

Board of Commissioners Meeting
September 18, 2013

Present: Commissioner Mark D. Davidson
Commissioner Steve McClure
Commissioner William D. Rosholt

Chairman Davidson opened the meeting at 9:00 a.m. with all three Commissioners present.

Public Comments

There were no public comments.

Elected Official, Department Head and & Employee Comments

Doug Wright, Public Works Director, presented the Palmer Junction Federal Lands Match Agreement for consideration. This Agreement is for Palmer Junction Road milepost 00 to milepost 15.1 which is with the US Department of Transportation Federal Highway Administration to overlay and rehabilitate Palmer Junction Road. The purpose is to document the intent of Union County to meet the match requirement for the subject project as authorized under the Moving Ahead for Progress in the 21st Century Act (Map 21). This will restore serviceability and lower the maintenance cost of Palmer Junction Road. It will not commit parties to complete the project, but sets forth the respective responsibilities as the project proceeds. Any subsequent decisions to complete final design and to construct the project will depend on authorizing legislation, NEPA analysis, availability of appropriations, and matching funds at the time of obligation.

A time line is spelled out which calls for preliminary engineering (PE) in three phases, which is year by year. They do not require the County to pay in full. The first match for the obligation to get the PE started is \$32,000 which is due October 31, 2013. This project is slated to begin construction in 2016 and be completed in 2017. The agreement states that a combination of cash and in-kind work is required in the way of furnishing and installing striping and signing, and to furnish and install shoulder rock work to fulfill the match requirements for the construction phase. Commissioner McClure stated there was an original agreement for this project that was previously signed by all involved parties, but then Congress passed a new Transportation Bill, which nullified the original agreement. The County had to start over by submitting a modified application and participate in a competitive process with thinned funding. Commissioner McClure supports proceeding on the project. The final project will result in approximately a \$5.4 million project. Commissioner Davidson stated the upgrade of the road is needed, this project proceeding with the financial assistance offered through this match agreement is a benefit to the County, and it will keep this section of road in serviceability for another twenty years. **Commissioner McClure moved approval of the Palmer Junction Federal Lands Match Agreement. Commissioner Rosholt seconded. Motion carried unanimously.**

Doug thanked Commissioner McClure for his efforts in getting this project to where it is today. He added that the scope of the project will also include an overlay and some major culvert replacements which is something that is needed, as they have not been replaced for the last twenty years. This funding would take care of that.

Consent Agenda

Commissioner Rosholt moved approval of the Consent Agenda as presented. Commissioner McClure seconded. Motion carried unanimously.

Administrative Matters

The 4-H and Extension District/Oregon Department of Agriculture Office Space Lease was presented for consideration. The lease begins in March 2014, which is an extension of the existing lease for a two year period. **Commissioner McClure moved approval. Commissioner Rosholt seconded. Motion carried unanimously.**

The Youth Development Fund Agreement was presented for consideration. The funding would involve youth investment funds in the amount of \$20,569 and JCP Prevention funds of \$22,500. **Commissioner Rosholt moved approval of Contract #9906 The State of Oregon Department of Education Youth Development Division 2013-2014 County Intergovernmental Agreement. Commissioner McClure seconded. Motion carried unanimously.**

A Resolution supporting the Hastings Bill, HR1526, which addresses Restoring Healthy Forests for Healthy Communities Act was presented for consideration. Although a resolution was originally presented last week, Commissioner Davidson had asked that a new resolution to be presented to the Commission so he could be present and supportive of the effort. He stated this Bill is vitally important to our local timber industry, and it is encouraging to see the House of Representatives address significant changes in the way our federal forests are managed. It would allow for taking an approach that addresses the problem system wide rather than region-by-region or state-by-state, setting targets for production and revenue for each forest. This will limit the litigation which stalls the work in the forest. Commissioner McClure apologized for proceeding last week in Commissioner Davidson's absence, but due to time constraints, felt it important to issue the original Resolution, 2013-10, last week. Commissioner Rosholt stated that his position hadn't changed since last week and remains in support of the Resolution, but wondered what will happen to the previous resolution that was passed. Commissioner Davidson explained that there would be two resolutions on this matter. Commissioner McClure said much strategy is being worked. The National Education Association (NEA) is participating, and they are trying to make this a legislative key vote, meaning legislators will be graded by the NEA on how they vote. This will provide broader bi-partisan support, and hopefully increase the pressure for the Senate to take up and seriously consider this Bill. **Commissioner Rosholt moved approval of Resolution 2013-11, in the Matter of a Resolution supporting HR 1526, Restoring Healthy Forests for Healthy Communities Act. Commissioner McClure seconded. Motion carried unanimously.**

Meeting was adjourned until 10:00 a.m. for the Public Hearing for a Zoning Ordinance Amendment.

