

WALLOWA COUNTY PLANNING COMMISSION
7:00 pm April 30, 2024
Wallowa County Courthouse
Agenda

1. **Planning Commission Meeting Minutes** from March 26, 2024
2. **Planning Commission Meeting Minutes** from April 10, 2024
3. ~~**FINDINGS APP#23-01 OF ZP#23-13 DOLLAR GENERAL**~~ – Removed from the agenda because the Planning Commission approved the findings at a special meeting held on April 10, 2024. Those with standing were mailed copies of the signed findings which included information on the appeal process. A copy of the findings is included in this packet for reference only.
4. ~~**FINDINGS APP#23-02 OF LLA#23-01 BURNS-DUBY/DOLLAR GENERAL**~~ – Removed from the agenda because the Planning Commission approved the findings at a special meeting held on April 10, 2024. Those with standing were mailed copies of the signed findings which included information on the appeal process. A copy of the findings is included in this packet for reference only.
5. **ZP#24-07 PROVIDENCE ESTATES** – Submitted by Hostetter Law Group on behalf of Providence Estates Limited Partnership for 62253 Knapper Road, Joseph, Oregon 97846. They propose up to six agritourism and/or commercial events within a year for a two-year period (no more than 12 events total). The property description is Township 03 South, Range 45 East, Section 02, tax lot 501, and is zoned Exclusive Farm Use (EFU).
6. **ZP#24-16 WALLOWA COUNTY** – Submitted by Katy Nesbitt on behalf of Wallowa County for 85300 Turner Lane, Joseph, Oregon 97846. The application proposes a vault toilet in an existing gravel parking area. This is an expansion of a pre-existing use (recreation) in this zone. The property description is Township 03 South, Range 45 East, Section 00, tax lot 1500, and is zoned Timber/Grazing (T/G).
7. **Other Business:**

The next Planning Commission meeting is scheduled for May 28, 2024.

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**Planning Commission Minutes
March 26, 2024**

This meeting of the Wallowa County Planning Commission convened at 7:00 p.m. on March 26, 2024. This meeting was held via Zoom, a video conferencing application, and in the Thornton Conference Room of the Courthouse. The following people were present:

COMMISSIONERS (CM):

Jim Nave
Kim Tippet
Rob DeSpain
Todd Turner
Ramona Phillips
Chris Bullat
Gay Fregulia (via Zoom)

STAFF:

Franz Goebel, Planning Director (PD)
Jean Jancaitis, Department Specialist

OTHERS PRESENT:

Bill Bradshaw
Mike Mercer
Eleanor Hawkins
John Hillock
June Jones
Cynthia Erickson
John Amond
Mary LaPointe
Debbie Neal
Amanda McDaniel
Alicia Zinni
Peter Ferre
Beckijo S-Wall
Sweyn Wall
Nels Gabbert
Monica Eng
Michael Eng
Joanna Radinovich
Andrew Radinovich
Erika Polmar
Jeanette Radinovich

PRESENT via ZOOM:

Shelly Wilks
Adam Smith
Carolyn Lochert
Angie Lunde
Teagan Miller
Paul Doherty
Kristy Athens
Roger Averbeck
Connie Guentert
Mike Mcnally
Alan Miller
Teresa Smergut
Daniel Kerns
Lisa Robertson
Doug Sundman
Joe Pierri
Emily Smergut
Dave Alba

[Please note that draft and adopted findings, staff reports, written testimony, and the official Planning Commission meeting audio records are available for review and/or purchase in the Planning Department.]

Planning Commission Minutes March 26, 2024

Public Hearing Procedure

Good evening, everyone, let me call to order the March 26, 2024 hearing of the Wallowa County Planning Commission. My name is Jim Nave, and I am the Chair of the Planning Commission. The members of the Planning Commission are appointed by the Wallowa County Board of Commissioners, and we all serve as volunteers.

Now I would like to introduce the current members of the Commission who are present tonight, and the staff who support the Planning Commission and have prepared the materials we will consider. [Introductions of members and staff]

The first order of business is approving the February 27 minutes.

1. February 27, 2024 Minutes

CM Turner moves to approve the minutes of the February 27, 2024 Planning Commission meeting.

CM DeSpain seconds the motion.

[**CM Nave – Yes;**
CM DeSpain – Yes;
CM Tippett – Yes;
CM Turner – Yes;
CM Phillips – Yes;
CM Bullat – Yes;
CM Fregulia – Yes;

Motion Passes 7-0-0]

The minutes are approved.

Our Quasi-judicial function tonight is to conduct a public hearing on the following two applications and their two appeals.

1. Zone Permit for a Dollar General Store – ZP#23-13 / APP#23-01
2. Lot Line Adjustment – file number: LLA#23-01 / APP#23-02

These appeals are being heard together. In performing this function we have reviewed the application, all public comments on the application, the Director's decisions, and the appeals filed by a group of neighbors to the site. This hearing is a continuance of the public hearing held

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on January 30, 2024. At that hearing, there was a request from a member of the public to keep the record open, which was honored, and the record remained open in three segments, with a final applicant rebuttal ending March 5, 2024. The record is now closed and there will be no more public testimony taken.

Tonight, we will determine whether the applications meet or do not meet the applicable approval criteria. It is not our job to be more restrictive or lenient than these approval standards allow, but rather to interpret and apply the approval standards as written. The approval standards, applicable approval criteria and Director's decision were presented in the staff report on January 30th.

In performing our obligations in these matters, we are required to render an impartial decision. This means we cannot have a personal financial stake or bias that would prevent us from making an impartial decision. Before we begin, I will call for the disclosure of bias, ex parte contacts, and conflict of interest from each commissioner. Anyone in the audience will then have the opportunity to question any of us about those disclosures.

First approval criteria: the law requires the County to list the applicable City, County and State zoning criteria. A County Planner did so at the January 30th hearing. The law requires us to identify those standards which an applicant must satisfy in order for the County to approve an application. Each of the standards must be supported by substantial evidence in the record. We can only apply standards that are written into City, County or State law.

Once we issue our written decision, it is final unless appealed to the Board of County Commissioners. To appeal our decision, you must have participated either orally or in writing before the record closed. You must have raised before us any issue you might have wished to preserve for a subsequent appeal to the Board Commissioners or LUBA, the Land Use Board of Appeals. You must have also presented to us any evidence you might have wished the Board Commissioners or LUBA to see. Because the record is now closed, you can no longer raise new issues or present evidence.

Let me describe the order of events for tonight's hearing:

- The Planning Commission will deliberate on the applications, testimony and evidence presented at the January hearing and prior to the close of the record.
- We will not be taking any additional testimony or accepting any new comments at tonight's hearing.
- Our decision, however, is not final until it is detailed in writing and officially issued in an approved Findings document.

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We will now consider the Appeals of the Planning Director's Decision to approve a Lot Line Adjustment and a Zone Permit for a Dollar General Store.

A quorum of the Planning Commission is present, and I will now ask all Commissioners to disclose any ex-parte contacts, conflicts of interest and bias in this matter. Would anyone in the audience like to question any Commissioner on any disclosure, ex parte contact, bias or conflict of interest or otherwise challenge the participation of any member of the Commission?

[nothing voiced]

CM Nave opens the meeting and proceeds to the next agenda item.

2. APP#23-01 OF ZP#23-13 DOLLAR GENERAL and APP#23-02 OF LLA#23-01 BURNS-DUBY/DOLLAR GENERAL

PD Goebel summarizes the appeals process to date and the next steps.

Regarding the merits of the Zone Permit and Lot Line Adjustment Applications:

1. Were the appropriate processes used to review the permits?

CM Bullat moves to affirm that the appropriate processes were used to review the permits.

CM Phillips seconds the motion.

[CM Nave – Yes;

CM DeSpain – Yes;

CM Tippett – Yes;

CM Turner – Yes;

CM Phillips – Yes;

CM Bullat – Yes;

CM Fregulia – Yes;

Motion Passes 7-0-0]

The Planning Commission affirms that the appropriate processes were used to review ZP#23-13 and LLA#23-01.

2. Were the appropriate criteria used to make the decisions?

CM Bullat moves to affirm that the appropriate criteria were used to review the permits.

CM Phillips seconds the motion.

[CM Nave – Yes;

CM DeSpain – Yes;

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**CM Tippett – Yes;
CM Turner – Yes;
CM Phillips – Yes;
CM Bullat – Yes;
CM Fregulia – Yes;**

Motion Passes 7-0-0]

The Planning Commission affirms that the appropriate criteria were used to review ZP#23-13 and LLA#23-01.

3. Do the applications meet the applicable criteria, approving the applications?
CM Bullat moves to affirm that the applications meet the applicable criteria.
CM Phillips seconds the motion.

**[CM Nave – Yes;
CM DeSpain – Yes;
CM Tippett – Yes;
CM Turner – Yes;
CM Phillips – Yes;
CM Bullat – Yes;
CM Fregulia – Yes;**

Motion Passes 7-0-0]

The Planning Commission affirms that ZP#23-13 and LLA#23-01 meet the applicable criteria.

Regarding the appeals:

1. Do the appellants have standing to appeal?
CM Turner moves to affirm that the appellants have standing to appeal.
CM DeSpain seconds the motion.

**[CM Nave – Yes;
CM DeSpain – Yes;
CM Tippett – No;
CM Turner – Yes;
CM Phillips – Yes;
CM Bullat – No;
CM Fregulia – Yes;**

Motion Passes 5-2-0]

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The Planning Commission affirms that the appellants have standing to appeal.

2. Vote to Deny the appeals (Upholding the Planning Director's Decision), or Approve the appeals (Overturning the PD's Decision).

CM Tippett moves to deny the appeals and uphold the Planning Director's decisions.

CM Phillips seconds the motion.

[CM Nave – Yes;

CM DeSpain – Yes;

CM Tippett – Yes;

CM Turner – Yes;

CM Phillips – Yes;

CM Bullat – Yes;

CM Fregulia – Yes;

Motion Passes 7-0-0]

The Planning Commission denies the appeals and upholds the Planning Director's decisions.

PD Goebel explains that The Planning Commission decision will be reflected in the findings which will be approved and signed and the next regular PC hearing on April 30, 2024. Those findings will detail the deadlines and process for appealing the PC's decision.

CM Nave closes the hearing to move on to other business.

3. OTHER BUSINESS

PD Goebel notes that, at the March 26 hearing, CM Nave requested the Planning Commission begin reviewing all Wallowa County Land Development Ordinance Articles, starting with the Commercial and Industrial Zones. CM Nave recognized the recent challenges have been concerning outdated City of Wallowa Ordinances, but he noted that county code might need updating as well.

PD Goebel provides a copy of Article 23, Rural Commercial (R/C) (Exhibit A) and requests the Planning Commissioners review the article to discuss it at the next meeting.

CM Nave emphasizes that the Article 23 criteria did not apply to the Dollar General decisions.

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CM Turner notes that he would still like the Planning Department to investigate how to implement the posting of a sign on each property where a planning review is taking place.

PD Goebel adds that he did contact the county's legal counsel and the Board of Commissioners about updating the Urban Growth Boundary Agreements that the county has with each city.

CM Bullat moves to adjourn the meeting.

CM Tippett seconds the motion.

[**CM Nave – Yes;**

CM DeSpain – Yes;

CM Tippett – Yes;

CM Turner – Yes;

CM Phillips – Yes;

CM Bullat – Yes;

CM Fregulia – Yes;

Motion Passes 7-0-0]

Meeting adjourns at 7:38 PM

Jean Jancaitis

Date

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Exhibit A
Article 23
RURAL COMMERCIAL (R/C)

SECTION 23.010, PURPOSE: The primary purpose of the Rural Commercial Zone is to provide a district for a limited number and type of commercial enterprises which depend on proximity to major streets or arterials for trade or transportation, require lot sizes larger than are typically available within Urban Growth Boundaries, and are compatible with surrounding areas.

SECTION 23.015, PERMITTED USES: In the Rural Commercial Zone the following uses and their accessory uses are permitted in accordance with Article 3, Ministerial Review:

01. Farm uses and associated accessory buildings.
02. Single-family dwellings.

Section 23.020 BUILDING AND ACTIVITIES PERMITTED CONDITIONALLY: In an Rural Commercial Zone the following uses may be established, subject to the requirements of Article 9, Conditional Use Permit:

01. Public/private outdoor recreation facilities.
02. A casting foundry with associated retail sales.
03. Home-Based occupations as described in Article 35, Home-Based Occupation.
04. Commercial activities in conjunction with farm use.
05. Office spaces.
06. Structures and facilities for non-profit agencies and governmental agencies rendering specialized services not involving retail trade with the general public nor maintaining a stock of goods for sale.
07. Assembly/meeting halls owned by non-profit organizations, churches, and other buildings of worship.
08. Private and public stables.
09. Horticultural nurseries and commercial greenhouses.
10. Limited expansion or remodeling of those structures in non-conforming use existing as of August 1, 1985.

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11. *Mini-storage facilities*
12. *Other commercial activities with impacts similar to activities conditionally permitted above.*

SECTION 23.025, PROPERTY DEVELOPMENT STANDARDS:

01. **LOT SIZE:** In the Rural Commercial Zone the minimum lot size shall be determined by the Department of Environmental Quality evaluation of adequacy to the lot to support a subsurface sewage system and independent water source. Department of Environmental Quality evaluation will be required for every proposed partition. In no situation will the lot be less than five acres in size.
02. **SET BACK:** The setbacks in the Rural Commercial Zone shall be as follows:
FRONT YARD - Not less than 25 feet.
SIDE YARD - Not less than 20 feet.
REAR YARD - Not less than 20 feet.
03. The following standards shall govern the application of uses in the Rural Commercial Zone:
 - A. If the parcel abuts a state or county road, proof of access permission from the responsible agency must be secured.
 - B. In the Rural Commercial Zone, off-street parking shall be provided in accordance with Article 33, Parking.
 - C. Visual barriers will be employed to shield new construction.

04. FIRE AND FLOOD SAFETY DESIGN STANDARDS:

In addition to the design standards in this base zone, land within special flood hazard areas, communities at risk (CARs) of wildland fires, and land within wildland urban interface (WUI) Zones, shall be subject to the provisions of Article 25, Natural Hazards.

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**Planning Commission Minutes
April 10, 2024**

This meeting of the Wallowa County Planning Commission convened at 2:36 p.m. on April 10, 2024. This meeting was held via Zoom, a video conferencing application, and in the Thornton Conference Room of the Courthouse. The following people were present:

COMMISSIONERS (CM):

Jim Nave
Kim Tippett
Todd Turner
Ramona Phillips
Gay Fregulia (via Zoom)

STAFF:

Franz Goebel, Planning Director (PD)
Jean Jancaitis, Department Specialist

OTHERS PRESENT:

None

PRESENT via ZOOM:

Adam Smith
Daniel Kerns
Kirk Farrelly

[Please note that draft and adopted findings, staff reports, written testimony, and the official Planning Commission meeting audio records are available for review and/or purchase in the Planning Department.]

Public Hearing Procedure

Good afternoon, everyone, let me call to order this April 10, 2024 session of the Wallowa County Planning Commission. My name is Jim Nave, and I am the Chair of the Planning Commission. Our purpose here today is to consider the Findings Reports for APP#23-01 and APP#23-02.

1. APP#23-01 OF ZP#23-13 DOLLAR GENERAL

PD Goebel presents the Findings Report.

CM Tippett moves to approve the Findings Report for APP#23-01.

CM Phillips seconds the motion.

**[CM Nave – Yes;
CM Tippett – Yes;
CM Turner – Yes;
CM Phillips – