created tougher regulations, especially as nitrate levels have increased.

Both the Oregon Department of Agriculture and DEQ say they're doing what they can to reduce the nitrate problem.

DEQ issues wastewater permits for industrial facilities like food processing plants to limit the amount of nitrogen-rich wastewater they can apply to farmland, a common practice that can contribute to the contamination problem if it's done in excess.

Doherty said DEQ should not have allowed entities like the Port of Morrow or food processor Lamb Weston to continually violate their wastewater permits at high rates year after year. The agency only became aware of the violations after each entity applied to renew

their permits. The Port of Morrow received [a \\$1.3 million fine](#) — the second largest in state history — for violating its permit more than a thousand times over the course of four years.



The Port of Morrow's East Beach Facility, where Lamb Weston operates a potato processing facility in Boardman, Oregon on April 15, 2022.  
*Monica Samayoa / OPB*

Doherty said the agency should have acted a lot sooner, and its lack of oversight is frustrating.

“They should have done that 30 years ago, 20 years ago, 10 years ago,” he said.

Newly appointed DEQ Eastern Region Administrator Shannon Davis said it’s a challenge when governments need to regulate an economic engine as big as these entities, which collectively, bring billions of dollars to the region and provide hundreds of jobs to residents. But she said she recognizes both the agency and the Port of Morrow could have done a lot better in preventing excess nitrate from contaminating the groundwater.

“I know that DEQ is holding itself accountable, from the director on down, holding ourselves accountable to what our regulatory authority is, and that’s to issue really good permits and to also take enforcement actions where those are needed,” Davis said.

Because nitrate is a naturally occurring chemical, Davis said, it’s not a regulated substance, which creates bigger challenges in understanding who can make what decisions and what methods can be used to clean it up.

“So we all have our little pieces in it but we don’t understand what everybody else’s pieces are, and we don’t understand what the gaps are, so we have a lot of work ahead of us,” she said.

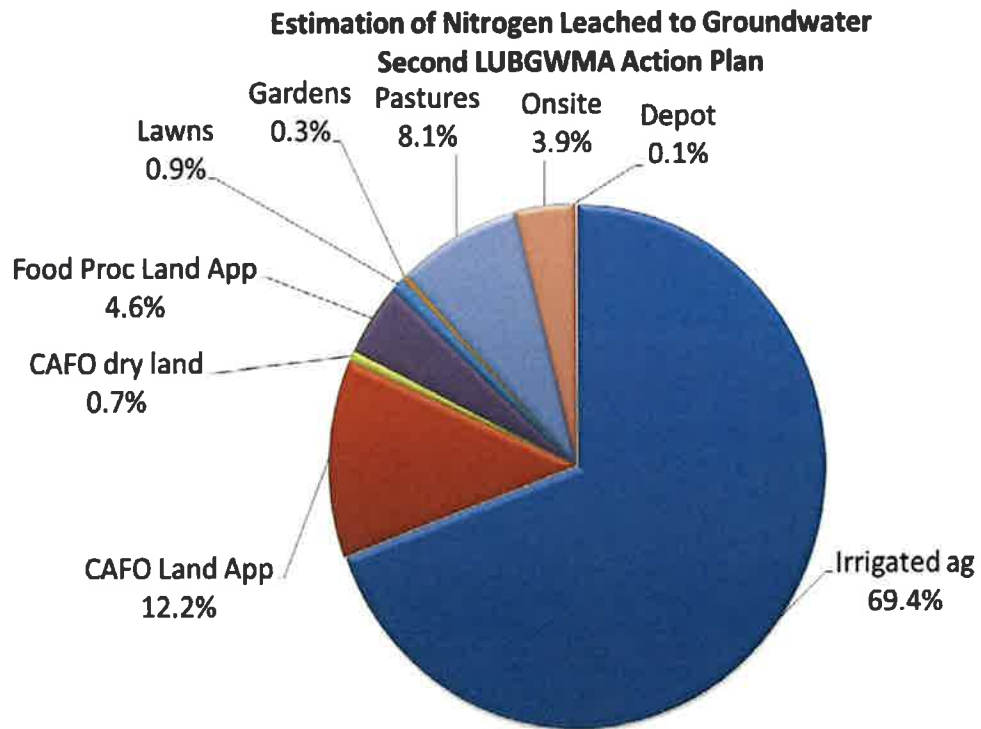
For example, the Oregon Department of Agriculture is the lead agency for regulating dairy farms or CAFOs — Concentrated Animal Feeding Operations — by issuing water pollution permits. The agency also implements [agricultural water quality plans and rules](#) to prevent and [control water pollution](#) from from CAFOs and farmers who irrigate and apply nutrients to farmland outside of DEQ’s wastewater irrigation permits.

ODA’s Agricultural Water Quality Program Manager Marganne Allen said her agency supports voluntary efforts by agricultural industries and then puts up a regulatory backstop if needed.

“Ultimately, it’s about a voluntary effort first,” she said. “And where [we] either [are] not achieving what we want, or if there’s individuals that we are able to identify with compliance issues, then we would look to a compliance approach after that.”

THANKS TO OUR SPONSOR:  
[Become a Sponsor](#)

If the agency receives a formal written complaint of an alleged occurrence of agricultural pollution, the agency may conduct an investigation. ODA said they have not received any irrigated agriculture complaints in the Lower Umatilla Basin area.



A pie chart from the Oregon Department of Environmental Quality shows the state's estimates of the sources of nitrogen leaching into the groundwater in the Lower Umatilla Basin Groundwater Management Area.  
*Oregon Department of Environmental Quality / Oregon Department of Environmental Quality*

But [according to data from DEQ](#), the number one contributor of nitrate contamination in the region is irrigated agriculture. It accounts for nearly 70% of the estimated nitrates that leach

into the groundwater. And yet, it's unclear how the current monitoring system from both DEQ or ODA accounts for the influence of individual farms.

## A balancing act for farmers

Fourth-generation farmer Jake Madison owns about 17,000 acres in Echo, Oregon. He grows a range of crops on his farm including grass seeds, onions, potatoes and wheat. He's facing many challenges as a farmer — from climate change to skyrocketing fertilizer costs and water shortages.



Fourth generation farmer Jake Madison stands on his farm located in Echo, Oregon on April 15, 2022. In order to reduce nitrates in the groundwater, Madison is using science and technology to better understand what's in his soil and how to best manage it for his crops.

*Monica Samayoa / OPB*

He said he understands that irrigated agriculture or farmers like himself get a bad reputation because of past generations. Historically, he said, farmers were planting and applying all the fertilizer they could on their farms to get the highest crop yield. He said that could be one of the many reasons why there are such high levels of nitrate found in the area today.

So, Madison turned to science to better understand his land and to make sure he's using every bit of nutrients, including fertilizer and water, as efficiently as possible.

“Those are two precious resources, natural resources that are extremely valuable and we can’t afford to waste from a sustainability standpoint or from a financial standpoint or from a community health standpoint,” he said.

For every crop that he grows, Madison collects soil samples to determine how much nitrate is already in the soil at the starting point for the next crop. Once it’s planted, he continues to collect soil samples every two weeks until the crop is harvested.

“It’s scheduled, and it’s metered, and it’s monitored because we can’t afford to waste it,” he said. “We manage the crap out of it.”

Madison said it’s a lot of work, but it helps him understand what’s already in his soil, and it gives him some assurance that he’s not contributing to groundwater contamination. He and his father were previously on the Lower Umatilla Basin groundwater committee, and his brother is on the committee now. But he said, there continues to be disagreement about what data should be used to determine how much nitrate is in the groundwater and soil and how data should be used to create regulations.

“Nobody’s come together and said, ‘All right, we’re done pointing fingers, let’s start talking about real solutions,’ and that’s what it’s going to take,” Madison said. “That’s why it’s been 30-50 years of nothing happening. It can’t be everybody pointing fingers at farmers or everybody pointing fingers at industry or everybody pointing fingers at regulators.”

## **Nitrate levels increasing**

Annie and Adam Philpott purchased their home in the outskirts of Boardman in the spring of 2018. About a year and a half after moving into their new home, the Philpotts decided to refinance with a new mortgage company. The new lender required a water quality test from their private well to ensure the groundwater has not exceeded safe drinking water limits.

But when Adam Philpott submitted the first test, the nitrate levels were at 17 milligrams per liter. After using chlorine tablets and flushing his system several times, he submitted a second test that came back at 20 milligrams per liter.

“The more we flushed it, the more nitrates we kept getting,” he said.

Because his well levels came back too high, he was not able to refinance his home — even though he has a filter system for his kitchen sink that removes excess nitrates.



Annie Philpott says her family's private well needs to be replaced, but they don't have the money to replace it. The Philpott's were hoping to refinance their home but did not qualify after their well system tested too high for nitrates.  
*Monica Samayoa / OPB*

He contacted his current lender but because he could not pass the water quality test, he wasn't able to get the type of loan he wanted that would have allowed him to take cash out to pay off debt.

"I have a lot of equity in my property," he said. "It would be really nice to use that to pay off debt or buy a vehicle or whatever, but I can't, it's just got to stay there and just be what it is."

Philpott said if he wanted to sell his home, he'd have the same problem. No lender would be able to finance anyone interested in his home until he replaces his well system, which he said could cost more than \$5,000.

"That's money I don't have, so it's not going to happen anytime soon," he said.

Since the groundwater contamination problem in Morrow and Umatilla counties was first identified in 1989, well testing in the region has actually decreased.

Of the original 198 wells that were tested to understand the extent of the groundwater contamination, only 31 wells are still routinely tested. In the early 90s, those wells were tested twice a month, but to save money, DEQ reduced testing from six to four times a year.



Despite ongoing efforts to address the problem, there's actually been a 55% increase in nitrates contaminating groundwater in Morrow and Umatilla counties since 1997, according to the Lower Umatilla Basin [committee's 2020 report](#). About 30% of the wells tested exceeded the federal limit for safe drinking water.

This prompted a [coalition of environmental groups](#) to file a petition in early 2020 asking the Environmental Protection Agency [to take emergency action](#) under the [Safe Drinking Water Act](#) in Umatilla and Morrow counties.

"We're asking EPA to use those emergency powers to come in and effectively take emergency action in the form of potentially enforcement actions, providing clean and free drinking water, conducting investigations, requiring more groundwater monitoring and establishing more transparency about what people may be exposed to," Food and Water Watch Legal Director Tarah Heinzen said.

The petition also calls for prohibiting any new CAFOs from opening in the region until nitrate concentrations in the area fall below the federal safe drinking water limit.

Heinzen said under the Safe Drinking Water Act, the EPA can step in when a state is not addressing a dangerous public health problem and when it can demonstrate that an imminent and sustainable endangerment does exist.

Despite having been two years since the petition was filed, Heinzen said they've only seen the state double down on its voluntary approach.

"That to us isn't the state doing its job or taking this problem seriously," she said. "And we'd like EPA to respond accordingly."

## Long way to go

The Lower Umatilla Basin groundwater committee still has a [long list of goals for addressing the nitrate problem](#). Those include securing more funds for soil and water testing, minimizing the amount of nitrate that is applied to farmland to reduce what is leaching into groundwater, working with researchers at Oregon State University to study the problem and creating better voluntary practices that farmers can follow.

DEQ's Davis said she hopes the groundwater studies will help the agency set new limits for how much nitrate can be applied to farmland by entities like the Port of Morrow and potato processor Lamb Weston.

"Once you can get the source where the contamination is coming from, it's easier to be able to understand what the contamination is," Davis said. "But I think we need to understand the water flows better than we do, the hydrogeology."

Most of the committee's current goals were set to begin in 2020 — thirty years after the committee was first formed. One of the goals is to find funding for the United States

Geological Survey to develop a model of the Lower Umatilla Basin that will help identify where nitrate contamination is coming from. But that isn't scheduled to start until 2025.

ODA's Allen said some of the committee's plans haven't happened or have been delayed because of a lack of funds.

"We have a new plan," she said. "We're trying to implement it with our partners the best that we can and move forward."

For Jim Doherty, time is of the essence. He remembers when he first moved to Boardman in the 1970s, he did not have to buy water filters for the well water at his home. He's worried he'll continue to encounter homes that don't have filters, or if they do, they're broken and need to be replaced.

He said the state should be providing filters for private well owners, so people don't have to buy them. And he said he's hopeful that state agencies might enforce tougher permits and issue bigger fines for water pollution violations that will help to reduce the nitrate contamination and break through any resistance from agricultural and industrial businesses.

"I think there's the forces from the DEQ coming down and from the EPA coming down," Doherty said. "And there's forces from the bottom up in the community that I think are not going to allow it this time."

# FINDINGS AND DECISION OF THE UMATILLA COUNTY BOARD OF COMMISSIONERS

RECEIVED

DEC 22 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

File No.: Z-259-97

Applicant: 7-A's Inc., c/o Jedediah Aylett, Route 1, Box 1818, Hermiston, Oregon 97838.

Represented by: Paul Hribernick and Leslie Ann Hauer.

Tentative County Board Decision Date: January 29, 1998.

Planning Commission Recommendation to Board of Commissioners: Approve addition of site to inventory; deny mining on site.

Board of Commissioners Decision: Approve addition of site to inventory, with a determination that mining is prohibited in order to protect agriculture. This statement of findings and decision supersedes and replaces any earlier versions.

## I. GENERAL INFORMATION

Location: The property is located north and south of Interstate 84, just east of the Morrow County line.

Legal Description: Tax Lots 1802 and 1803, Section 27 and all of Section 35, T4N, R27E, W.M.

Site Size: 1015 acres (375 acres in Section 27; 640 acres in Section 35)

Zoning: Exclusive Farm Use (EFU).

Comprehensive Plan: North/South County Agriculture.

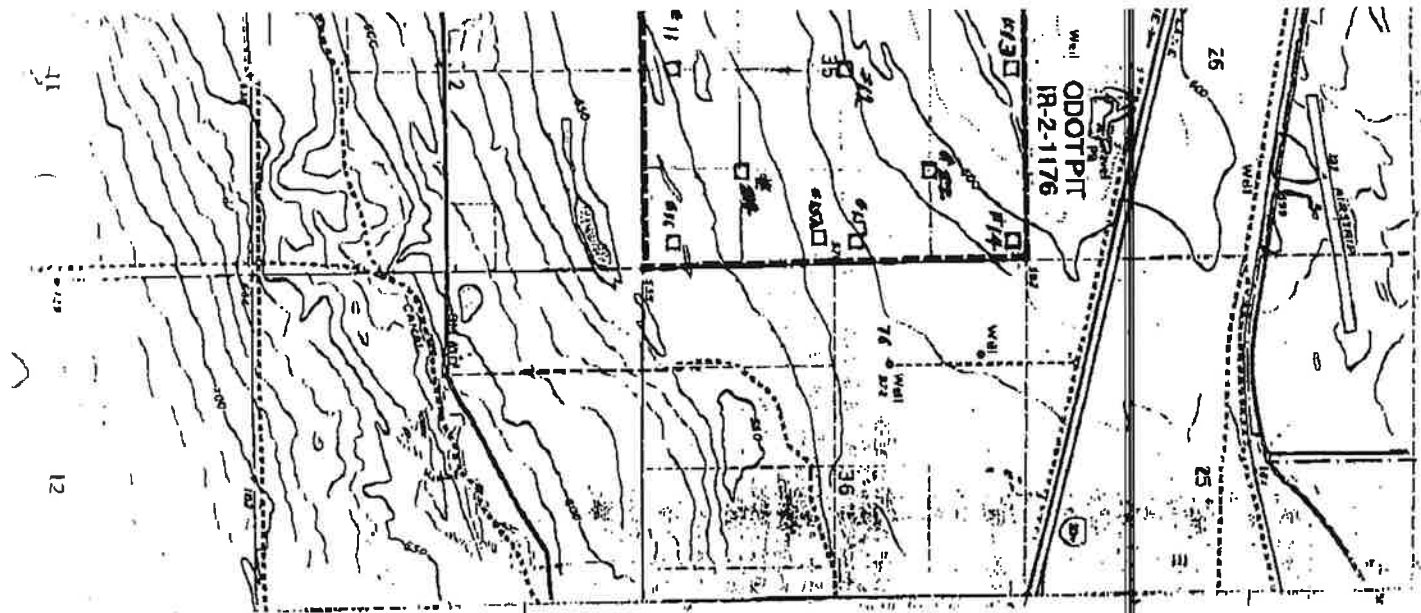
Proposal: Applicant originally requested: (1) adding the entire 1015-acre site to the Umatilla County Rock Materials Resources Inventory through an amendment to the Comprehensive Plan; and (2) applying the Aggregate Resource (AR) Overlay Zone to the entire site pursuant to Umatilla County Code Section 152.485. In the hearings before the Board of Commissioners, applicant amended its request for application of the AR overlay to delete all of Section 35 except 20 acres along the southern end of Section 35, consisting of two 5-acre triangles in the southeastern and southwestern corners of Section 35 and a 10-acre triangle centered on the middle of the southern boundary of Section 35 (all intended to remain outside established center pivot irrigation circles).

## II. INTRODUCTION

The record indicates that the applicant is the holder of the mineral rights on the site (which the applicant apparently is purchasing under a land sale contract). The subject and is currently in agricultural production, and is farmed by the owner of the surface rights, Hansell Brothers, Inc.

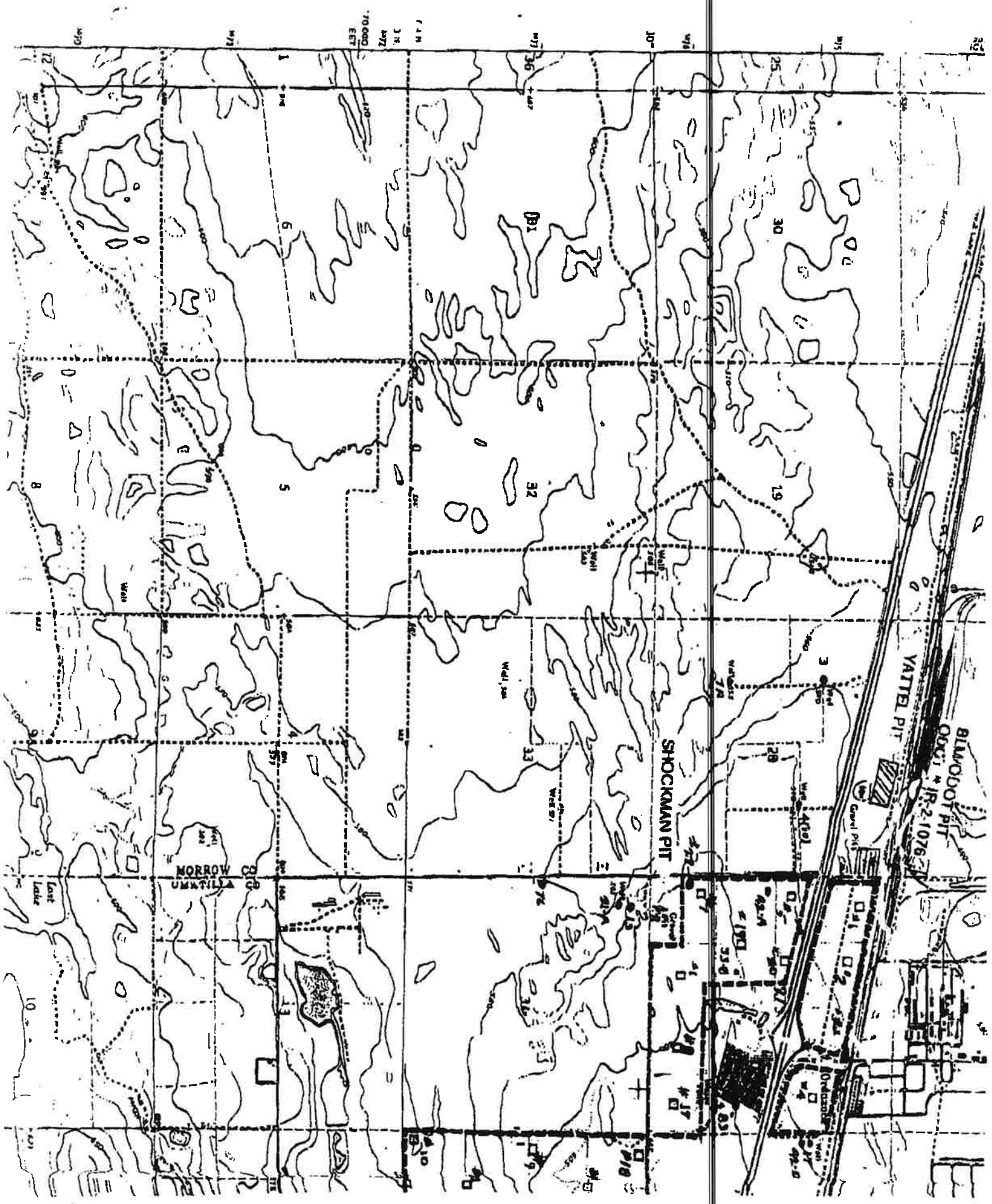
Map Showing Location of

- Testholes
- Wells
- - - Aylett Property Line



31 12

Section 27 and 30, 14N, 27E, Wm



(HBI). HBI has vigorously opposed the application before both the Planning Commission and the Board of Commissioners.

The proposal by applicant will require an amendment to the Umatilla County Comprehensive Plan in order to add the site to the Umatilla County Rock Materials Resources Inventory. Because this proposal would require amending the Comprehensive Plan, we must apply the criteria of the Goal 5 rule (OAR 660-23-180) which govern review of post-acknowledgment plan amendments (PAPAs).

As discussed below, the Board concludes that the aggregate resource on the site is "significant" as defined in the Goal 5 rule, and that the Comprehensive Plan must be amended to add the site to the County's inventory. However, we also conclude that mining on HBI's productive farmland presents conflicts that cannot be minimized, and that our analysis of the economic, social, energy and environmental impacts of allowing, limiting, or not allowing mining leads us to the determination that mining should not be allowed. We therefore agree with the unanimous recommendation of the Umatilla County Planning Commission and adopt the Findings and Conclusions herein. These findings and conclusions supersede any prior oral or written decision by the Board with respect to this application.

### III. ANALYSIS OF POST-ACKNOWLEDGMENT PLAN AMENDMENT UNDER THE GOAL 5 RULE

**OAR 660-23-180 Post Acknowledgment Plan Amendment Approval Criteria.** Amendments to an acknowledged Comprehensive Plan as they relate to Goal 5 resources (including mineral and aggregate resources) require that the applicant satisfy specific Goal 5 criteria. The criteria for post-acknowledgment plan amendments (PAPAs) for mineral and aggregate resources are set forth in OAR 660-23-180. In this section of the findings, we address each of the criteria in turn. To summarize the decisionmaking steps under the rule, a determination to allow mining requires answering the following questions:

1. Has the applicant submitted a complete application?
2. Is the aggregate resource "significant," under the Goal 5 criteria?
3. If the resource is significant, are there any significant conflicts between mining and existing or proposed land uses within the "impact area"?
4. If there are significant conflicts, are there measures that can minimize those conflicts, i.e. render them insignificant?
5. If the conflicts cannot be minimized, what are the economic, social, energy and environmental ("ESEE") consequences of allowing mining, limiting mining, or not allowing mining?
6. In light of the ESEE consequences, should mining be allowed?

7. If mining is allowed, what restrictions should be placed on new land uses within the impact area that conflict with mining?

We do not reach the last question because we conclude that mining should not be allowed.

**A. IS THE APPLICATION COMPLETE?**

**Standard:** OAR 660-23-180(6) describes the requirements for a complete application.

**Findings:** The application originally submitted by the applicant (April 1997) did not address all of the applicable requirements of the Goal 5 rule. However, the applicant subsequently supplemented the application to provide the required information. Therefore, the application was complete.

**B. IS THE AGGREGATE RESOURCE "SIGNIFICANT"?**

**Standard:** OAR 660-23-180(3) provides:

*"An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:*

*(a) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley."*

**Findings:** In determining whether or not to place the requested area on the County's inventory of significant mineral and aggregate resources, Umatilla County received substantial information about the Goal 5 resource site and carefully reviewed the information. Based on the information, we have determined that the site is a significant resource site and hereby find and conclude that it is appropriate to add it to the County's inventory.

The testimony of Mr. Lewis E. Scott is particularly helpful. We note that Mr. Scott is a professional engineer and is a registered engineering geologist in the state of Oregon and a registered geotechnical engineer in the state of Arizona. Mr. Scott's resume demonstrates that he has appropriate professional credentials and nearly 50 years of engineering experience related to geology, materials engineering, geotechnical services and consulting. Mr. Scott provided a number of reports for our review including a November 26, 1997 summary report of the overall exploration and testing of the requested areas in Section 27 and Section 35. Mr. Scott participated in an extensive exploration of the site, including examination of two active sand and gravel operations adjacent to the site and two older adjacent sand and gravel pits and the

corresponding laboratory tests for some of these sites. He examined the drilling logs of a significant number of nearby irrigation wells. He also supervised the extraction of sampling of 25 test holes on the subject property. We find that the test holes are carefully distributed throughout the entire requested portions of Section 27 and Section 35 to provide a thorough review of the geology of the requested site.

From our examination of the map showing the distribution of the test sites, we are convinced and persuaded that the sampling locations provide an accurate picture of the geology of the site. We find that Mr. Scott's geologic investigation is thorough and credible. Based on Mr. Scott's information, which we specifically adopt, we conclude that there are more than 63 million yards of sand and gravel in Section 35 and in those portions of Section 27 where significant inventory listing has been requested.

As we indicated in our preliminary order, we have concerns about the differences in the threshold levels of materials set forth in the Goal 5 rule that serve as guidance for our determination of significance. We are particularly bothered by the disparity between the amount required outside the Willamette Valley (e.g., Eastern Oregon)--100,000 tons--compared to the amount of material that is required inside the Willamette Valley--2 million tons--to meet the Goal 5 rule's definition of significance. We question the wisdom of the policy makers in drawing this east/west distinction. However, we find and conclude that the site at issue contains a quantity of material that is significantly greater than the amount of material which meets the Goal 5 threshold for significance, even for a site located in the Willamette Valley. We find that the site contains 63 million cubic yards of materials which we find to be approximately 95 million tons of mineral and aggregate material. Accordingly, we find and conclude that the site contains approximately 40 times the threshold amount indicated in the Goal 5 rule for significance, even for Willamette Valley sites.

With regard to quality of material, we again find the reports and testimony of Mr. Scott to be helpful and persuasive. The applicant excavated and visually examined 25 pits at various depths. The applicant prepared detailed logs of the excavations and that materials from the excavations were provided to well-known testing laboratories for analysis. In addition, the applicant visually examined two adjacent active pits and two older adjacent sand and gravel pits and laboratory test results from some of those pits. Finally, the applicant provided laboratory testing of 44 samples from the test holes and borings that it excavated on the property and from these samples conducted 125 laboratory tests. We find that the results of this testing regime, which we find to have been conducted under appropriate professional oversight, demonstrate that material from the site is of superior quality. We find and conclude that the overwhelming majority of the test results significantly exceed the basic required ODOT standards provided in the Goal 5 rule. By that, we mean that the material taken from the test sites and examined in the laboratories had qualities that made it significantly better than the threshold standard of quality found in the Goal 5 rule. We agree with Mr. Scott's stated professional opinion that the mineral and aggregate resources from this site are high quality paving aggregates that are of significant higher quality than base rock standards which are threshold standards provided by Goal 5. After reviewing all of the evidence and testimony before us, we find and conclude that Mr. Scott's professional conclusion is credible and accurate. Accordingly, we find and conclude that the quality of the



materials from the proposed site is high and substantially and significantly exceeds the minimum Goal 5 standards.

With regard to location, the applicant has provided the County detailed maps and testimony about the surface resource area together with detailed discussion and study of the subsurface mineral and aggregate resources. We find and conclude that this evidence accurately establishes the location of the site and resources on the site.

The opponents provided testimony, including the testimony of Mr. James D. Graham, to question the applicant's evidence related to quality, quantity and location of materials on the site. We have considered this testimony, including the written testimony and spoken testimony of Mr. Graham, and find and conclude that it does not alter our conclusion. Even using a smaller figure suggested by Mr. Graham, the proposed site would have at least 14 million cubic yards, or nearly 22 million tons of extractable material using the standard average multiplying figure of 1.57 tons per each cubic yard. This quantity figure is ten times greater than the threshold amount for the Willamette Valley as required in the Goal 5 rule. Accordingly, we find and conclude that Mr. Graham's testimony supports our conclusion regarding quantity of materials on the site.

Mr. Graham also suggested that there were clay lenses on portions of the site which could affect quantity of the materials as well as its quality. These suggestions were rebutted to our satisfaction by Mr. Scott. We find that there are no clay lenses on portions of the site in Section 27 and in the northerly portion of Section 35. We find that clay lenses may be present on the southerly portion of Section 35, but that they occur at a depth below the proposed commercial mining activity.

We also find that the opponents raise a quality issue related to sand on the southerly portion of Section 35. With regard to the sand issue, we find that there are at least two factors upon which we base our significance determination. First, we find the work prepared and submitted by Mr. Scott to be credible and persuasive on this issue. Mr. Scott's analysis, which we find correct, is that all the material on the site--sand, and sand and gravel--has the same geologic origin and the same composition. We find, as Mr. Scott points out, that the material on the southern site is the same as the material on the northern site and that it differs only in size. Taken as a whole, the sand and gravel in this single unit or deposit is of extremely high quality.

Second, we find that sand is a mineral. The sand in the southern portion of Section 35 is extremely clean, is an extremely valuable mineral, and in and of itself is deserving of Goal 5 protection. We note that the Goal 5 rule provides for consideration of both aggregate resources and mineral resources. Under the rule, "aggregate resources" are defined as naturally occurring concentrations of sand and gravel. We find that under the rule, either the entire sand and gravel resource must be analyzed as a unit, as Mr. Scott has suggested, or in the alternative the site consists of two separate resources: sand and gravel resources to the north and a sand resource in the lower section of Section 35. In either event, based on the professional evidence that we have before us, we find the entire site significant. We further note that the aggregate resource test requirements in the Goal 5 rule refer to "an aggregate resource" that is defined as naturally occurring concentrations of "sand and gravel." The whole site clearly passes and exceeds

minimum testing standards for sand and gravel. We further find that if the entire site is deemed not to be one unit and to pass the sand and gravel portions of the Goal 5 test as we have determined, the southern portion of Section 35 is an independent sand resource that is valuable and should be protected on the County's mineral and aggregate resources inventory.

We find as a general matter that opponents provided very little direct information about resource quantity and quality, but rather chose to criticize the information provided by Mr. Scott, the applicant's professional engineer. After analyzing the entire record, including Mr. Scott's reports, the criticism of those reports, and the responses to the criticism, we find and conclude, based on the reasoning explained above, that the site has a significant quantity of mineral resources and aggregate resources, that the quality of the mineral resources and aggregate resources on the site is high and significant, and that the location of the site has been adequately described to us to allow us to make a reasonable decision on the facts.

Based on these findings, we conclude that the site shall be added to the County's inventory of mineral and aggregate resources as a significant site.

**C. ARE THERE ANY SIGNIFICANT CONFLICTS BETWEEN MINING AND EXISTING OR PROPOSED LAND USES WITHIN THE "IMPACT AREA"?**

**Standard:** OAR 660-23-180(4) sets forth the criteria for determining whether to allow mining of significant mineral and aggregate resource sites. In order to identify conflicts between mining and other land uses, the local government must determine an impact area:

*"The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance."* OAR 660-23-180(4)(a).

**Findings:** Except as discussed below with respect to conflicts with agricultural practices, we find that the impact area extends 1,500 feet from the boundaries of the mining area. As discussed below, the applicant has contended that the "impact area" does not include the mining site itself. Although we disagree with the applicant's interpretation of the rule, we find that the distinction is irrelevant to our analysis of conflicts, except conflicts with agricultural practices: the other conflicts required to be considered under the rule are predominantly conflicts with uses off the mining site.

**Standard:** OAR 660-23-180(4)(b) requires the County to identify land uses that will be adversely affected by proposed mining operations and to specify the predicted conflicts:

*“The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government.”*

**Finding:** Our analysis of predicted conflicts is based on conflicts with existing land uses rather than “approved land uses.”

**Standard:** OAR 660-23-180(4)(b) lists the six types of conflicts that a local government may consider in determining whether to allow mining:

*“For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*

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

**Findings:**

**Noise:** There are several residences in three locations that could give rise to conflicts resulting from noise. These are the residences on the U.S. Army Depot, about 250 feet north of Section 27, the residence 1000 feet west of the northwest corner of Section 27 and south of I-84, and the Hansell residence, east of the northeast corner of Section 35, approximately 250 feet from the property line. The noise control regulations for industry and commerce of the Department of Environmental Quality (DEQ), found at OAR 340-35-035, provide the applicable standards for noise levels. Based on the data provided by the applicant’s consultant, we conclude that it is likely that noise standards would be violated and that a conflict with the residential uses in the impact area would result.

**Dust:** The Board finds that dust generated by the mining operations would conflict with existing land uses within the impact area. The record includes credible testimony that the soils in the area are extremely susceptible to wind erosion. Irrigation and crop cover reduces such wind erosion significantly. Mining operations could promote wind erosion by disturbing cover crops and exposing unprotected soils to the wind. In addition, topsoil berms would be exposed to the wind and would be a source of dust unless adequately irrigated and covered with a stabilizing crop. Dust would create a conflict with nearby residences (identified above, in the discussion regarding noise). Dust would also cause conflict with public transportation and safety because dust would impair visibility along I-84 and adjacent County roads.

**Other Discharges:** The subject property is part of a critical groundwater area. Credible testimony in the record indicates that contamination of the aquifer could have serious negative consequences for area farms as well as food processors. While no direct discharges from the mining site to surface or ground water are anticipated, potential conflicts between the mining activity and water quality are serious concerns. HBI presented evidence in the form of a video tape that excavation equipment used by the applicant to dig test pits on the site leaked hydraulic fluid.

**Standard:** OAR 660-23-180(4)(b)(B) requires analysis of:

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

**Findings:** Based on the data provided by the applicant in the transportation impact analysis prepared by Kittelson and Associates, the Board determines that potential conflicts as provided in this section do exist. As discussed below, however, the Board also concludes that this conflict could be minimized by imposing reasonable and practicable mitigation measures.

**Standard:** OAR 660-23-180(4)(b)(C) requires identification of:

*"Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments."*

**Finding:** There are no existing public airports in the vicinity of the mining site.

**Standard:** OAR 660-23-180(4)(b)(D) requires identification of:

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

**Findings:** There is a wetland to the south of Section 35 that is inventoried as a "Significant Wetland" in the Comprehensive Plan. Umatilla County Comprehensive Plan Technical Report, Map D-49. While the Comprehensive Plan requires a 500-foot setback from the wetland, we note that the wetland is still within 1,500 feet of the proposed mining areas at the southern line of

Section 35, and is therefore within the impact area. Potential conflicts between mining and the wetland include possible loss of recharge if all or part of the Hansell farm is taken out of irrigated agricultural production, and impacts to species that use the wetland. However, based on the record before us, we are unable to conclude that such conflicts will occur or to determine the extent of any conflict. Therefore, we do not rely on conflicts between mining and the wetland in making our decision not to authorize mining of the site.

**Standard:** OAR 660-23-180(4)(b)(E) requires identification of:

*“Conflicts with agricultural practices.”*

**Findings:** The record demonstrates that conflicts between mining and agriculture are severe. However, before addressing those conflicts in more detail, we must address several interpretive issues raised in this proceeding. The applicant contended throughout the Planning Commission and Board of Commissioners proceedings that the County may not consider the conflicts between mining and agricultural practices on the mining site itself. For the reasons explained below, we disagree. However, as also discussed below, we find in the alternative that there are also serious conflicts between the proposed mining operations and farming off of the mining site on the remainder of the HBI farm.

1. The County may consider conflicts between proposed mining operations and agricultural practices on the proposed mining site itself.

The applicant presents two arguments in support of its contention that the County may not consider conflicts between mining and agricultural practices on the mining site itself. First, the applicant points to the language of OAR 660-23-180(4), which states that the impact area “shall be limited to 1,500 feet from the boundaries of the mining area ....” This language, according to the applicant, indicates that the impact area is only the area measured outward “from the boundaries of the mining area.” We disagree. The rule limits the outward extent of the impact area, but it does not by doing so exclude the mining site itself from the impact area. Indeed, the same subsection of the rule states that “[t]he impact area shall be large enough to include uses listed in subsection (b) of this section ....” The impact area would not be large enough to address “conflicts with agricultural practices” if it did not include the mining site itself, where agricultural practices will be the most severely impacted. Finally, the term “impact area” is used to limit the consideration not only of conflicts with farming, but also conflicts “with other Goal 5 resource sites within the impact area.” OAR 660-23-180(4)(b)(D). Applicant’s interpretation of “impact area” would prohibit the County from considering conflicts between proposed mining operations and other significant Goal 5 resources within a mining site. In essence, significant mineral and aggregate resources would automatically “trump” any other significant Goal 5 resource if the other Goal 5 resource were located on the proposed mining site, but not if the other Goal 5 resource were located within 1,500 feet outside the proposed mining area. We decline to interpret “impact area” in a way that prohibits us from considering the impacts of mining where those impacts are likely to be greatest -- on the mining site itself.

Second, the applicant points to OAR 660-23-180(4)(c), which provides:

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

ORS 215.296 provides, in relevant part, as follows:

*“(1) A use allowed under ORS 215.213(2) or 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:*

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.”*

The applicant contends that the references in ORS 215.296 to “surrounding lands” compel the County to limit its inquiry to conflicts with agricultural practices on surrounding lands. Again, we disagree. We note that the Goal 5 requires the County to address “conflicts with agricultural practices.” OAR 660-23-180(4)(b)(E). In other words, the requirement to identify conflicts is not limited by reference to ORS 215.296, which is referred to in the rule only as relevant to determining whether identified conflicts with agricultural practices can be minimized. Second, the staff report to the Planning Commission reported a conversation between Ms. Beier of the Planning Department and Bob Rindy of the Department of Land Conservation and Development, who was involved in the drafting of the Goal 5 rule. According to Ms. Beier’s staff report, Mr. Rindy stated that the reference to ORS 215.296 is not intended to limit the impact area. Rather, it tells the County that if conflicts with agricultural practices force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices, then the conflict has not been “minimized.” We believe that this is a sensible and persuasive interpretation, and we adopt it.

However, we also realize that these interpretive issues may be the subject of an appeal. We wish to make it clear that our decision would be the same even if we were limited to considering conflicts with agricultural practices within the portion of the impact area outside of the proposed mining site itself. We have structured our findings to address “onsite” and “offsite” conflicts.

2. The “offsite” impact area includes all portions of the HBI farm located off of the proposed mining site.

As provided in OAR 660-23-180(4), the impact area extends beyond the 1,500 foot perimeter “where factual information indicates significant potential conflicts beyond this distance.” Applying this provision, we find that the impact area includes the entirety of the Hansell Brothers farm, including all remaining portions that extend beyond this 1,500 foot perimeter. HBI submitted numerous maps of the farming operation, depicting “offsite” farming in Sections 26, 34 and 36, and on part of Section 27 not included in the applicant’s mineral rights. In

addition, with the amendment to the applicant's request, most of Section 35 is now "offsite" in the sense that it is outside the area actually proposed for mining. Factual data, discussed below, shows that significant potential *and actual* impacts from mining would affect the entire farm site and would not be confined to a 1,500 foot perimeter around the mining area.

### 3. Description of agricultural practices on the Hansell Brothers farm

Extensive evidence in the record persuasively demonstrates that the Hansell Brothers farm is highly productive, and depends on the combination of several key "ingredients" for its success: soils that have been improved over several decades by the addition of organic matter and nutrients; a complicated assemblage of water rights; a complex and interconnected system of wells, pumps, and irrigation pipelines; use of advanced technology to manage the application of water and nutrients; and the accumulated knowledge from farming the land for over three decades.

With the exception of small fields used for crops such as melons, all crops are grown in "circles" irrigated with center pivot irrigation systems. Crops grown in the circles include potatoes, onions, wheat, alfalfa, and peas. The centers and corners of the fields (i.e., the portions of the fields outside the irrigation circles) are also essential to the agricultural practices. The centers and corners are used for bee keeping, greenhouses, crop storage (e.g., as a stacking yard for alfalfa hay) and storage of farming equipment, among other agricultural purposes.

### 4. Identification of "onsite" conflicts with agricultural practices

#### (a) Loss of use of land being mined

Even assuming that the mined areas can be reclaimed for agricultural production, the proposed mining operations will displace all agricultural activities on the portion of the site being actively mined.

#### (b) Loss of pit slopes

The applicant proposes to mine to a depth of 50 feet over much if not all of the proposed mining site. As a consequence, after mining the pit floor will be about 50 feet below the surrounding terrain. Unless the slope between the pit floor and the surrounding terrain is sufficiently level, no farming on the pit slope is possible. This could result in the loss of a significant portion of the tillable area on the HBI farm. For example, if all of Section 35 were mined, and a 150-foot perimeter of slope were left, approximately 70 acres, or 11 percent of the total 640 acres, would be lost for agricultural use even if the pit floor could be reclaimed.<sup>1</sup> The calculation of lost acreage on Section 27 would be more difficult; however, given the shape of the mining areas on Section 27, it is clear that an even higher percentage of the mining area in that section would be lost to future farming.

---

<sup>1</sup> We realize that the applicant no longer is proposing to mine all of Section 35; we include this calculation in our findings only to illustrate the potential loss of farmland.

The applicant has not committed to any particular post-mining slope (a reclamation plan submitted by the applicant to the Department of Geology and Mineral Industries indicates that the maximum slope would be 1-1/2:1, but the applicant indicates that the reclamation plan application is not final). One of the applicant's experts, Phil Small, testified that although 12-15% slopes might be farmed, a slope of 5% maximum would be preferable. In the irregular shape of Section 27, such a slope could leave little or no "pit floor"; i.e., the slopes around the sides could meet in the middle. For example, the opponents calculated that an 8 percent slope in a 50-foot deep pit would create a 625-foot, sloped perimeter (i.e., 50 foot "rise", 625-foot "run").

The slope cannot be flattened by extending the slope outward onto adjacent portions of the farm on which the applicant has no mineral rights. This leaves the applicant with the options of "flattening" the slope by either: (1) taking less material out of the mine to start with; (2) raising the mine floor with fill material after mining; (3) extending the slope further into the mine pit; or (4) a combination of two or more of these measures. Either of these alternatives would entail tremendous expense and difficulty. Assuming a 50 foot pit depth, the difference between a 2:1 slope (30 degrees) and a 3:1 slope (unfarmable with current methods) along even a one-quarter mile stretch of pit slope is about 60,000 cubic yards of material. Assuming a 50-foot pit depth and a 100-foot perimeter slope (measured on the horizontal, or a 2:1 slope), the pit floor would have to be filled with over 16 feet of material to change the slope to 3:1 without increasing the 100-foot perimeter. This would require a large volume of fill material. We note that the applicant has produced no evidence that it is willing or able to engage in the kind of reclamation that would be able to return the pit slopes to production.

If the slopes are not farmable, then the pit floor provides a smaller area in which to continue farming than was available prior to mining.

(c) Disturbance of pit floor for post-mining agricultural use

Even the applicant and its experts concede that the floor of a mining pit can be returned to agricultural use only through careful reclamation practices. The evidence in the record is convincing that without careful reclamation, the floor of the pit would be lost to any future agricultural use. Under the applicant's current proposal, that would result in the loss of almost all farming within Section 27 (considering only the mining site itself). By any reasonable standard, that is a major conflict between farming and mining. We address below the issue of whether the conflict can be minimized through reclamation of the pit floor.

(d) Loss of water rights

As Steve Bloom, water rights attorney for Hansell Brothers, Inc., testified at the July 8 Planning Commission hearing, the water rights on the Hansell Brothers farm are extremely complicated. The truth of that statement was illustrated on a water rights map of the Hansell Brothers irrigation rights, and in the water rights documentation submitted by the applicant in the April 1997 application. As Steve Bloom stated, mining of the Hansell Brothers farm would necessitate numerous applications to the Oregon Water Resources Department to transfer water rights to other lands in order to avoid losing them. Under Oregon law, water rights not used for a period of five consecutive years are automatically forfeited. ORS 540.610(1); Rencken v. Young, 300 Or



352 (1985). As has been noted repeatedly, the Hansell Brothers farm is located in a critical groundwater area; the regulations applicable to groundwater in the area are not likely to become any more flexible. The applicant certainly is not in a position to guarantee that the transfers would be approved, or that transfers back to the Hansell Brothers farm (at some indefinite point in the future) would be approved.

## 5. Identification of "Offsite" Impacts

### (a) Interference with the Irrigation System

The irrigation wells and the irrigation pipelines for the Hansell Brothers farm are interconnected in a complex system. As Fred Ziari, a highly experienced irrigation consultant, testified on May 29 and July 8, removal of one segment of pipeline can affect the ability to irrigate a large area of the farm. For example, a 16-inch steel pipeline carries water from Well #s 6 and 7 south under the freeway. It is literally interconnected with all but two irrigation circles on the farm. Mining in the areas requested by the applicant (e.g., initially mining north of I-84) would disrupt the ability to deliver water to "offsite" irrigation circles in Sections 26, 34, 35 and 36. The pipelines are only 4-5 feet beneath the surface. In addition, testimony from the Water Resources Department indicated that WRD standards will not allow well casings to be "up in the air": as mining proceeds, wells would have to be redrilled and/or recased. Mining will invariably require redesigning and rebuilding the irrigation system (including replacement of wells) that serves not only the proposed mining site but the rest of the farm as well. It should be noted that this is a conflict between mining and farming offsite as well as on the mining site itself (because the same irrigation system serves the entire farm).

### (b) Interference with Irrigation Circles

The letter to the Planning Commission from Dale Van Schoiack of SCM Consultants, submitted at the July 31 hearing, demonstrates that mining of the portions of the farm within Sections 27 will require alteration of center pivot irrigation circles off the mining site because a center pivot system cannot simultaneously irrigate land at surface level and land in a 50 or 60-foot pit. Three irrigation circles (#s 6, 9, and 10) extend into the Section 27 mining area from off the mining site. If the applicant were to mine as proposed in Section 27, these circles would have to be altered significantly, as shown on Enclosure 2 of Mr. Van Schoiack's letter (map titled "Hansell Brothers Inc. Irrigated Acreage Affected by Mineral Rights").<sup>2</sup> Based on the overall acreage losses shown on that map, and the acreages for water rights shown on a map of Hansell Brothers water rights found at Tab F of HBI's July 31, 1997 submittal, it is possible to calculate the offsite (i.e., "surrounding lands") irrigated acreage lost as a result of changes to these irrigation circles:

---

<sup>2</sup> That map shows changes to Circles 13A and 13B, which would not be necessary with the change proposed in the applicant (i.e., mining only 20 acres at the southern end of Section 35).

<u>Circle No.</u>	<u>Total Acres Lost</u>	<u>"Onsite" Acres Lost</u>	<u>"Offsite" Acres Lost</u>
9	43.5	31.3	12.2
10	34.2	11.1	23.1

The total "offsite" irrigated acreage in Circles 9 and 10 that would be lost through changes to the dimensions of the circles is 35.3 acres. In addition, 3.4 acres of Circle 6 extends off the portion of Section 27 on which 7A's holds the mineral rights; that small acreage could not be reconfigured as part of an irrigation circle. Thus, the total offsite acreage lost through reconfiguration is approximately 39 acres.

(c) County Line Water Improvement District ("CLWID")

Testimony and documentation from Jim Key, President of the County Line Water Improvement District and from Donn Miller of the Oregon Water Resources Department establishes the importance of the CLWID not only to the farms that are direct participants in the CLWID, but also to the other groundwater users whose properties benefit from higher water table that has resulted from CLWID's recharge efforts. The evidence indicates the CLWID has succeeded in raising groundwater levels. A letter from Donn Miller of the Oregon Water Resources Department dated May 16, 1997 identifies 35 wells in the Westland Road subarea and the Lost Lake Depot subarea that have benefited from the recharge efforts. The Hansell Brothers farm accounts for approximately 20 percent of the land contributing to the CLWID. For purposes of this conflict, the Board concludes that there is sufficient evidence in the record to conclude that the impact area extends to all of the wells identified in Mr. Miller's letter.

Mr. Key's letter of July 14, 1997 clearly describes the essential role of the Hansell Brothers farm, historically and prospectively, in the success of the CLWID. The continued participation of Hansell Brothers is threatened by the mining of the property. There is no assurance that Hansell Brothers can continue as an economically viable operation if the site is mined: Hansell Brothers would have to absorb losses of cultivated land both on and off the mining site, and might have to pay for the costs of reestablishing the irrigation system.

There is at least a potential conflict between mining and the irrigated agriculture fostered by the County Line Water Improvement District (the "CLWID") because the Hansell Brothers farm accounts for 20 percent of the land contributing to the CLWID.

**Standard:** OAR 660-23-180(4)(b)(F) requires identification of:

*"Other conflicts for which consideration is necessary in order to carry out ordinances that supersede DOGAMI regulations if all of Section 35 were mined, and a 150 foot perimeter of slope were left, approximately 70 acres, or 11 percent of the total 640 acres, would be lost for agricultural use even if the pit floor could be reclaimed. pursuant to ORS 517.780."*

**Finding:** Umatilla County no longer has its own reclamation ordinance. Therefore, this standard does not apply.

**D. ARE THERE REASONABLE AND PRACTICABLE MEASURES THAT CAN MINIMIZE THE CONFLICTS?**

**Standards:** OAR 660-23-180(4)(c) requires the local government to “determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section.” With the exception of conflicts with agricultural practices (discussed below), the definition of “minimize a conflict” is set forth in OAR 660-23-180(1)(f):

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

In addition, OAR 660-23-180(4)(e) requires that “[a]ny required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective.”

**Findings:** We address whether there are “reasonable and practicable measures” that would minimize each of the conflicts discussed above under OAR 660-23-180(4)(b).

**Noise:** This conflict can be mitigated with appropriate noise control measures. Such measures would include conditions of approval that mandate compliance with DEQ noise standards, establishment of operating hours that will not disturb neighboring residences, and installation of acoustical berms along property lines to minimize noise impacts on adjacent properties.

**Dust:** It is possible that this conflict could be mitigated by conditions of approval requiring air quality permits as necessary from DEQ, specific measures for controlling dust on haul roads and other gravel roads used for transportation of materials on site, and mitigation measures along I-84, subject to ODOT approval. However, the applicant has failed to provide credible evidence that it has available an adequate source of water for effective dust control. The applicant has no water rights on the property, and neither it nor this Board can force HBI to transfer any of its water rights to the applicant for mining purposes. The applicant contended that it already has transferred water rights from its own farming operations to its mining operation in Morrow County (the “Yattel pit”). However, the “transfer” document submitted to the Board was a limited license, which is temporary. The applicant also indicated that it could develop a well to provide 5000 gal/day, without Water Resources Department approval. However, we find credible the testimony from Jim Graham that 5,000 gal/day is sufficient to irrigate approximately 1/2 acre. Calculations submitted by HBI indicate that the surface area of berms alone is likely to greatly exceed 1/2 acre, without even taking into consideration the

potential need for water to suppress dust from mining activities themselves. In the absence of evidence that the applicant has access to an adequate source of water, we conclude that the impact from dust cannot be minimized.

**Other Discharges:** As discussed above, mining operations on the site would create at least the potential for ground water contamination. The following measures would be required to mitigate such conflicts: (1) maintain at least 10 feet between the bottom of any mining location and the ground water table; (2) obtain from DEQ any necessary discharge permits including any permits needed for water discharges associated with dust control; (3) develop a spill prevention program to minimize the potential for groundwater contamination resulting from accidental spills of materials such as gasoline and other petroleum products during mining operations. Such measures would minimize potential conflicts from other discharges.

**Roads/Traffic:** The Board finds that this conflict could be minimized by imposing conditions of approval requiring: (1) compliance by applicant with the requirements of the Morrow County and Umatilla County TSP's; (2) agreement to cooperate with the Morrow County and Umatilla County road departments to enter into any necessary road maintenance agreements resulting from impacts on roads caused by hauling aggregate material; (3) ensure that access points have proper visibility as discussed in the Kittelson study; (4) work with Umatilla Ordnance Depot to minimize traffic conflicts on Ordnance Road; and (5) use only existing agricultural roads (improved to a standard that supports large trucks) and/or existing public roads to transport materials from the mine site.

**Other Goal 5 Resources:** As discussed above, the potential for impacts to the wetland south of Section 35 appears speculative. We believe it is likely that the potential for such impacts could be minimized by requiring an adequate buffer between the aquifer and the floor of any mining operation in Section 35. In any event, we do not rely on conflicts between mining and the wetland as a basis for our decision not to allow mining of the site.

**Agricultural Practices:**

**Standards:** OAR 660-23-180(4)(c) states that “[t]o determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section.” ORS 215.296 provides, in relevant part, as follows:

*(1) A use allowed under ORS 215.213(2) or 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:*

*(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*

*(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

Thus, in determining whether the proposed measures would minimize conflicts with agricultural practices, Goal 5 requires us to look only at whether the proposed measures would force a

significant change in or significantly increase the cost of accepted farm practices on land devoted to farm use.

We also note that both ORS 215.296(2) and OAR 660-23-180(4)(e) require that any conditions imposed on mining operations to "minimize" impacts on farming must be "clear and objective." Conditions of approval are "clear and objective" if they do not require the exercise of "any significant factual or legal judgment." Flowers v. Klamath County, 98 Or App 384 (1989), rev. denied, 308 Or 592.

**Findings:** The first question we must answer in determining whether conflicts with agricultural practices can be "minimized" under the Goal 5 rule and ORS 215.296(1) is: "What are the accepted farm practices in the area?"

1. Description of accepted farm practices

We are persuaded by testimony and documentation, including testimony and an exhibit submitted by Leslie Hauer in the hearing before the Board, that "accepted farming practices" on the HBI farm and in a large surrounding area, consist almost entirely of center pivot irrigation for crops such as those grown on the HBI farm. In addition, smaller areas may be cultivated using other irrigation techniques such as drip irrigation. However, we are persuaded by the evidence in the record that drip irrigation is currently an accepted farming practice only for certain high-value crops (such as melons) and for growing hybrid poplars or cottonwoods for wood pulp. Although a few farms in the area may use wheel irrigation, it is not as efficient as center pivot irrigation. Moreover, we are persuaded by testimony that food processors in the area will not contract to purchase potatoes, a key crop, from farmers using wheel irrigation. Thus, center pivot irrigation is preferable, and is overwhelmingly the dominant form of irrigation in the area. We find that the current farming practices on the HBI farm are representative of the range of accepted farming practices in the area.

2. Analysis of Potential to Minimize Conflicts

(a) Loss of use of land being mined

There is no way of avoiding the fact that the land being mined cannot be in agricultural production. However, the applicant in closing argument before the Board proposed a condition of approval requiring that the applicant pay to Hansell Brothers the county average rent for the land being mined (at either the irrigated or unirrigated rate, depending on whether the Hansell Brothers would provide the applicant with water). This condition, however, is not "clear and objective." To the contrary, monitoring compliance with this condition of approval would require the County to become enmeshed on a regular basis in potential factual disputes between the applicant and HBI over what constitutes the current county average rent. Therefore, we conclude that we could not impose this condition under the Goal 5 rule. Moreover, as a policy matter we do not believe that the County has the staff and resources to arbitrate essentially private disputes over compensation. Thus, we do not see a way, within the constraints of the Goal 5 rule, of minimizing this conflict. Finally, compensation paid between private parties -- whether under a condition of approval or in accordance with the terms of the applicant's mineral

rights -- does not address the effect that the loss of agricultural production has on the economy as a whole (employees, food processors, suppliers, etc.). Goal 3, in other words, does not allow unlimited conflict with agriculture as long as the individual farmer is compensated. On the area being actively mined, all agricultural production will cease, which is a significant change in agricultural practices.

(b) Measures to minimize loss of pit slopes

The applicant has not identified any reasonable and practicable means to "minimize" the conflict resulting from the loss of pit slopes. The applicant contended that the loss of acreage to pit slopes did not amount to a real loss in farmable land because there is already a substantial amount of unfarmed land in the "centers" and "corners" around the center pivot circles. This ignores the fact that in order to reestablish "accepted farming practices," the center pivots would have to be reestablished in the pit bottoms. The center pivot circles would have to be smaller, and there still would be centers and corners, in addition to the pit slopes. Moreover, the current centers and corners are used for farming purposes, as discussed above, whereas the applicant has not identified farm uses for steep pit slopes. The substantial loss of farmable land and the reduced size of post-mining irrigation circles represents a significant increase in the cost of accepted farming practices and a significant change in accepted farming practices.

The applicant also suggested that HBI could compensate for the loss of area to pit slopes by using different farming methods -- in particular by using irrigation methods (such as wheel systems, "programmable big guns" and "corner catchers" on center pivot systems, that would allow rectangular fields to be irrigated (and thus allow the entire pit bottom to be farmed). However, we find persuasive the testimony from John Hansell and Fred Ziani that such systems are costly and less efficient than current methods, and produce inferior results in terms of yields and crop quality. Moreover, in the case of wheel systems, the unrebutted testimony before this Board was that a farmer could not get a contract from potato processors for fields that are irrigated with wheel systems. We conclude that these "mitigation measures" would not "minimize" the conflict because they would either (or both) significantly increase the cost of accepted farming practices or force a significant change in accepted farming practices.

(c) Potential to reclaim pit floors

We are unconvinced by the applicant's evidence regarding reclamation. After reviewing the evidence in the record, we are unpersuaded by the scant evidence of successful reclamation of irrigated agricultural croplands presented by the applicant because such examples are too dissimilar in location, extent of disturbance, soil type and purpose. Nor has the applicant presented any evidence of reclamation of such croplands to their prior level of production. Thus, while some reclamation may be feasible, the Board finds nothing that persuades us to believe that any particular level of production, let alone full production of the type previously attained, can be recovered. This finding is supported by evidence submitted by and on behalf of HBI, which we consider persuasive, that even temporary disturbance of surface soils on farms in the area (including the HBI farm) results in significant and long-lasting negative impacts on productivity.

The applicant contended that we should “think outside the box,” i.e., consider innovative ways of farming the reclaimed land. We find based on the testimony that HBI has been innovative, and that the current farm practices in the area generally and on the HBI farm in particular are the positive result of that innovation. Some of the types of farm practices suggested by the applicant (including growing exotic fruits and vegetables in greenhouses growing containerized nursery stock) were completely unsupported by testimony that they are possible as a matter of climate and technology, let alone that there is a market to support the sale of the crops produced. We cannot consider these practices to be “accepted farm practices” in the area. Other practices suggested by the applicant (drip irrigation and growing melon seedlings in greenhouses) are used in the area (and on the HBI farm) but are limited in their application. For example, persuasive testimony in the record (from Fred Ziari) establishes that drip irrigation is not practical or economical for most crops grown in the area. It is very expensive, and is limited to use on a few crops (melons, and hybrid trees grown for pulp). John Hansell testified that he could grow all the melon seedlings needed on his farm in one small greenhouse, and in fact already does so. Therefore, we conclude that the applicant’s suggested farming practices do not present a way of minimizing the conflict between farming and mining. In fact, the applicant’s suggestions would significantly increase farming costs and would force significant changes in accepted farm practices.

The applicant argued that the Planning Commission erred in recommending to this Board that “restoration” rather than “reclamation” should be the standard. In essence, the applicant contends that DOGAMI has exclusive jurisdiction to regulate reclamation, and DOGAMI does not require restoration. We do not disagree. However, our task under Goal 5 is to determine whether conflicts have been “minimized.” For purposes of these findings, we assume that the applicant is correct that we cannot require restoration to pre-mining farm uses and levels of productivity. In that event, our task is to determine whether conflicts can or will be minimized. We conclude that the impact of mining on the agricultural productivity of the pit floor cannot be minimized.

We do not intend to criticize DOGAMI or its implementation of statutory and regulatory reclamation requirements. However, as the applicant has noted, DOGAMI does not require “restoration.” Although Ben Mundie of DOGAMI testified before this Board that Hansell Brothers would have to give its approval to any reclamation plan before DOGAMI would approve the plan and issue an operating permit, we find that we cannot rely on his assertion. As was pointed out in cross-examination of Mr. Mundie, DOGAMI’s rules do not necessarily give the surface rights holder a “veto” over the issuance of an operating permit. In order to issue the permit, the rules require:

“Written evidence that the surface estate and mineral estate owners concur with the reclamation plan and that they will allow Department access to complete reclamation with the permit area if the permittee fails to comply with the approved reclamation plan.  
If the applicant can document a legal right to mine without the consent of the surface estate owner, including legal right of access

to the site, the Department may issue an Operation Permit.” DAR 632-30-025(3)(a) (emphasis added).

We are not in a position to make a legal determination about the applicant's legal right to mine without HBI's permission. However, we see nothing in the grant of mineral rights that gives HBI express authority to deny the right to mine; therefore, find that we cannot rely on any "veto" authority of HBI as a means of ensuring that any reclamation plan approved by DOGAMI would be acceptable to HBI and would allow the continuation of accepted farm practices after mining.

Instead of proving that reclamation to the "accepted farming practices" described above is possible, the applicant proposed, in closing argument before this Board, a condition of approval requiring that the applicant demonstrate that the mining area can be "successfully reclaimed" before being allowed to mine south of I-84. There are several problems with this proposed condition:

First, the applicant would be allowed to mine the portion of Section 27 north of I-84, an area of approximately 100 acres, before the applicant would ever have to demonstrate that "successful reclamation" is possible.

Second, the applicant offered no definition of "successful reclamation"; thus, we do not even know what standard the applicant would have to meet.

Third, the applicant proposed that the success of the reclamation be determined by a 3-person panel, consisting of a representative of DOGAMI, a representative of the Oregon Department of Agriculture, and a third expert selected by the other two. We question whether it is legal for the County to delegate a land use decision (i.e., whether a condition of approval precedent to mining south of I-84 has been satisfied) to a non-County panel. In any event, we decline as a policy matter to turn that decision over to such a panel.

Fourth, HBI would be required under the condition to lease the surface of its land to the applicant to farm for five years. We doubt our authority to compel a private landowner to lease its surface rights to another private party.

Fifth, and most critically, the condition is not "clear and objective." Indeed, it requires the panel to address a key legal issue (what is "successful reclamation") and to examine evidence regarding farm productivity to determine whether the standard is met. The degree of factual and legal discretion involved is significant.

With respect to conflicts with accepted agricultural practices outside of the mining site, employing the narrow definition of "surrounding lands" advocated by the applicant, we similarly conclude that there are no measures adequate to minimize the conflicts created by mining. Specifically, we focus on two areas of conflict: (1) conflict with the irrigation system on adjacent portions of the Hansell farm, and (2) conflict with irrigation circles on the adjacent lands. Both of these practices are modes of operation that are common in this County to farms of this type



and necessary for the operation of such a farm for profit, and customarily utilized in conjunction with farm use.

(d) Loss of Water Rights

The applicant's only suggestion for preserving the water rights is for Hansell Brothers to transfer water to the applicant for use in mining. We are convinced by HBI's repeated protestations that HBI will never make such a transfer. Moreover, a transfer to Mr. Aylett or his company for mining purposes would involve not only a change in place of use (to allow use outside existing irrigation circles) and point of appropriation (because of the need to move wells that are in mining areas), but also a change of use. That significantly complicates any transfer.

Even if Hansell Brothers could transfer its water rights to some other use (including offsite agricultural use) there is no assurance that the rights could be transferred back. Moreover, Hansell Brothers would bear the costs of such repeated applications.

In summary, the applicant cannot demonstrate that there will be adequate (or any) water available for farming after the mining is completed. Without water, all of the applicant's various reclamation schemes are worthless. Loss of water rights would force a significant change in agricultural practices because irrigated agriculture appears to be the only accepted farming practice in the area. We lack adequate information on the cost of water right transfers to determine whether the need to pursue numerous such transfers would constitute a significant increase in the cost of operating the Hansell Brothers farm.

(e) Interference with the Irrigation System

In closing argument, the applicant proposed conditions of approval requiring that the mining operator: (1) "coordinate" with the surface owner to minimize farm disruption and safeguard water availability and distribution; (2) not disrupt or interfere with irrigation wells and water distribution; and (3) at its expense, protect or re-drill wells and re-route delivery pipes as necessary to avoid disruption or interference with irrigation. Although these conditions might help to alleviate the conflict, they are not "clear and objective" conditions. We cannot objectively determine whether the applicant is "coordinating" with HBI, nor can we objectively determine what is "necessary" to avoid disruption or interference with irrigation. These conditions are an open invitation to ongoing factual and legal disputes, with the County as the referee. We decline the invitation, both because the Goal 5 rule does not allow us to impose such conditions, and because the County does not have the staff and resources to police such conditions.

Given the complexity of the HBI irrigation system, we cannot imagine (and the parties have not suggested), reasonable and practicable, clear and objective conditions that would allow mining to proceed and still protect the irrigation system that serves the entire HBI farm. Thus, we conclude that the conflict cannot be minimized. Without an adequate and reliable irrigation system, irrigated agriculture on the HBI farm is not possible, and irrigated agriculture is essential to any "accepted farm practices" on the HBI farm.

(f) Interference with Irrigation Circles

At the hearing on January 6, 1998, Leslie Hauer submitted a plan showing how irrigation circles could be relocated and altered in size and number to compensate for the loss in cultivated area in irrigation circles. We conclude that the applicant's proposal would not minimize the conflict because the un rebutted testimony in the record is that the applicant's plan would require the relocation of at least one existing center pivot and the installation of 3 or 4 new center pivots, at a combined cost that could exceed \$100,000. That is a significant capital investment, with no concomitant increase in farm productivity, and we therefore conclude that it would constitute a significant increase in the cost of accepted farm practices.

(g) County Line Water Improvement District

This conflict probably could be minimized by requiring the applicant to pay the CLWID assessment for an portion of the Hansell Brothers farm being mined, and for the entire farm if the land were to be cease being farmed because of the impact of mining.

**E. WHAT ARE THE ECONOMIC, SOCIAL, ENERGY AND ENVIRONMENTAL ("ESEE") CONSEQUENCES OF ALLOWING MINING, LIMITING MINING, OR NOT ALLOWING MINING?**

**Standards:** Because we have determined that there are no reasonable or practicable measures that would minimize all identified conflicts, whether looking at only "offsite" conflicts or conflicts both on the mine site and on surrounding affected lands, OAR 660-23-180(4)(c) requires that we analyze the ESEE consequences of allowing mining, limiting mining, or not allowing mining. OAR 660-23-180(4)(d) provides:

*"The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:*

*(A) The degree of adverse effect on existing land uses within the impact area;*

*(B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and*

*(C) The probable duration of the mining operation and the proposed post-mining use of the site."*

In addition, OAR 660-23-180(5) requires us to "follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting

uses within the impact area of a significant mineral and aggregate site.” The steps in a standard ESEE process are: (a) identify conflicting uses; (b) determine the impact area; (c) analyze the ESEE consequences; and (d) develop a program to achieve Goal 5. We have previously identified the conflicting uses and the extent of the impact area. We have also addressed the degree of adverse effect on existing land uses (particularly agriculture) and any reasonable and practicable (and clear and objective) conditions to mitigate the adverse effects. The applicant has not stated the probable duration of the mining operation; even at the applicant’s most optimistic projections for sales, mining would last for many decades. Duration of mining of individual phases (10 acres according to the applicant) is similarly uncertain because of a lack of information from the applicant concerning likely actual sales. The proposed post-mining use of the property, according to the applicant, is agricultural. As discussed above, however, the applicant has not committed to any particular form of agriculture or to any particular level of productivity. In short, the applicant has not demonstrated that productive and profitable post-reclamation agricultural use is possible on this site.

We now analyze the ESEE consequences of allowing mining, limiting mining, or not allowing mining. This analysis is based solely on the conflicts that we found were not “minimized”: dust; loss of use of land being mined; loss of pit slopes; loss of pit floor after mining; loss of water rights; interference with HBI irrigation system; and interference with “offsite” irrigation circles. With the exception of dust impacts, these impacts all relate to the ability to continue to farm the HBI property.

### *Economic Consequences*

**Findings:** Both parties have presented us with expert testimony regarding economics. The analyses presented by the applicant are informative, but they suffer from some common flaws:

- (1) The applicant’s analyses appear to assume that our analysis of the economic consequences of allowing mining depends only on a comparison of: (a) the revenues that HBI can earn on its farming operations, and (b) the revenues that the applicant might earn on its mining operations. We disagree fundamentally with that approach. Statewide Planning Goal 3, and our Comprehensive Plan and ordinance provisions implementing it, require the protection of agricultural land. We do not believe that we are required to allow a conflicting use such as mining simply because the short-term revenue stream from that conflicting use is potentially greater than the revenue from farming. That rationale could lead to the loss of a great deal of farmland.
- (2) The applicant and its experts provide no credible, factually supported analysis of how much aggregate the applicant may be able to sell from the mining site. The applicant and its experts simply make a range of assumptions about potential sales. As pointed out by the opponents, in some cases those assumptions are highly questionable, in that they would require the applicant to capture a high percentage of the County aggregate market in order to achieve the projected

sales.<sup>3</sup> By comparison, Dr. Ziari's analysis of the economic benefits of farming the HBI farm is based on actual production and sales from the farm.

(3) The applicant and its experts do not address the extent to which the applicant's sales of aggregate from this site would displace sales of aggregate by other producers. There is nothing in the record to persuade us that the opening of an additional source for aggregate will generate additional demand. We note that the sand and gravel at this site, while of high quality, is not unique, nor is the deposit at this location unique in comparison to other sites in the surrounding area. Thus, the benefit to the County economy of allowing or limiting mining is minimal or nonexistent. As Dr. Ziari points out, in a local market for sand and gravel that is already adequately supplied, the applicant's sales will only displace sales by other producers. We find that this additional mining site will not have significant economic benefits for the county. By contrast, continued farming on the site does not compete only or primarily with local sales. The market for agricultural products from the Hansell farm extends far beyond the County and therefore brings significant net economic benefit to the local economy.

We do not choose to analyze economic consequences simply by comparing revenue streams. If the County allows mining or limits mining (under reasonable and practicable, clear and objective conditions), part of the HBI farm will be removed from production, and we do not believe that a productive, irrigated farm producing the types and yields of crops could be re-established within the mining areas. Moreover, given the "offsite conflicts" that cannot be minimized, there is a substantial risk that all or part of the remainder of the HBI farm could be removed from production. Although there may be other lands in the County that can be farmed, the HBI farm already has a large investment at this site in water rights, wells, pipelines, pumps, center pivot irrigation equipment, and several decades of soil enhancement and farming "know how." The County economy, which depends to a large measure on agriculture, would suffer a loss.

By contrast, if we do not allow mining, we believe that the County will still have enough aggregate to supply the County's market, and other markets (Portland/Vancouver, for instance) as well. Both the applicant (in the April 1997 application) and the opponent emphasized that 17% of Umatilla County has commercial deposits of aggregate. In other words, Umatilla County is blessed with an enormous potential supply. Unlike many other counties in Oregon, Umatilla County (particularly the northwest corner of the County) can have all the aggregate it needs (including for export) for the foreseeable future without having to sacrifice productive farmland

---

<sup>3</sup> The applicant has suggested that it will be able to sell aggregate to the Portland/Vancouver market, or even to San Francisco or Seattle consumers. We have seen no credible evidence to support that conclusion. We find persuasive the evidence that the applicant will be at a significant competitive disadvantage in comparison to other aggregate suppliers who are closer to those markets and in particular to suppliers who can load aggregate onto barges in the Columbia River directly from their mining sites.

to get it. In other words, a decision to not allow mining at this site results in the best economic outcome for the County:<sup>4</sup>

- (1) The County gets the full value of farm production on the HBI farm. Unrebutted testimony indicated that with proper stewardship, this land could be farmed for many decades -- if not centuries -- into the future.
- (2) The County gets the full benefit of whatever aggregate markets currently exist or develop in the future by mining sites that are not on productive farmland. Although it could be argued that there are other sites for farming as well, we have already noted the significant investment in making the HBI farm productive.
- (3) The aggregate resource under the farm is protected, so that if farming becomes permanently unfeasible on this site in the future, the aggregate resource is available for mining.

In summary, we find that allowing mining or limiting mining on this site results in negative economic consequences (loss of agricultural production), whereas the County can enjoy the full benefits of agriculture and an adequate supply of aggregate if mining is not allowed.

We realize that the best economic outcome for the County is not the best economic outcome for the applicant. However, we are not required to perform our ESEE analysis based on private returns on investment.<sup>5</sup>

### *Social*

**Findings:** For many of the same reasons as discussed above under economic consequences, there are negative social consequences of allowing or limiting mining. The Hansell Brothers farm has been a part of Umatilla County's social fabric for several decades, and with proper stewardship can continue indefinitely. It provides food, which is a basic necessity. Allowing or limiting mining would interfere with the provision of food by taking land out of production and threatening the remainder of the HBI farm.

Mining also provides benefits to society. Aggregate is needed for buildings, roads, and other critical items of infrastructure. As already discussed, however, Umatilla County is blessed with a large supply of aggregate. In some senses, the supply could be too much of a good thing if the County does not carefully address the impacts of allowing mining. Given that the northwest corner of the County is underlain by huge sand and gravel deposits, there is the potential that this part of the County could be pockmarked with many competing sand and gravel pits, if the County simply allows mining because of the general usefulness of aggregate. In the case of social consequences, as with economic consequences, Umatilla County is in the enviable

---

<sup>4</sup> We believe that this is the case whether our analysis is limited to impacts on "surrounding" agricultural lands (the remainder of the HBI farm) or also includes the mining site itself.

position of being able to protect the social benefits of farming without losing the social benefits of mining.

### *Environmental Consequences*

**Findings:** Allowing or limiting mining will likely result in adverse impact to air quality from dust associated with mining. Reasonable and practicable measures to mitigate this impact are possible, such as watering and crop cover. However, the applicant has offered supposition, rather than substantial evidence, supporting its ability to obtain sufficient water rights for dust control, for irrigation of a cover crop on the berm, and to irrigate trees the applicant has proposed as a visual buffer (and that also might serve as a windbreak).

We find that there would not be adverse environmental consequences from not allowing mining. The applicant has attempted to characterize some of HBI's management practices as environmentally undesirable, in particular the application of hog effluent to the land. However, the application of hog effluent has been discontinued, and the record indicates that the HBI farm is carefully managed to minimize any potential for fertilizer to escape the root zone of the crops and potentially enter groundwater.

### *Energy*

**Findings:** Goal 5 provides that the "efficient consumption of energy should be considered when utilizing natural resources." Goal 13 requires that land and land uses "be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles." The location of mining sites relative to construction sites has a direct impact on consumption of energy. The greater the distance, the more energy is consumed. If the applicant were proposing to sell the aggregate locally, the goal of efficient use of energy would likely be met. The applicant has stated that it intends to ship aggregate from the mining site to the Portland/Vancouver market and possibly to even more distant markets. This reduces the energy efficiency argument ordinarily presented in support of aggregate mining. The energy efficiency of the applicant's proposal is further reduced by the applicant's proposal to process the aggregate at its current mining site in Morrow County. In other words, the material would have to be transported once to the Morrow County site (presumably in trucks) if it requires processing, and then shipped again to the customer. Given the uncertainty of where the applicant will sell aggregate, the Board cannot conclude that there are energy benefits associated with allowing mining or limiting mining.

The energy consequences of not allowing mining consist of the energy "cost" of supplying aggregate markets from other sites. As discussed above, Umatilla County has a large supply of aggregate, particularly in the northwest corner of the County where this site is located. Therefore, it is likely that other sites could provide aggregate to customers at a similar level of energy efficiency.

**F. IN LIGHT OF THE ESEE CONSEQUENCES, SHOULD MINING BE ALLOWED?**

The parties have acknowledged that we have considerable discretion to determine, based on our analysis of the ESEE consequences, whether to allow mining, limit mining, or not allow mining. The economic, social, and environmental consequences of allowing mining are, in our view, unacceptable. Similarly, we do not believe that we can limit mining through legally supportable conditions of approval such that the negative economic, social, and environmental consequences of mining could be minimized or eliminated. The impact on the HBI farm (whether including the mining site or not), and the importance of farming to the Umatilla County economy, are decisive in our view. We determine that mining should not be allowed on the site.

**IV. AGGREGATE RESOURCE OVERLAY ZONE.**

**Standards:** The standards for application of the AR overlay zone are found in Umatilla County Code sections 152.485 to 152.491.

**Findings:** The Board finds that an analysis of whether to apply the aggregate resource overlay zone is moot because we have decided under the standards of the Goal 5 rule that mining will not be allowed on the site.

**V. DECISION**

While the Board approves the request to add the subject site to the Umatilla County Rock Materials Resources Inventory, it also finds that based on and supported by the ESEE analysis above, the applicant's proposal to mine part of the site and to apply the Aggregate Resource Overlay Zone to that portion of the site should be and hereby is denied.

DATED: February 17, \_\_\_\_\_, 1998

UMATILLA COUNTY BOARD OF COMMISSIONERS

  
Dennis D. Doherty, Chairman

  
Emile M. Holeman, Commissioner

\*Commissioner William S. Hansell did not participate in this decision.

**DECEMBER 29, 2022**

**REBUTTAL**

**SUBMITTED BY:**

**CRAIG COLEMAN & REPRESENTATIVES  
(APPLICANT)**



**Carla McLane Consulting, LLC**  
**170 Van Buren Drive**  
**Umatilla, Oregon 97882**  
**541-314-3139**  
[mclane@eoni.com](mailto:mclane@eoni.com)

RECEIVED

DEC 29 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

December 29, 2022

Chair Danforth and Members of the Umatilla County Planning Commission  
Robert Waldher, Planning Director  
Umatilla County Planning Department (VIA EMAIL)  
216 SE 4<sup>th</sup> Street  
Pendleton, Oregon 97801

Chair Danforth and Umatilla County Planning Commission members:

Please accept this as the response to testimony provided by Wade Aylett, Wade Aylett JR, and Andrew Stamp, legal counsel to the Aylett family, submitted for the December 22, 2022, deadline as set by the Planning Commission at the conclusion of the December 15, 2022 Public Hearing regarding the application for Goal 5 protections and approval of mining as represented by local file numbers Comprehensive Plan Map Amendment #P-135-22, Comprehensive Plan Text Amendment #T-092-22, and Zoning Map Amendment #Z-322-22 on property owned by Craig Coleman, or Girth Dog, LLC, and currently defined as Tax Lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36.

Addressed in this letter will be arguments raised by Wade Aylett, Wade Aylett JR, and Mr. Stamp from their December 22 submittals: 1) gravel samples submitted exceed required standards (including declarations concerning collection and transport); 2) water availability and mining without water (including Port of Morrow Compliance Letter from the Oregon Drinking Water Services and a declaration concerning mining without water); 3) adjacency is not a standard; 4) dust suppression; and 5) Goal 12 is the Transportation Planning Rule.

**Gravel Samples Submitted Exceed Required Standards:** Testimony from the Aylett's continues to provide more confusion to the applicable standard for quality. The requirement found at OAR 660-023-0180(3)(a) for quality states, "**(a) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness...**" The applicable Oregon Department of Transportation (ODOT) requirements are found in Section 02630.11(c) of the [Oregon Standard Specifications for Construction](#) (2021) and indicate that Abrasion can be up to 35% maximum, Coarse Degradation can be up to 30% maximum, and Sediment Height should be 3.0 inches maximum (the two applicable pages were submitted as part of our December 15 submittal). This table indicates the test, the standard, and the results from the samples submitted in both March and November.

Abrasion	Standard: Not to exceed 35%	Result: 14% (Both Samples)
Course Degradation	Standard: Not to exceed 30%	Result: 1.9% (November Sample) Result: .98% through 2.8% (March Sample)

Sediment Height	Standard: 3.0 inches	Result: .4 inches (November Sample)
Sulfate Soundness	Standard: 12%	Result: 2.1% (November Sample) Result: 1.4% (March Sample)

The requirement is to determine if the aggregate is significant based on the requirements in the rule. The applicant has proven that it meets the standard for quality. Earlier testimony and evidence indicate that the site is also significant for quantity (earlier map generated by IRZ Engineering and Consulting with calculations indicating over 1.2 million tons within the top 10-feet of the site).

While not an ODOT standard or a requirement of the approval process, the opponents have questioned how the samples were collected and delivered for the analysis completed by Atlas Technical Consultants. Please see the attached declarations completed by Craig Coleman, Noel Salinas, and Jeff Hines providing additional information concerning when the samples were collected and transported to Ontario, Oregon.

*The applicant requests that the Planning Commission find the subject property significant for both quantity and quality meeting the requirements in OAR 660-023-0180(3).*

**Water Availability and Mining Without Water:** As part of the December 15 submittal the applicant provided information from Mr. Porfily, a well-respected Water Rights Examiner in the greater Umatilla and Morrow County area, indicating that the applicant has significant water rights that can be modified for a change in use. Mr. Porfily has significant experience in doing this work under the requirements of the Oregon Department of Water Resources. The time involved to accomplish this work could be significant so the applicant has indicated that for dust mitigation water or a chemical dust abatement measure could be used. This is a true and accurate statement and has not changed. The applicant did not, as part of the application, address water usage for other purposes. The intent has been to mine without water until water is available. That may mean that initial mining would be for unwashed base rock. Further processing of the rock, including washing, would need to be done at another site or at the place of processing or use until an onsite water source is secured.

Should water be identified as a need the applicant has also submitted to the record a letter from the Port of Morrow indicating available hydrant water for use. Mr. Stamp has attempted to cloud this available water with the submittal of two articles about process water high in nitrates. Hydrant water in any jurisdiction comes from the same source as your tap water, meaning that it is potable and safe to drink. To assure the Planning Commission that the Port of Morrow hydrant water is potable find attached a statement from the Oregon Health Authority Center for Health Protection Drinking Water Services indicating that the Port of Morrow water is a Public Water System as it serves both residential units and serves a local population.

While the Aylett's use significant water, based on their testimony, mining occurs on the other side of Interstate 84, on property owned by JTJ Enterprises, LLC and operated by Terry Clark, who has testified in these proceedings, without any water available. A check of the Oregon Water Resources Department Water Rights Information Query by location shows no water rights (ground, surface, or storage pond) pertinent to that property.

The applicant has every intention to obtain water to operate the proposed mining operation and provide services beyond what can be done without water (see Jeff Hines declaration concerning mining

and water usage). Until the water is available there is no reason that mining without water cannot begin and continue through the water right permit modification process.

*The applicant requests that the Planning Commission find that mining can occur without water; that the applicant has available water resources that can be modified to be used in the mining operation; and that having water is not a standard that the applicant must meet. The applicant also requests that the Planning Commission find that using chemical abatement to control dust is an adequate measure to abate fugitive dust that is created as part of the mining process.*

**Adjacency is NOT a Standard:** The Aylett's and Mr. Stamp continue to argue that the application should be denied for no other reason than the 1,000-acre significant site to the west should be mined first. In 1998 the then Board of Commissioners correctly denied mining as the surface and mineral rights were owned by two different parties. While the specific parties have changed there is still not common ownership of both the surface and mineral rights. Oregon Revised Statute 517.790(3) which governs the Oregon Department of Geology and Mineral Industries (DOGAMI) is still applicable and states, "The department may not issue an operating permit to an operator other than the owner or owners of the surface and mineral interests of the lands included within the surface mining area unless the operator: (a) Has written approval from the owner or owners of all surface and mineral interests of the lands included within the surface mining area; and (b) Maintains a legal interest in the lands that is sufficient to ensure that the operator has the authority to operate and reclaim the lands as provided in the operating permit and reclamation plan." Even though the 1,000-acre site has been deemed significant there is not an interest on the part of the holder of the surface rights to have that land mined.

The applicant continues to assert that there are no conflicts under Goal 5 with either adjacent sites designation of significance. The potential impacts of dust, noise, or other discharges are the responsibility of the respective operators and should be considered in the same manner for this application as they were for the Aylett request. Fugitive dust and noise are both regulated by the Oregon Department of Environmental Quality (DEQ). Stormwater and other water retention would also be regulated by DEQ with additional oversight by DOGAMI for mining impacts.

*The applicant would ask that the Planning Commission find that 1) there are no other, non-aggregate, Goal 5 Resources in the impact area, 2) that the Coleman/Girth Dog site is significant for the purposes of Goal 5, and 3) that the Goal 5 protected resource to the west is not a consideration of this approval. The applicant would also ask that the Planning Commission find that the property to the west of the proposed mining site is not available for mining purposes, not changing the 1998 decision rendered by the Planning Commission and Board of Commissioners.*

**Dust Suppression:** The applicant continues to assert that dust can and will be managed through mitigation that would consist of chemical abatement as well as water when appropriate (with water available through the Port of Morrow or onsite when water rights have been through a change in use review and approval). For the home to the northeast of the mining site a berm will be installed for protection from mining impacts that may include fugitive dust. The home to the northwest has asked that no berm be installed as they do not want to have a berm impact their current view to the south of their property.

The opponent is concerned that unmitigated dust could be attributed to their site. That assertion could also be made by the applicant as the wind can and does blow from the northeast to the south or

southeast, albeit not with the prevalence as the wind blows from the southwest to the northeast. The appropriate subsequent Condition of Approval applied to the Aylett approval is as follows:

1. Obtain all other federal and state permits necessary for development. Provide copies of these permit approvals to the County Planning Department.
  - a. Obtain all applicable permits for the mining operation from DOGAMI before these activities begin. Applicant will obtain approval from DOGAMI for the reclamation plan and submit a copy of the reclamation plan to the Planning Department.
  - b. Obtain all applicable permits for the mining operation from DEQ (air, noise, and water quality issues) before these activities begin.

The applicant would support the same condition be applied to this request which will work to assure both operations meet the same standards relative to air, noise, and water quality.

*The applicant requests that the Planning Commission find that the proposed mining operation can mine with limited water and that the Condition of Approval identified above be applied to the recommended decision.*

**Goal 12 is the Transportation Planning Rule:** Again Mr. Stamp asserts that the applicant has not addressed Goal 12, but he fails to identify what component of Goal 12 has not been addressed (Goal 12 is attached to this submittal). As stated in our December 15, 2022, submittal OAR Chapter 660 Division 12 is the Transportation Planning Rule and states in the Purpose statement that “This division implements Statewide Planning Goal 12 (Transportation) to provide and encourage a safe, convenient, and economic transportation system.” The Department of Land Conservation and Development website states on its Goal 12 page that the OARs that implement Goal 12 are Division 12 Transportation Planning and Division 34 Airport Planning. During the application process, Planning staff asked that a Traffic Impact Analysis be submitted to address both the Westland Road Interchange Area Management Plan and the Transportation Planning Rule. Also, as part of the original application Goal 12 was analyzed with the following:

Goal 12 requires local governments to provide and encourage a safe, convenient, and economic transportation system, implemented through the Transportation Planning Rule. In 2006 Umatilla County adopted an Interchange Area Management Plan (IAMP) for the Westland Interchange which does discuss the intersection of Stafford Hansell Road to Westland Road, identifying concerns with the spacing of Stafford Hansell Road from the interstate eastbound on- and off-ramps. This request is for a use that is allowed conditionally and improvements to the Stafford Hansell Road intersection, while needed, are not appropriately required of this application. Connection for the proposed aggregate site is proposed to be from Center Street at the current intersection of Noble Road and Colonel Jordan Road, which is nearly 1,000-feet more than the 1320-feet required by the IAMP.

There was also an assertion by Mr. Stamp that the Traffic Impact Analysis must be redone to address additional trips for water trucks. That is not necessary as the proposed mining operation will use minimal water until the water rights change in use process is completed to allow for industrial use water at the site. If water is hauled in it would not be more than one or two trucks per week to address limited dust mitigation as part of the rock crushing operation. No change in the Traffic Impact Analysis is warranted as four trips per week would not change the analysis.

*Based on this the applicant would ask that the Planning Commission find that the requirements of the Transportation Planning Rule, which implements Goal 12, have been satisfied through the analysis accomplished in the Traffic Impact Study and that the connection of the mining operation to the transportation network along Center Street, to be renamed Noble Road, with access to Colonel Jordan Road is sufficient for the mining operation. We would also ask that the Planning Commission find that the addition of up to four trips per week would not change the analysis of the submitted Traffic Impact Analysis and that it continues to be adequate for purposes of review and approval of the proposed mining operation.*

Thank you for the ability to provide further comment. The applicant will be available at the Public Hearing on January 26 should any questions arise. Your consideration and recommendation of approval of the requests outlined in the proposal is appreciated.

Cordially,

*Carla McLane*

Carla McLane, MBA  
Carla McLane Consulting, LLC

Attachments:

1. Craig Coleman Declaration
2. Noel Salinas Declaration
3. Jeff Hines Declaration re sample collection and delivery
4. Port of Morrow Compliance Letter – Oregon Drinking Water Services.
5. Jeff Hines Declaration re mining and water
6. Oregon’s Statewide Planning Goals & Guidelines – GOAL 12: TRANSPORTATION.

**BEFORE THE  
PLANNING COMMISSION  
OF UMATILLA COUNTY**

**RECEIVED**

DEC 29 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

In the Matter of the Application for )  
Girth Dog, LLC )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

**DECLARATION OF CRAIG COLEMAN**

I, the undersigned, declare under penalty of perjury under the laws of the State of Oregon that the following is true and correct to the best of my knowledge:

1. My name is Craig Coleman and I am the co-owner and manager of Girth Dog, LLC.
2. On October 25, 2022, I collected sand and gravel samples for delivery to Atlas Technical Consultants in Ontario Oregon.
3. The intent of the samples was to determine if the material meets the standard found at OAR 660-023-0180(3) related to quality, otherwise known as the ODOT standards.
4. These samples were collected on the property identified as Tax Lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36 which is under consideration for Goal 5 protections and approval of mining.
5. I collected three buckets of sand and gravel at four different sites, for a total of 12 buckets.
6. After collecting the samples, the 12 buckets were loaded on a trailer and stored at 29730 Stafford Hansel Road, Hermiston, Oregon, 97838 under my control until my employee Noel Salinas loaded the buckets into a Ford Transit Connect van for transport to Atlas on October 31, 2022.

SIGNED at Umatilla County, Oregon on this 29 day of December 2022

Signed: Craig F Coleman

Printed Name: Craig F Coleman

**BEFORE THE  
PLANNING COMMISSION  
OF UMATILLA COUNTY**

**RECEIVED**

DEC 29 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

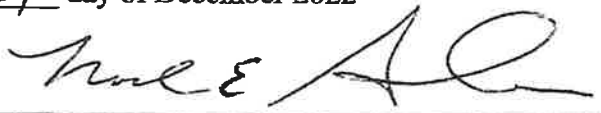
In the Matter of the Application for )  
Girth Dog, LLC )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

**DECLARATION OF NOEL SALINAS**

I, the undersigned, declare under penalty of perjury under the laws of the State of Oregon that the following is true and correct to the best of my knowledge:

1. My name is Noel Salinas and I am an employee of Craig f. Coleman, Inc.
2. On October 31, 2022, I picked up 12 buckets of gravel from Craig Coleman's shop located at 29730 Stafford Hansel Road in Hermiston, Oregon and transported the buckets to Atlas Technical Consultants in Ontario, Oregon.
3. The buckets were leaded in a Ford Transit Connect van and under my control at all times until they were delivered to Atlas on October 31, 2022.

SIGNED at Umatilla County, Oregon on this 29 day of December 2022

Signed: 

Printed Name: NOEL E. SALINAS



**BEFORE THE  
PLANNING COMMISSION  
OF UMATILLA COUNTY**

**RECEIVED**

DEC 29 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

In the Matter of the Application for )  
Girth Dog, LLC )  
\_\_\_\_\_ )

**DECLARATION OF JEFF HINES**

I, the undersigned, declare under penalty of perjury under the laws of the State of Oregon that the following is true and correct to the best of my knowledge:

1. My name is Jeff Hines and I am the owner and manager of HNS, Inc.
2. HNS, Inc is an Oregon Corporation that does work throughout Oregon since 1984 that provides rock crushing with four portable rock crushers and manages certified personnel and laboratories that accomplish testing as required by clients, including ODOT.
2. On March 1, 2022, I collected sand and gravel samples for delivery to Atlas Technical Consultants in Ontario, Oregon.
3. The intent of the samples was to determine if the material meets the standard found at OAR 660-023-0180(3) related to quality, otherwise known as the ODOT standards.
4. These samples were collected on the property identified as Tax Lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36 which is under consideration for Goal 5 protections and approval of mining.
5. I collected nine buckets of sand and gravel.

6. After collecting the samples, I loaded the buckets into my vehicle where it was stored securely under my control until I transported the buckets to Atlas on March 4, 2022.

SIGNED at Umatilla County, Oregon on this 29 day of December 2022

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Jeff Hines

**Oregon Health Authority  
Center for Health Protection  
Drinking Water Services**

**RECEIVED**

DEC 29 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

800 NE Oregon St. Suite 640  
Portland, OR 97232-2162  
(971)673-0405  
FAX: (971)673-0694  
TTY-Nonvoice: (971)673-0372

**Public Water System Compliance Information**

December 28, 2022

The PORT OF MORROW in Morrow County is classified as a "non-transient non-community" water supply and is identified on the Oregon Health Authority Drinking Water Services public water system inventory by **Public Water System (PWS) Identification Number OR4101328**. This classification is based on the system serving 30 residential connections and a population of 1,350 people.

Public water systems are subject to the requirements of Oregon Administrative Rules, Chapter 333 as administered by the Oregon Health Authority. The state rules are established as required by the federal Safe Drinking Water Act and Environmental Protection Agency.

For specific information regarding this water system, check Data Online at <https://yourwater.oregon.gov/inventory.php?pwsno=01328> or contact:

MIFF DEVIN  
PORT OF MORROW OR4101328  
541-481-7467

**BEFORE THE  
PLANNING COMMISSION  
OF UMATILLA COUNTY**

**RECEIVED**

DEC 29 2022

UMATILLA COUNTY  
PLANNING DEPARTMENT

In the Matter of the Application for )  
Girth Dog, LLC )  
\_\_\_\_\_)

**DECLARATION OF JEFF HINES**

I, the undersigned, declare under penalty of perjury under the laws of the State of Oregon that the following is true and correct to the best of my knowledge:

1. My name is Jeff Hines and I am the owner and manager of HNS, Inc.
2. I have 38 years of experience with aggregate operations in Eastern Oregon, including the mining of basalt and gravel sites.
2. I am working with Girth Dog, LLC on its application to mine the subject property identified as Tax Lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36, which is under consideration for Goal 5 protections and approval of mining.
3. Based on my experience in the industry, water is used in the mining and processing of rock for several purposes including: dust mitigation on roads and other traveled surfaces, the control of dust created during the crushing of rock, and to wash rock prior to processing to concrete.
3. Dust on roads and other traveled surfaces can be mitigated with water but chemical mitigation can also be used. Until sufficient water is available at the proposed site, chemical abatement will be used to manage this fugitive dust.
4. Dust mitigation during the process of crushing rock does require water but not a significant amount to achieve the desired results. The intent is to contain fugitive dust which can be accomplished with less water than it takes to water a lawn. In similar operations of this type, dust mitigation has been accomplished with approximately 80 gallons of water an hour. It should

be noted that removing too much dust through this process for rock to be converted to asphalt can be detrimental.

5. Rock washing is required when rock is to be converted to concrete. This does require significant amounts of water and will not be accomplished at the proposed site until water is available for this purpose upon completion of the necessary water right change in use.

6. Rock washing is NOT required when rock is to be converted to asphalt. The production of asphalt is a requested use at this site and does NOT require water for that production.

SIGNED at Umatilla County, Oregon on this 29 day of December 2022

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

# Oregon's Statewide Planning Goals & Guidelines

RECEIVED

## GOAL 12: TRANSPORTATION

DEC 29 2022

OAR 660-015-0000(12)

UMATILLA COUNTY  
PLANNING DEPARTMENT

**To provide and encourage a safe, convenient and economic transportation system.**

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

**Transportation** -- refers to the movement of people and goods.

**Transportation Facility** -- refers to any physical facility that moves or assists in the movement of people and goods excluding electricity, sewage and water.

**Transportation System** -- refers to one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

**Mass Transit** -- refers to any form of passenger transportation which

carries members of the public on a regular and continuing basis.

**Transportation Disadvantaged** -- refers to those individuals who have difficulty in obtaining transportation because of their age, income, physical or mental disability.

### GUIDELINES

#### A. PLANNING

1. All current area-wide transportation studies and plans should be revised in coordination with local and regional comprehensive plans and submitted to local and regional agencies for review and approval.

2. Transportation systems, to the fullest extent possible, should be planned to utilize existing facilities and rights-of-way within the state provided that such use is not inconsistent with the environmental, energy, land-use, economic or social policies of the state.

3. No major transportation facility should be planned or developed outside urban boundaries on Class 1 and II agricultural land, as defined by the U.S. Soil Conservation Service unless no feasible alternative exists.

4. Major transportation facilities should avoid dividing existing economic farm units and urban social units unless no feasible alternative exists.

5. Population densities and peak hour travel patterns of existing and planned developments should be considered in the choice of transportation modes for trips taken by persons. While high density developments with concentrated trip origins and destinations should be designed to be principally served by mass transit,

low-density developments with dispersed origins and destinations should be principally served by the auto.

6. Plans providing for a transportation system should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

## **B. IMPLEMENTATION**

1. The number and location of major transportation facilities should conform to applicable state or local land use plans and policies designed to direct urban expansion to areas identified as necessary and suitable for urban development. The planning and development of transportation facilities in rural areas should discourage urban growth while providing transportation service necessary to sustain rural and recreational uses in those areas so designated in the comprehensive plan.

2. Plans for new or for the improvement of major transportation facilities should identify the positive and negative impacts on: (1) local land use patterns, (2) environmental quality, (3) energy use and resources, (4) existing transportation systems and (5) fiscal resources in a manner sufficient to enable local governments to rationally consider the issues posed by the construction and operation of such facilities.

3. Lands adjacent to major mass transit stations, freeway interchanges, and other major air, land and water terminals should be managed and controlled so as to be consistent with and supportive of the land use and development patterns identified in the comprehensive plan of the jurisdiction within which the facilities are located.

4. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

**JANUARY 5, 2023**  
**FINAL LEGAL ARGUMENT**

**SUBMITTED BY:**  
**SARAH STAUFFER CURTISS,**  
**APPLICANT'S REPRESENTATIVE**



**RECEIVED**

JAN 05 2023

UMATILLA COUNTY  
PLANNING DEPARTMENTSarah Stauffer Curtiss  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
D. 503.294.9829  
sarah.curtiss@stoel.com

January 5, 2023

Umatilla County Planning Commission  
c/o Robert Waldher, Planning Director  
Umatilla County Department of Land Use Planning  
216 SE 4th Street, Room 104  
Pendleton, OR 97801**Re: #T-092-22, #P-135-22, #Z-322-22 - Applicant's Final Legal Argument**

Dear Commissioners:

This office represents Girth Dog, LLC, the applicant in the above-referenced matter ("Applicant"). Applicant is seeking approval from Umatilla County ("County") to add tax lots 900, 1100, 1200, 1300, and 1800 of Assessor's Map 4N 27 36 ("Property") to the County's Large Significant Sites list, providing Goal 5 protections and applying an Aggregate Resource Overlay Zone to the Property. In accordance with the County's order extending the deadline for new evidence to December 22, 2022, rebuttal evidence to December 29, 2022, and the Applicant's final legal argument to January 5, 2022, please find the Applicant's final legal argument below for submittal to the record.

**I. Background and Public Process****A. Application Process**

As summarized in the County's Staff Reports, Applicant submitted its land use application in September 2022 ("Application").<sup>1</sup> The materials in the Application and the subsequent submissions provide extensive information about the Applicant's proposal, including substantial evidence in support of the Statewide Planning Goal 5 post-acknowledgement plan amendment or PAPA.<sup>2</sup> The Applicant provided additional support and project "highlights" in supplemental submittals and at the public hearings on October 20, 2022 and December 15, 2022.

At the public hearing, Andrew Stamp, attorney for Wade Aylett Sr., Rock Solid Sand & Gravel, LLC, and Rock It LLC testified in opposition to the Application. Wade Aylett Sr. and Wade Aylett Jr. ("Ayletts") testified in opposition.

---

<sup>1</sup> Preliminary Findings and Conclusions for public hearing on October 20, 2022, 9 (2022) ("October Hearing Packet").

<sup>2</sup> See October Hearing Packet; Preliminary Findings and Conclusions for public hearing on December 15, 2022, 9 (2022) ("December Hearing Packet"); Letter from Carla McLane to the Umatilla County Planning Commission (Dec. 22, 2022) ("McLane December 22 Letter").

## **B. Property and Zoning**

The Property is located just south of the interchange for Interstates 84 and 82, southwest of the Westland Road interchange, and just over a quarter of a mile west of Colonel Jordan Road, and south of Stafford Hansell Road (“Property”). The Applicant’s current Property use is agricultural operations under circle pivot irrigation and drip irrigation. The proposed use is to establish a Large Significant Site for mining and processing of concrete and asphalt batch plants and stockpiling.

The Property is in an Exclusive Farm Use (EFU) zone. The purpose of the EFU zone is to “preserve and maintain agricultural lands for farm use, including range and grazing uses, consistent with existing and future needs for agricultural projects.”<sup>3</sup> In an EFU zone, mining operations, including the mining, crushing, and stockpiling of aggregate and other minerals and the process of aggregate into asphalt or cement, are allowable through the Goal 5 and Aggregate Resource Overlay processes.<sup>4</sup>

## **II. Response to Oral and Written Comments<sup>5</sup>**

### **A. Andrew Stamp and the Ayletts have raised numerous arguments that have nothing to do with the applicable standards.**

Throughout these proceedings, Andrew Stamp and the Ayletts have raised numerous arguments in support of their position that the County should deny the Application but most of the arguments raised have nothing to do with the applicable standards. For example, during the public hearing on the Application, Mr. Stamp argued that the County should deny the Application because the Applicant has not demonstrated consistency with a long list of state standards. However, as the Applicant’s representatives explained during the December 15 hearing, County approval of the Goal 5 PAPA and application of the Aggregate Resource Overlay Zone is only one of the many approvals the Applicant must secure before mining the Property. It is not the County’s responsibility to evaluate Applicant’s proposal for compliance with state standards. Rather, it is the responsibility of the state agencies with jurisdiction over the applicable standards to evaluate compliance with their standards. For example, prior to mining the Property, the Applicant must secure an Operating Permit from the Department of Geology and Mineral Industries (DOGAMI). The purpose of a DOGAMI operating permit is to ensure that the applicant conducts the mining operation in a way that protects land, air and water resources, avoids off-site impacts, and ensures reclamation. DOGAMI renews operating permits

---

<sup>3</sup> Umatilla Development Code § 152.055.

<sup>4</sup> Umatilla Development Code § 152.060.

<sup>5</sup> Recent testimony from Wade Aylett Senior has attacked the credibility and reputation of Jeff Hines. However, Jeff Hines’s reputation has nothing to do with this Application. The claims are baseless and unprofessional. They go beyond normal attacks of witness credibility, and the Planning Commissioner should not consider them as part of its evaluation of the Application.

annually so that it can evaluate compliance with applicable permit conditions.<sup>6</sup> The Applicant understands that it must secure a DOGAMI operating permit and comply with applicable standards, but there is no requirement that the Applicant demonstrate compliance with those standards as part of the County's process.

Likewise, during the public hearing Mr. Stamp and the Ayletts argued that the Application does not contain sufficient evidence of aggregate quantity and quality (i.e., that the Application is "half-baked") and asked the County to deny the Application on the grounds that the record contains insufficient information. However, like the argument related to state standards, the "half-baked" argument has no connection to a relevant County approval criteria or application requirements. Although Mr. Stamp and the Ayletts have argued over and over that the Application was done on the "cheap" and that there are evidentiary items that are missing from the Application, they have failed to point to any land use standards or application requirements to support their position.

It is easiest to understand the absence of any support for the position that the Application is "half-baked" by comparing what evidence was (and was not) submitted by the Ayletts in their Rock It 2 application. Unlike the Rock It 2 application, the Applicant hired an outside third-party consultant to determine aggregate quantity on the site.<sup>7</sup> Also, unlike the Rock It 2 application, the Applicant completed a traffic impact report. Accordingly, Mr. Stamp and the Ayletts have not provided any support for their claim that the Application is "half-baked" because, after weighing the record as a whole and considering what prior applicants submitted, the Applicant has clearly provided a more comprehensive application package than other previous aggregate applications.<sup>8</sup>

**B. The Results of Aggregate Testing on the Entire Property Show the Project Meets the Standards for Quality, Quantity, and Location.**

In various oral and written comments on the record, Mr. Stamp and the Ayletts raised concerns about the quality and quantity of aggregate on the Property. While the Applicant has worked diligently to address Mr. Stamp's and the Ayletts' concerns, there is overwhelming evidence in the record that the proposed aggregate site has sufficient quality and quantity to warrant Goal 5 protection.

---

<sup>6</sup> There are numerous other state requirements that apply to the development and operation of sand and gravel facilities, but none of those standards (including those cited by Mr. Stamp) apply to the **County's** review of the Application. As discussed during the public hearing, the Applicant will ensure compliance with DOGAMI, Oregon Department of Environmental Quality, Oregon Water Resources Department, and Oregon Occupational Safety and Health Safety requirements by securing all required permits and complying with all applicable standards.

<sup>7</sup> Compare Letter from Carla McLane to the Planning Commission (Dec. 22, 2022) ("Coleman Response Letter III") at 19; with December Hearing Packet, *supra* note 2, at 121 & 149.

<sup>8</sup> Although it is true that the County is not bound by its past interpretations, it would be fundamentally unfair for the County to arbitrarily require additional evidence and analysis in this instance simply because a competitor has argued that the Application is half-baked or done "on the cheap".

As OAR 660-023-0180 dictates, the County considers an aggregate resource site significant “if adequate information regarding the quality, quantity, and location of the resource demonstrates” that the site meets the criteria for designation. One criteria is that the sampling of aggregate material be “representative.”<sup>9</sup> The Land Use Board of Appeals (“LUBA”) has determined that sampling is representative when the testing is either attributable to the entire property or spread throughout the property.<sup>10</sup> LUBA does not require a specific number of test pits as long as the test pits dug are representative.<sup>11</sup> For example, in *Sanders v. Yamhill County*, a case cited by Mr. Stamp,<sup>12</sup> the applicant dug a number of test holes on an 120-acre property to show sufficient quantity and quantity for Goal 5 large significant site status.<sup>13</sup> The court found that the planning commission did not have substantial evidence of quantity and quality because the applicant had only dug one test hole in the property’s southern half.<sup>14</sup>

Unlike the *Sanders v. Yamhill County* case, the Applicant’s samples are representative. The Applicant dug six test pits throughout the entire site.<sup>15</sup> The 10-foot deep test pits are located throughout the property. Two well logs supplement the record. Well log 1584 is attached to a well in tax lot 1100 adjacent to test pit 5. Well log 1806 is on the border of tax lots 1200 and 1300 adjacent to test pit 4. This sampling is representative because the Applicant has spread the testing throughout the entire site, as shown in Coleman Response Letter III, Attachment 2.

**1. The Property’s aggregate samples meet Oregon Department of Transportation (ODOT) specifications for *quality* of aggregate.**

OAR requires that a “representative set of samples of aggregate material in the deposit on the site meets applicable ODOT specifications for base rock for air degradation, abrasion, and soundness.”<sup>16</sup> The table below compares the ODOT specifications with the Applicant’s samples.

<b>Specification</b>	<b>ODOT Compliance</b>	<b>Applicant’s Aggregate</b>
Abrasion	35% Maximum	14%
Coarse Degradation	30% Maximum	1.9%
Sediment Height	3.0 inches Maximum	.4 inches
Sulfate Soundness	12%	2.1% and 1.4%

<sup>9</sup> OAR 660-023-0180(3).

<sup>10</sup> *Sanders v. Yamhill County*, 34 Or. LUBA 69, 98-99 (1998).

<sup>11</sup> *Id.*

<sup>12</sup> See December Hearing Packet, *supra* note 2, at 72.

<sup>13</sup> *Sanders v. Yamhill County*, 34 Or. LUBA at 97-98 (1998).

<sup>14</sup> *Id.* at 99.

<sup>15</sup> See, December Hearing Packet, *supra* note 2, at 182.

<sup>16</sup> OAR 660-023-0180(3)(a).

Nothing in OAR 660-023-0180(3) nor the ODOT specifications require the Applicant to use a geologist to confirm quality of aggregate. Mr. Stamp claims that a geologist is “standard practice in these types of cases.”<sup>17</sup> However, his own client’s application is devoid any confirmation of quality from a geologist.<sup>18</sup> The Applicant has provided sufficient evidence of quality through testing completed by Atlas Technical Consultants, a nationwide professional engineering consulting and testing firm.<sup>19</sup>

Although there is no “chain of custody” requirement in the applicable land use standards, to address questions regarding how the applicant delivered samples to the lab, the Applicant and the employees involved in taking and delivering the samples have filed affidavits swearing that the Applicant took the samples from the site and did not tamper with them. In addition, the Applicant fully expects that ODOT or other clients will test the material to ensure it meets ODOT standards. The testing of aggregate on the site is not a one and done situation, because the Applicant will need to continue to meet the quality requirements to sell the aggregate. The Applicant fully expects Wade Aylett Jr.’s description of testing for current and potential clients to apply to its practices, including using a geologist to confirm that the aggregate meets ODOT standards.<sup>20</sup>

## **2. There is sufficient *quantity* of aggregate on the Property.**

OAR 660-023-0180(3) requires that the quantity of aggregate material be greater than 2,000,000 tons in the Willamette Valley or 500,000 tons outside the Willamette Valley.

The Applicant used a variety of sources to confirm the quantity of material on the site. First, Applicant hired IRZ Engineering and Consulting to estimate gravel present based on the test pits dug by the Applicant.<sup>21</sup> There is at least 7 feet of gravel in each test pit. The firm used these numbers to estimate that the gravel at Site A (only a portion of the Property) was at least 1.23 million tons, well over the Goal 5 requirements. Second, the Applicant submitted a soil map created by the U.S. Department of Agriculture that shows lines of aggregate that run through the property and indicate that the property contains gravel, gravelly substratum, fine and sandy loam in sufficient quantity.

---

<sup>17</sup> December Hearing Packet, *supra* note 2, at 71.

<sup>18</sup> *Id.* at 148-172.

<sup>19</sup> The Aylett’s Rock It 2 application used the same laboratory for quality testing as Girth Dog, LLC’s. While the Rock It 2 application says that it used Material Testing and Inspection, Inc., that is an Atlas Company that has officially changed its name to Atlas Technical Consultants.

<sup>20</sup> *See*, Letter to the Umatilla County Planning Commission from Wade Aylett Jr. (Dec. 22, 2022).

<sup>21</sup> The Aylett’s Rock It 2 application did not use a third party to determine quantity. It only used the U.S. Department of Agriculture soil map. Girth Dog, LLC has gone above and beyond what the County has previously required for a large significant site determination.

**C. The Applicant has identified and mitigated conflicts with its proposed use.**

OAR 660-023-0180(5) directs the local government to determine “existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts.”<sup>22</sup> The regulations define conflicting use as “a use or activity that is subject to land use regulations and that would interfere with or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site.”<sup>23</sup> After identifying conflicts, it is the local governments responsibility to “determine reasonable and practicable measures that would minimize the conflicts identified”.<sup>24</sup> The table below summarizes the impact analysis and findings as required by OAR 660-023-0180(5).

OAR 660-023-0180(5)(b)	Impact	Mitigation
(A): Conflicts due to noise or dust with regards to sensitive uses and activities (houses and schools)	There are two dwellings in the impact area.	1. Build a berm. <sup>25</sup> 2. Chemical dust suppression 3. Water dust suppression 4. The location of the crushing will always occur in tax lot 1800. 5. If needed, other methods commonly used by the industry
(B): Conflicts to local roads for access and egress to the mining site within one mile of the entrance to the mining site	The Applicant is developing Center Street exclusively for mining use traffic. Existing farm use traffic will use a different road and be unaffected by the mining activity.	No mitigation is necessary. However, the Applicant has voluntarily agreed to address this issue through: 1. Chemical dust suppression 2. Water dust suppression 3. If needed, other methods commonly used by the industry
(C): Airports	There are no airports in the area	No mitigation is necessary.

<sup>22</sup> OAR 660-023-0190(5)(b).

<sup>23</sup> OAR 660-023-0180(1)(b).

<sup>24</sup> OAR 660-023-0180(5)(c).

<sup>25</sup> One dwelling has requested that the Applicant not build a berm because it will impede on their views.

<p>(D): Other goal 5 resource sites</p>	<p>There are two existing goal 5 resources in the impact area.</p> <p>One is not currently in use, so there is no impact on the site.</p> <p>The second is the existing Rock It II facility.</p>	<p>No mitigation is necessary. However, the Applicant has voluntarily agreed to address this issue through:</p> <ol style="list-style-type: none"> <li>1. Chemical dust suppression</li> <li>2. Water dust suppression</li> <li>3. If needed, other methods commonly used by the industry</li> </ol>
<p>(E): Agricultural practices (using the analysis in ORS 215.296)</p>	<p>There is additional farmland to the west, south and east of the subject property. These farming operations are under circle pivot irrigation systems. The crops grown are potatoes, corn, wheat, and other row crops. These properties have existed near mining operations for several years without any impact.</p>	<p>No mitigation is necessary. However, the Applicant will voluntarily mitigate this conflict by:</p> <ol style="list-style-type: none"> <li>1. Chemical dust suppression</li> <li>2. Water dust suppression</li> <li>3. If needed, other methods commonly used by the industry</li> </ol>

**1. The Applicant has proposed several industry standard mitigation measures to address any potential conflicts.**

**Chemical Dust Abatement:** The Applicant will use chemical dust abatement processes to suppress dust on the Property. Chemical dust abatement does not require water.

**Water Dust Abatement:** The Applicant will use water to suppress dust on the Property. Mr. Stamp has *incorrectly* identified water as a key problem in this Application. As demonstrated throughout the submittals, if water is necessary, the Applicant has sufficient water to suppress dust through clean drinking water provided by the Port of Morrow and/or conversion of the Applicant’s own water rights. The water provided by the Port of Morrow will be able to meet all the Applicant’s needs without significant increases in traffic, because, prior to accomplishing the necessary water rights transfers, the Applicant does not plan to wash the rock onsite and plans to use other forms of dust abatement in addition to water. Finally, as stated during the December 15 public hearing, the Applicant is open to a condition of approval requiring the Applicant to secure water from a permitted source.

**Berms:** The Applicant will build berms to protect the neighboring dwelling to the northeast. The owner of the dwelling to the northwest has asked that a berm not be installed to protect their view to the south of their home.

**Location of Crushing:** As discussed during the December 15 public hearing, the Applicant proposes to locate its crushing equipment in tax lot 1800. The applicant will start the crushing equipment at the surface. Once the pit is opened up to the finish depth and there is enough room, the crushing equipment will be relocated down in the pit.<sup>26</sup> This location will keep all impacts away from the residences in the area. The County can place a condition on approval that will require the Applicant to keep the location of the crushing there throughout the entire operation.

**Additional measures as required to maintain compliance with DEQ:** In addition to the above measures and as required by law, the Applicant will receive the necessary approvals and conduct operations to maintain compliance with the applicable legal standards, like DEQ and DOGAMI. These measures are sufficient to mitigate the impacts of the mining operation as required by OAR 660-023-0180(5).

**2. The County can ensure compliance with applicable standards through imposition of conditions of approval.**

Although the Applicant believes it has met the applicable standards for approval as required above, as noted during the December 15 public hearing, the Applicant is open to conditions of approval that memorialize the commitments made in the Application and supplemental submittals. Specifically, the Applicant recommends that the Commission consider the following conditions:

- **Mining is only allowed as proposed in the Application, and as otherwise limited in these conditions.**
- **All crushing, washing, and screening of mineral and aggregate materials shall occur on tax lot 1800 in the area shown in the Coleman Response Letter III, attachment 2..**
- **Permittee shall minimize fugitive dust emissions from the Property by application of dust abatement chemicals, water, or similar best management practices recommended by DOGAMI and DEQ for control of dust at aggregate mining sites. Permittee shall also ensure equipment operating on internal haul roads does not exceed 20 mph to reduce potential dust impacts.**
- **If Permittee uses water for dust abatement, water must be secured from a permitted source.**

---

<sup>26</sup> December Hearing Packet, *supra* note 2, at 16.



3. The County *can impose conditions of approval* that require the Applicant to secure water from an approved source.

Opposing counsel improperly argues that the County cannot require water availability as a condition of approval. Mr. Stamp correctly asserts that “a local government cannot defer to a state agency the responsibility to ensure compliance with its own approval criteria.”<sup>27</sup> However, to support his improper deferral claim, Mr. Stamp must identify the authority that the County is deferring and the conditions that defer that authority.<sup>28</sup> He cannot show either.

Mr. Stamp fails to identify the language that requires the County to make a “feasibility” determination.<sup>29</sup> A feasibility determination is not a part of a Goal 5 analysis.<sup>30</sup> Even if there was a feasibility criterion, the Applicant has demonstrated that it is feasible to suppress dust on the Property through a variety of mechanisms.

Mr. Stamp fails to identify the conditions that defer the authority to a state agency.<sup>31</sup> The conditions proposed by the Applicant are based on a determination by the County that its proposed measures will mitigate the dust impact. The County would be properly imposing conditions to ensure that the Applicant complies with the criteria.<sup>32</sup>

---

<sup>27</sup> Letter submitted by Andrew Stamp 12/22/2022.

<sup>28</sup> *Harcourt v. Marion County*, 33 Or LUBA 400, 407 (1997) (finding that the county had not expressly addressed the availability of water *as required by its comprehensive plan*, which stated that approval be based on a determination that there is no significant evidence of inability to obtain a suitable domestic water supply.); *Vizina v. Douglas County*, 16 Or LUBA 936, 948 (1988) (finding that the petitioners did not identify the conditions that they believe represent impermissible deferrals of compliance with mandatory approval criteria).

<sup>29</sup> Letter submitted by Andrew Stamp 12/22/2022.

<sup>30</sup> OAR 660-023-0180(3) & (5).

<sup>31</sup> *See Vizina v. Douglas County*, 16 Or LUBA 936, 948 (1988) (finding that the petitioners did not identify the conditions that they believe represent impermissible deferrals of compliance with mandatory approval criteria).

<sup>32</sup> *Id.* at 942 (“Once a local government decides that a proposed use can meet applicable criteria, the imposition of conditions is an appropriate way to ensure that the criteria is met.”).

### **III. Conclusion**

With this argument and the evidence in the record, Girth Dog, LLC has met the applicable criteria for approval of all aspects of the requested Goal 5 post-acknowledgement plan amendment and application of the Aggregate Resource Overlay Zone. Accordingly, we respectfully request that you forward the Application with a recommendation to approve to the Board of Commissioners with the conditions proposed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Sarah Stauffer Curtiss', with a long horizontal flourish extending to the right.

Sarah Stauffer Curtiss

cc: Carla McLane, Carla McLane Consulting, LLC  
Craig Coleman, Girth Dog, LLC  
Emily Schimelpfenig, Stoel Rives