10:00 a.m. Zoning Ordinance Amendment – Public Hearing.

Hanley Jenkins II, Planning Director, gave a review of the steps that have been taken for this Zoning Ordinance Amendment. This included an application that was submitted on June 19, 2013 to remove aggregate mining as conditional use in all the Heavy Industrial Zones in Union County. Notice was mailed to the Department of Land Conservation and Development 45 days prior to the first evidentiary Hearing, which occurred on June 19.

On August 9, 2013, notice was submitted to the newspaper and adjacent land owners for the Planning Commission Hearing which was held on August 19. Staff prepared a report explaining the application and the applicable regulations. Written testimony was received at the Hearing from Ward King of Northwood Manufacturing, Mike Martin of US Bank and Daniel Stark of Union County Economic Development Corporation. The Planning Commission received oral testimony in support and also in opposition to the proposed change to remove aggregate mining as a conditional use opportunity in the I-2 Heavy Industrial Zones. After deliberation, the Planning Commission decided they did not agree with the removal, and felt this was an opportunity existing for current landowners, which was given as a recommendation to the Board of Commissioners. As a result, notice of the Hearing was given on September 9, 2013 to the newspaper, adjacent land owners and participating parties in the Planning Commission process.

Commissioner McClure stated that this is a legislative process, not quasi-judicial, affecting all Heavy Industrial Zones, the Commissioners do not have to declare any ex parte contact, it is appropriate to lobby Commissioners personally, and that Union County initiated this application. As this pertains to all the Heavy Industrial Zones, it will affect a large area of land and potentially a large number of land owners.

The Hearing was then opened for public testimony. Testimony was first taken from those in support of the proposed zone change.

Dan Stark, Executive Director of Union County Economic Development District, 102 Depot Street, La Grande, presented a written narrative, which he read to the Commissioners. A copy of his narrative is attached to these minutes.

Commissioner McClure asked Dan Stark to elaborate a bit more upon how the mining of a neighboring property would reduce the value of the adjoining properties. Dan stated that the potential businesses he has been in conversation with have certain conditions for noise, dust, glare and adjacent impacts. A mining operation with an open pit involving moving material and vibrations could create a problem for companies looking to locate to this site. This land will not be reclaimed to its current conditions as it would be cost prohibitive. Benton County, Oregon has a provision in their Industrial Zones that if mining is permitted, they have to demonstrate that they can bring the property back to a topographic and stable condition that it would support future development of industrial uses. At the time of the Hearing, Dan had not yet called Benton County to find out if there were any mining organizations willing to meet those conditions. It has been recognized there is a conflict, which is why this is a conditional use, and should be dealt with on a conditional use basis. However, the Union County Code doesn't direct the Planning Commission or the County Commissioners to address existing and future developments and investment in this industrial area. The Code criteria addresses the operations of the mining activity, so there is not a current codified way to address this.

Barney Kuensting, 308 S 12th Street, La Grande, Oregon, owns six acres of heavy industrial land next to the old Borden Chemical Plant. He stated the history of people mining is bad in every city in the nation, including ours. USA Concrete has a lease on the land right across the river from where they want to mine now and there are big holes in the ground. He feels the reclamation idea doesn't work. Walking through where they've tried to reclaim and fill the holes there is rebar sticking up out of the ground and concrete slabs. The ground can't be used for anything. He feels the same thing is going

on out at RD Mac. They went through ten years of trying to get a permit, and now there is a big dust cloud coming out of the big holes in the ground. He wondered if the RD Mac permit says he needs to reclaim that property for future uses, because if so, it's going to be impossible. There is a large pile of rock that has been taken out of the ground that is about ten acres and about three times as high as probably what the permit allows. The idea of reclaiming any holes in the ground is non-existent. He feels you can put stipulations in the permits, but follow-through and full reclamation won't happen. The long term effect decreases the value of the entire area for the long term, and even though it is conditional use now, he really doesn't think it's a good idea that it's in there as a conditional use. He stated that he is a business man, and doesn't like the idea of government telling him what he can't do with his property, but there are certain conditions that require putting up with rules in order to go along with the good of the whole situation, and this is probably one them.

Testimony was then accepted for those in opposition to the amendment.

Ward King, Chief Operations Officer for Northwood Manufacturing, spoke to the Commission in opposition of the amendment, primarily because they do a lot of business with Hines, Inc., and anything that hinders Hines, Inc. would actually hinder Northwood in their expansion plans. They are in the process of building a new plant, and getting permits in place. Jeff Hines is an integral part of getting that done, and he needs Jeff in business for Northwood to continue to move on. The second reason of his opposition is that if this was originally approved and is now changing, he has a little bit of apprehension that the business that he's in right now could also be changed somewhere down the road with intervention. He would like to make sure he's protected and that they can continue to build travel trailers under the present permissions they have to do so.

Don Nagey, 309 Lake, La Grande, Oregon, has industrial property just down the street from the proposed site on Booth Lane near the grain transfer site. He has a problem with all Heavy Industrial use property being included in this proposal, while the area referred to by Dan Stark is only 60 acres with a \$300,000 property investment, but the rest of the heavy industrial property owners have as much or more invested in their property. Don stated that the other property owners in the area are paying taxes on the properties, and that Dan Stark of LUBA is not. He said Union County is not paying taxes on their property because they own it and he feels they shouldn't even be in the land business. There is a big hole in the ground and that can be reclaimed. He said that he has brought in gravel and top soil to his property and feels it is in better condition now than it was before. He does not believe that Dan Stark's reference to industrial properties being unusable afterward, and stated that RD Mac has little ponds available to use. In Baker they have ponds available for public recreation use too. He stated there's a lot more aspects than trying to do this small 60 acre parcel that Dan's talking about. He stated that if aggregate work in this area is shut down, then Rogers Asphalt, Becker's, and Mace might as well be shut down too. New builds in the area would require concrete, asphalt, and aggregate. Road improvements in the County would be difficult without aggregate or asphalt available. He stated Dan Stark said the Industrial Park corridor is the only place there is aggregate. Don urged the Commissioners to think on this more and how it will affect the whole community, not just a small 60 acre property. He questioned how many people have been moved into the Baum Industrial Park area in the last 40 years, how many restrictions have been placed on the

community and on new people to stop them from coming in? These people are just trying to make a living. He feels the problem is that no tax is paid on that property by the County. Don asked the Commissioners if the Baum Industrial area is more than 60 acres, to which Commissioner Davidson stated that it is, and the only vacant parcels in the Baum Industrial Park include the 60 acres that Union County owns and 20 acres by Northwood. All other land in the area is developed to some extent. Don asked how long has it taken to develop the area and how many more years before a business actually comes into the valley? There will be dust and dirt and changes in real estate ownership. This is a small farming community, and the road shown on the map is gravel with no sidewalks and already has dust.

Jeff Hines, HNS owner, 63830 Industrial Lane, La Grande, Oregon. He agrees with Dan Stark on everything in this situation except for taking away his rights. He doesn't have a contract with Northwood right now, but the property between Ron and Sherry Nash and his property could possibly be used to mine, and that mining would possibly start on his HNS property. He stated there are no other sources available to extract alluvial rock, and if all Heavy Industrial Zones are taken away, all sources are gone. He feels a right is being taken away from him that possibly would keep him in business. Right now he is maintaining his business with crushed aggregates, but there are problems with using crushed aggregate, as this is fractured rock instead of round. It makes it difficult to get a fine finish on concrete. Currently, his business is buying aggregates from RD Mac, who is his competitor, to compensate for the crushed rock. He stated that his competitor is getting tougher to deal with, as the busier Jeff gets, the less RD Mac sells. By taking away the aggregate option, it could potentially shut down USA Concrete. Currently, HNS has a lease on Muilenburgs pit, and as of today, fifteen years ago there was more property taken than what is being farmed today – more has been put back than what has been taken out. This was aggregate producers prior to USA Concrete. There are some potential issues with the concrete and some of the other materials that gets placed in the holes to fill up, but that particular piece of property is next to farmland, so that is what it will be put back to. Jeff stated that he has helped Boise Cascade get rid of a part of their mill waste, and as long as it is kept above the water table it can be used. They are growing wheat and other crops on top of processed mill waste, making this portion of land productive and reclaimed. The Industrial Park is not just farm use, and there could be issues there. He is not mining at that location now. If there was an application for mining, the Commissioners have the right to put what needs to be placed there, whether economical or not. He is not asking for the land, but just wants the opportunity, which he currently has as this rule stands now. Jeff is currently processing rock, and rock processing creates more dust than mining, especially alluvial, because there is water in the bottom of the hole. Any activity that is going on that will create dust is not the mining, but the processing. The dust is currently being controlled as best as he can and he has not received any complaints.

Commissioner McClure clarified that Jeff is processing rock at the current site and not mining, to which Jeff stated was correct. Commissioner McClure asked if he was bringing in aggregate and processing and crushing it, which Jeff stated was also correct. Commissioner McClure asked if it is required for HNS to have a DEQ permit, and if they limit the dust production based on the permit? Jeff stated most of his DEQ permits are fuel related such as the diesel that he burns, however, DEQ does have regulations on the dust. His problem is that he needs alluvial rock, and it is a difficult source to obtain. He has basalt pits and permits available. He is currently taking basalt from Perry, which

is crushed into fractured rock to use for concrete rock. The alluvial rock has to pass a fineness modulus (fm) test. Crushed rock will not meet the test. Alluvial rock is rounded. Crushed rock is fractured and causes fm tests to fail. Most concrete pumps will not pump 100% fractured rock. Many contractors will not pour concrete that contains crushed rock, as it is difficult to get a smooth finish. Commissioner Rosholt asked Jeff how long he has owned this property. Jeff stated that the first parcel was purchased in the 1990s, and the second parcel in 2002, which is when USA Concrete was placed there. Commissioner Rosholt asked if Jeff owned mineral rights to the property. Union Pacific Railroad has a Realty Company with an agent by the name of Don Ballard that handles all the real estate. Don told Jeff he could buy the royalties from Union Pacific, which he said is common practice and involves him filling out a form. Jeff stated he doesn't know that this option is cost effective, but it is currently an available option. He said that by taking the rights of his land away from him that he once had may result in him needing to close the doors to his business. He also stated that he wished he could make a better deal with RD Mac, as they have a 300,000 ton pile of sand waste. The reason there is so much waste is they crush more aggregate for highways and asphalt than they produce in concrete. RD Mac sells between 7,000 to 10,000 yards of concrete yearly, which is close to the amount Jeff sells each year, but because of the volume of mining done by RD Mac, he has a lot of sand leftover as by product, which he won't sell.

Barney Kuensting stated that he agrees with Don Nagey. He has been a private businessman all his life, he knows that the rock guys need to have rock, and the Commissioners shouldn't be able to close up all aggregate for one 60 acre piece of property. The statement that says to cover all Heavy Industrial land forever is something to think about in the long run, and he agrees with that because he thinks that every issue is specific to that area. Hauling rock is an expense. If it's brought in from Union or hauled off the hill, costs are high. He thinks each situation should be handled separately.

Dan Stark stated his support is not intended to be an attack upon the existing businesses in the business park, but rather a subject of compatibility of uses. This is a traditional zoning activity to deal with competing businesses. He stated he is not in any way associated with LUBA, the DLCD, or LCDC. He also stated that apart from Jeff Hines and his particular property, the amendment doesn't deal with any aggregate uses anywhere else in the County except in the Heavy Industrial zoned properties, which includes 360 acres in the four different pieces that are zoned Heavy Industrial property. Currently, there is no mining that he could see taking place on these properties. He said he had problems understanding how the access to the gravel can be achieved in the Baum Industrial Park, given the Union Pacific Railroad (UPRR) exception wherein they say they can access the minerals, but they will not enter upon or using the surface of the lands, nor will they do it in such a manner as to damage the surface of said lands, or to interfere with the use thereof by the Grantee, its successors, or assigns. So while they reserve the mineral rights, they also condition their reservation to say they weren't going to disrupt the property. He thinks UPRR was more interested in the oil and gas potential or perhaps cooling of the geothermal. The exception in the document is very restrictive in terms of how they can go on and access that resource. That is a question to be discussed and debated at some point, and may even involve a lawyer to interpret. Even if UPRR wanted to access the minerals they would still have to abide by the exceptions and the conditions of that exception. So it raises some questions that even if they want to grant or deal with the royalties, they would still have to abide by those exceptions, and

how it's phrased and written in the Deed of Restrictions. He also wanted to clarify that several owners feel this is a taking of rights. He went through the 36 counties in Oregon, and was able to access 28 of their zoning ordinances. Of the 28, 15 counties do not allow mining in their industrial zones, nine do allow by conditional use permit, and four have multi-industrial zones, some that allow mining and some that don't allow mining. Some counties do recognize there is a conflict between trying to encourage industrial development and providing access to the aggregate material.

Jeff Hines asked if the Commissioners take away the mining now, and he is processing next to it, what keeps them from taking away the processing next? If a multi-million dollar company moves in that is building electronics, who is to say that won't cancel out the processing he is doing?

Don Nagey stated that if the Railroad owns all the mineral rights and then there are restrictions placed, then how is it that they went ahead and changed the land and put a rock grade all the way where they run their railroads on. This changes the land too. He feels this is like DEQ fining someone for spilling oil on the ground and the city and the states and everybody else puts asphalt all over the ground. This doesn't make sense to him.

As there was no further testimony, Commissioner Davidson closed the public testimony portion of the Hearing, will continue this Hearing at 11:30 a.m. ,and recess until 11:00 a.m.

11:00 a.m. Plan/Text Amendment

Commissioner Davidson stated they would take back up the Plan and Text Amendment for the Urban Growth Boundary expansion and exchange for the City of La Grande.

Hanley Jenkins, Planning Director, presented the staff report. On August 21, staff was asked to work on options to go forward from the discussions that had been held to that point. On September 16, Commissioner Rosholt and Hanley met with the City of La Grande representatives to discuss options. There were three options discussed at that time that staff sees are available to the Commissioners for the proposals presented. The first option would be to deny the application with findings, which would be a final local land use decision. That decision would be appealable to the Land Conservation and Development Commission rather than to LUBA, because it is a Urban Growth Boundary expansion greater than 50 acres in size, and that is prescribed by ORS 197.646.

The second option would be to approve the application and that would result in exchanging land for the Urban Growth Boundary and Heavy Industrial zoning as well as approval for the Parks Master Plan update that is included in the packet. In doing that, it would recognize that there is a prohibition for water impoundments in the County Airport Overlay Zone, which extends into this area and beyond. The prohibition would extend out 5,000 feet from the end or edge of a runway. If the Airport Master Plan is updated at some point in the future, and it included mitigating measures for water impoundments that could be incorporated into the County Airport Overlay Zone, then it could be that the prohibition is relaxed to some degree based on those mitigating measures are that are identified within the Airport Master Plan update. There may also need to be changes made to the City's Heavy Industrial Zone for that 200 acres that is adjacent to the airport.

He is not supposing there is a need for that, just saying that may be something that is a result of the Master Plan update. There already are a number of limitations based on the Airport Overlay Zone dealing with height and flare and there may be others raised as part of the update that could be directed to the City for them to make changes for that area.

The third option would be to postpone a decision on the Urban Growth Boundary Exchange area but adopt the Parks and Recreation Master Plan update. Those were the three options discussed with the City of La Grande representatives.

Hanley explained this is a legislative process not subject to quasi-judicial ex parte contact limitations. You can have conversations and can be lobbied. This is a much more open process than the typical quasi-judicial process that deals with an individual application. He also noted that the record was closed after the last Hearing, however, questions can still be asked as a part of this process.

Commissioner Rosholt asked if Doug Wright found out about what was going on with the Federal Aviation Administration (FAA) as far as the Master Plan. Commissioner McClure said the FAA is at end of their fiscal year, so that means they are making sure they have committed all funding between now and October 1, 2013. Doug Wright told Commissioner McClure he had a comment from the FAA representative they are working with who said they will take that up, but now is not the time. We need to wait until they complete their fiscal year, and then we may need to go to Seattle to discuss with their Planner about where this project is going to fit. He urged the importance of maintaining a relationship with FAA. He said he was surprised FAA said they would consider impoundments within the 5,000 foot area, as he was told they would consider mitigation on some of those issues within the area. Commissioner McClure recommends waiting until the end of the fiscal year, and bring this up again in October after he and Doug Wright have had a chance to visit with the appropriate manager in Seattle and see what FAA would like to do. Commissioner Rosholt asked if FAA would expedite this Master Plan, as it's already four years in the making. Commissioner McClure stated FAA likes to do this every 10 years, but it has now been 14 years, and FAA is the one that suggested that this be done simultaneously. He agrees with the City of La Grande this needs to be resolved as quickly as possible. This is an important asset for the County and the City and needs to be taken into consideration. He has been quite frustrated with how long this process has taken, and needs to be resolved as quickly as possible, but we also need to make sure mistakes aren't made that would be regretted later on. Commissioner Davidson agreed. Commissioner Rosholt stated his position has always been that we don't want to step on the toes of the FAA, and he also agreed with Commissioner McClure.

Commissioner McClure asked City Manager Robert Strobe how he felt about waiting until October to see where FAA is in this process. The Commissioner stated that he liked that the City is willing to make adjustments, and willing to continue to look at scope of Heavy Industrial lands. He doesn't think this completely solves the problem, and that we need to continue to be as competitive as we can with the communities we have to compete with. Robert Strobe agreed it is important to protect to airport. The current Overlay Zone has the most restrictive provisions we could have, and the update being considered to the Master Plan and the Overlay is less restrictive with the concurrence of the FAA. He stated he is a bit confused about not approving it with these more

restrictive conditions in place for the airport. Currently we can't do impoundments, and this is the most restrictive scenario for that property to protect the airport today. He envisions that the master planning process will result in more restrictive conditions, and even if that occurs, we would have to abide by those restrictions anyway. He doesn't see them linked as much as it appears the Commissioners do, and he doesn't think the FAA would have problem accepting the change. Commissioner McClure stated his experience with FAA is such that if they make a suggestion, it doesn't always mean they are just making a suggestion. He would like to have the discussion with their manager and explain what our situation is, how we intend to handle it, and make sure they are comfortable with going forward with an expedited approach. Robert felt this was reasonable. Commissioner McClure stated they provide a lot of funding for us and if we had to fully fund the maintenance of the airport on our own, we would face some financial troubles. Robert asked if the conversation would include having them looking at the zoning proposal to determine if it would be jeopardized in any way.

Commissioner Davidson asked to table this until the November 13 Commission meeting, allowing time to meet with FAA in October and come up with a proposed plan. The Public Hearing will be continued on November 13 at 10:00 a.m.

Meeting was adjourned until 11:30 a.m.

11:30 a.m. Zoning Ordinance Amendment

Commissioner Davidson reopened the Public Hearing on the Zoning Ordinance Amendment for the I-2 Heavy Industrial Ground. Commissioner Davidson asked the Commissioners if they were ready to consider or have discussion on the issue. Commissioner Rosholt asked about the Real Estate representative for Union Pacific Railroad, Don Ballard. Mark disagrees with Dan Stark's assertion, stating his understanding was that if Union Pacific was to exercise their right to access the minerals, they would have to do so without disturbing the surface. However, if they wanted to charge royalties to the property owner, that doesn't restrict the property owner of digging down below the surface to access those minerals. Hanley stated he had read the mineral right requirement, and his interpretation is that they only hold the mineral right not the surface right, so they would have to go to the surface right holder in order to get access to the surface. If access to the minerals is required, they would need to get a lease or an agreement with Union Pacific, and a second agreement with the surface right owner, or be the surface right owner. He felt the more important part of Jeff Hines testimony was that he can only acquire the mineral rights through a royalty, and that he doesn't actually buy the mineral rights. The mineral rights are owned by Union Pacific in the opportunity that Jeff has, which he feels is a more important point than simply being able to gain access to that rock. That doesn't mean the royalty is economically viable. Commissioner McClure stated his experience with most people in the rock business, is that they don't like to deal with the royalty agreements and cost involved.

Commissioner Davidson wanted to discuss the assertion Jeff Hines made about the very small alluvial fan, and a very limited number of places to access alluvial gravels. He doesn't agree as there are eight other zones in multiple drainages. He asked Hanley if there was an idea of the number of acres of land that would have the appropriate zoning and the surface structure that would have the alluvial fan. Hanley stated that in the Union County Comprehensive Land Use Plan, there is a section that addresses alluvial aggregate resources, and in the inventory portion of that section, it identifies six alluvial

fans entering into La Grande and in the Grande Ronde Valley. The largest is from the Grande Ronde river which extends from the mouth of the canyon out to Pierce Road. Over time, the gradient has changed, depositing the larger material towards mouth of canyon, and the smaller material out toward Pierce Road. The further you extend out on the alluvial fan, the dirtier the rock gets, with more sediments in the sand and gravel. There is a large amount of area in the valley that have alluvial fans and are designated in the Comprehensive Land Use Plan, and the zones are primarily located in the Agricultural Zone.

Commissioner Davidson stated that if the fan extends to Pierce, and the rock is dirtier the further it travels, then the property at the Baum Park would be of lower quality as compared to higher up in the fan, and the property on Booth Lane may not be even be in an alluvial fan. This amendment would only affect 360 acres, and there are 1,000's of acres located in an alluvial fan within the County that would be eligible, so this is not restricting the only source to an alluvial fan in the County. Hanley agreed, but stated that Jeff's statement is correct, that there are no other sites he has access to, other than the Muilenburg pit, which is in a Surface Mining Zone for alluvial aggregate at this time. There are no other active conditional use permits besides RD Mac and 40 to 80 acres on Godley Road, as some of this is a Surface Mining Zone. Hanley stated there is no question there is a land use process that is needed that must be gone through, which includes a willing seller and right now Jeff Hines doesn't have access to any other alluvial aggregate rock besides what he buys from RD Mac and what may be left at the Muilenburg pit.

Commissioner Rosholt stated the point is that Jeff Hines bought the property with the thought that he could someday mine there. Commissioner Davidson stated he was involved in the sales as a representative of UCEDC, and said that land was never represented to be able to be mined, and he knows that the title report and deed have the restriction of the mineral rights for Union Pacific. It was never represented to Jeff or his partner at the time, Jim Deal, that it was for an aggregate source. The representations that were made is that it was strictly for processing. He also stated he didn't believe there ended up being a restriction in the sales contract. The corporation viewed the deed restriction from Union Pacific as enough protection that it wasn't needed.

Commissioner Davidson stated that given a very limited supply of Heavy Industrial property outside of an Urban Growth property within the County, and obstacles involved to convert any resource lands to that industrial use, do we feel that this is the highest and best use to allow surface mining on those lands? The individual situations aside, and looked at from a general concept, his answer would be no, as this would not be the best use of this property, and this is a resource for the community that would be better used for ongoing employment opportunities.

Commissioner McClure stated more importantly is that the infrastructure has already been placed, which is a piece of the investment of the property. If it was raw, undeveloped land, it would probably be viewed differently.

Hanley stated that to give an indication of the complexity of identifying new heavy industrial land in the County, they were only able to identify the four areas we have now in a Heavy Industrial Zone, because they were built and committed to something other than commercial agricultural production. He is not aware of any other sites outside of

urban growth boundaries that meet the double-committed exception requirement, which means the only other way to identify Heavy Industrial land in the County is to go through a state-wide planning exception process. As Planning Director, he feels that process is more complicated to go through than what Mike Boquist of the City of La Grande has gone through for the Urban Growth Boundary expansion, but certainly they are equally difficult processes to go through, and Mike has spent at least three years going through the Urban Growth Boundary process. Replacing Heavy Industrial land that is vacant, available, and serviced is not easy and we have seen what it takes to get through this process to include it in our Urban Growth Boundary.

The Commissioners discussed the fact that there is a very limited resource that is difficult if not next to impossible to replace, improvements and an investment have been made, and there are other opportunities in the County. Would it be reasonable and prudent for this restriction to be placed? The question of takings was also discussed, and they weren't sure if Jeff has a takings, because right now, he does not have the opportunity to mine that property, as he doesn't hold the mineral rights. The current surface rights owners do not have a takings claim.

Commissioner Rosholt stated that a tentative decision could be made today. Commissioner Davidson said we've heard arguments from the opposition as well as support of this matter. **Commissioner Rosholt moved to make a tentative decision to approve the application and instruct staff to prepare findings in support for approval at the October 2, 2013 Commission meeting at 10:30 a.m. Commissioner McClure seconded. An Ordinance will be prepared, and it will be drawn up with an emergency clause. Motion carried unanimously.**

Meeting adjourned at 11:53 a.m.

Respectfully submitted,

Annette Powers
Department Specialist