

MINUTES FOR THE  
BOARD OF COMMISSIONERS  
STATE OF OREGON, COUNTY OF JACKSON  
LAND USE MEETING HELD ON  
NOVEMBER 15, 2023

The Board of Commissioners' meeting is for a public hearing to consider a Jackson County Planning Commission (JCPC) recommendation of denial for a Comprehensive Plan Map Amendment from Agricultural Land to Aggregate Resource Land and a Zoning Map Amendment from Exclusive Farm Use (EFU) to Aggregate Removal (AR), and to add a portion of the property to the County's Goal 5 Inventory of Significant Aggregate Resource Sites, on property described as Township 35 South, Range 1 West, Section 1, Tax Lot 100, Section 2, Tax Lot 100, and Section 3, Tax Lot 100, located at 16568 Highway 62, Eagle Point; Applicant Freel & Associates, File No. 439-23-00001-LRP. Those participating were:

Colleen Roberts, Chair  
Rick Dyer, Commissioner  
Dave Dotterrer, Commissioner  
Joel Benton, County Counsel  
Ted Zuk, Director, Development Services Department  
Charles Bennett, Planner III, Development Services Department  
Alycia Hartley, Recording Secretary

Commissioner Roberts called the land use meeting to order on Wednesday, November 15, 2023, at 1:30 p.m., in the Courthouse Auditorium and by audio/videoconference.

Commissioner Roberts read the recommendation for denial by title.

Mr. Benton read the admonishments. There were no conflicts of interest or ex parte contact. Mr. Benton read Section 213.07, Rules for the Conduct of Public Hearings, of the Codified Ordinances of Jackson County.

Mr. Bennett provided the Planning Staff report (*Submission No. 1*) and explained the Comprehensive Plan Map Amendment and Zoning Map Amendment, which is being recommended for denial. He noted the significance of the site and the impact area, as well as conflicts involved and whether they will be mitigated. He further explained why staff disagrees with the Applicant's assertion of the mitigation, and that the Jackson County Planning Commission voted to deny the application two to one. Commissioner Dyer asked about the map being interpreted in different ways and how to discern which one should be asserted. Mr. Benton explained that it is up to the Board to decide and resolve whether the subject property falls within the overlay in question. He noted that, based on Oregon caselaw, the text governs the map. Commissioner Roberts asked if the deer and elk overlay is the biggest conflict. Mr. Bennett answered that it is not the only conflict, but a large one. There was a discussion regarding the original approvals of certain parcels, the maximum number of acres that would be aggregately removed, and potential conditions of approval to address mitigation efforts.

Commissioner Roberts asked if there were any additional questions or comments for Planning Staff. There were none.

Commissioner Roberts opened the public hearing at 1:49 p.m.

Mr. Dan O'Connor and Mr. Garrett West, O'Connor Law Group, agents of record for Freel & Associates, presented information regarding the application for the Board (*Submission No. 2*). Mr. O'Connor explained the subject properties, the original approvals, and the zoning area changes that are being requested. He noted that they are not expanding the scope of the operation and the condition that only one pit could be mined at a time. He provided detailed information on the benefits of the operation for development in the northern portion of the valley, which is a source that could be relied on for several hundred years. Mr. O'Connor explained the current application timeline and Oregon Department of Fish and Wildlife's (ODFW) role in the process. He reviewed proposed conditions of approval; benefits of the location; the legal standards of site significance, which the site has been determined to be; and habitat issues. Mr. O'Connor stated that he believes the split decision of the JCPC was due to the legal standard of whether the map controls or the text; it was provided to the JCPC that the map controlled, which was incorrect. He believes that the property is not in the habitat overlay; however, there are conditions of approval in place to mitigate. Commissioner Dotterer asked if the proposed conditions contain those that are in place for the current approval. Mr. O'Connor verified that they are, and they are stipulating to the proposed wildlife additions whether the Board determines that they are in the habitat overlay or not. Mr. O'Connor answered additional questions of the Board.

Mr. Dave Freel, Jacksonville, Freel & Associates, stated that this site has sold over 1,300,000 tons of aggregate in the Upper Rogue area. He spoke about the benefits of this operation and how they are highly regulated. He noted that they have stipulated from the beginning of the process that there would be no changes to the conditions in place; such as, only mining one acre at a time in a maximum of 40-acre parcels at a time. He explained mitigation work that is done, the aggregates high quality in relation to the industry standard, and complaints that have been received and addressed.

Ms. Theresa Leonardo, Eagle Point, stated that their property is located on the same side as the gravel pit and, if approved, will soon be right next to the quarry. She explained how the gravel pit has affected wildlife and humans. She expressed frustration with how the quarry affects their lives and supports denial of the application.

Mr. Tyler Dungannon, Oregon Hunters Association, spoke about valuing wildlife and major issues in winter-range habitats, which are very important. He spoke about how long it takes to regenerate the land, and how substantial mitigation needs to be in place. He stated that he is not here to oppose or support the application, but to outline concerns. Mr. Dungannon answered questions of the Board.

Ms. Sara Hadden, Eagle Point, stated that she is a new homeowner that backs up to the expanded zoning proposal. She spoke about how unique the area is and how the community was uninformed by the Applicant. She did not receive an invitation to attend any of the meetings during the application process.

Ms. Cheryl King, Eagle Point, state that she agreed with prior neighbors' testimony. She stated that wildlife has diminished substantially, and spoke about a blast occurring on the day of the South Obenchain and Almeda Fires.

Mr. Harold Leonardo, Eagle Point, stated that, until this year, it had been seven years since any elk were on their property, and prior to the quarry there were 87.

Mr. Dan Ethridge, ODFW, Central Point, explained that they are responsible for dealing with land use in the County, and to mitigate losses for winter-range when development occurs. He stated that the issue with this application is being able to protect the existing deer and elk winter-range habitats. He does not believe that a full mitigation plan has been presented to ODFW. Mr. Ethridge recommended that the Board deny the application and resolve the discrepancies related to the maps. Commissioner Dyer said that the Board has seen

a lot of additional mitigation efforts being proposed, and that they have not heard ODFW's response to those, including the wildlife enhancements. There was discussion of, and Commissioner Dyer expressed concerns with, ODFW's suggestion of a conservation easement. Mr. Ethridge stated that every landowner has to go through habitat improvement projects, and the Applicant has not come to ODFW with sufficient plans to meet those needs. Commissioner Dotterer asked for clarification as to whether habitat loss can be restored, and Mr. Ethridge explained that, while mitigation efforts are necessary, a habitat cannot be fully restored to its original landscape. He recommends not expanding on the requested additional acreage until the current loss is successfully mitigated, and the Applicant can return for each request of an additional 40 acres. Mr. Benton provided clarification on the total acreage being requested. Mr. Ethridge feels that the mitigation conditions initially approved have not occurred, and now additional lands will need to be mitigated. He recommends that this application be denied and that the Applicant go back through the process. Commissioner Dyer expressed that there needs to be a balance in place, and new ideas have been heard by the Applicant which are in the spirit of compromise.

Mr. David DePiero, Eagle Point, explained that they are not long-term residents; however, since speaking with other neighbors, they are weary of this battle and have always opposed the quarry. He clarified that they moved from Jacksonville, not California as implied. He feels that there has been dangerously little conversation about the watershed, and asked who is responsible for watching that impact. He stated that his main concern is oversight and recommends denying the application.

Commissioner Dotterer asked what the process is for when each new mining parcel is opened. Mr. Zuk explained that they would have to come back for a new site review, which is the current process and would remain the same if the zoning was expanded. There was an additional brief discussion regarding the reviews that take place and by which agencies.

Ms. Janice DePiero, Eagle Point, explained that she has a recommendation of denial of the application due to the impassioned residents. While the quarry does not personally impact her daily life, it would impact property values. She spoke about doing extensive research on this issue and how the policies are confusing. She stated that her biggest concern is a health concern of dust.

Mr. O'Connor returned for rebuttal. He said that, with regard to the neighbor meetings, etc., they use the notice list provided by the County. He said that he appreciates Mr. Ethridge's testimony and tries to be understanding, but there has been frustration on both sides. He questioned why ODFW did not appear during the initial process, and how their only recommendation is a conservation easement. He spoke about different issues that creating one would cause. He spoke about the wildlife enhancements that the Applicant is stipulating too, which would be paid to a third-party for the work to be completed. Mr. O'Connor believes this is fair mitigation and noted that they consulted a wildlife biologist, who agreed.

Mr. Freel spoke about statements of the elk herds diminishing, and stated that, at one point, ODFW wanted to reduce the size of the herds. He also spoke to the statements of Mr. Ethridge regarding the previous mitigation not being completed, and explained how he attempted to work with ODFW to have this done.

No one else wished to speak.

Commissioner Roberts closed the public hearing at 4:16 p.m.

**Commissioner Dyer moved to admit Exhibits 1-29 into the record of the Board of Commissioners' Land Use Meeting for File No. 439-23-00001-LRP. Commissioner Dotterer seconded the motion. Those who voted aye: Commissioner Dyer, Commissioner Dotterer, and Commissioner Roberts. Motion passed.**

The Commissioners moved to deliberations.

After discussion, the Board agreed to deliberate and make a decision during today's meeting.

Mr. Benton explained that normally there is no dispute as to the standards and criteria, but there is today and, in the case of an appeal, the Board needs to resolve the issue of if the habitat overlay applies to these parcels. There was discussion among the Board regarding the differing interpretations of the maps, and determined that the parcels do fall within the overlay. As the Board determined that the overlay applies, Mr. Benton then explained the different options for the Board to either approve, conditionally approve, or deny the application. Commissioner Dyer stated his belief that the impacts have been adequately mitigated by the proposed conditions of the Applicant. Mr. Benton explained the different sets of conditions that could be set forth in the motion so that staff has proper direction in preparing the Ordinance, if the Board chooses to go that direction.

**Commissioner Dyer moved to approve an application for a Comprehensive Plan Map Amendment from Agricultural Land to Aggregate Resource Land and a Zoning Map Amendment from Exclusive Farm Use (EFU) to Aggregate Removal (AR), and to add a portion of the property to the County's Goal 5 Inventory of Significant Aggregate Resource Sites, for property located at 16568 Highway 62, Eagle Point, with conditions existing in the original approval and in addition to the proposed mitigation measures contained in the applicants testimony. The property is further described as Township 35 South, Range 1 West, Section 1, Tax Lot 100, Section 2, Tax Lot 100, and Section 3, Tax Lot 100. The application was submitted by Freel & Associates through their agent, O'Connor Law Group. File No. 439-23-00001-LRP. Commissioner Dotterrer seconded the motion.**

Staff confirmed the conditions of approval to be prepared in the Ordinance. Commissioner Roberts expressed appreciation for everyone's input that was received.

**Those who voted aye: Commissioner Dyer, Commissioner Dotterrer, and Commissioner Roberts. Motion passed.**

Commissioner Roberts instructed staff to prepare the Ordinance for approval and set the dates for the first reading on December 6, 2023, at 9:30 a.m., in the Courthouse Auditorium and by audio/videoconference, and the second reading and public hearing for December 20, 2023, at 1:30 p.m., in the Courthouse Auditorium and by audio/videoconference.

There being no further business, Commissioner Roberts adjourned the Land Use Meeting at 4:33 p.m.

JACKSON COUNTY BOARD OF COMMISSIONERS

/s/ Colleen Roberts  
Colleen Roberts, Chair

/s/ Rick Dyer  
Rick Dyer, Commissioner

/s/ Dave Dotterrer  
Dave Dotterrer, Commissioner

/s/ Alycia Hartley  
Alycia Hartley, Recorder

Approved on: 12/06/2023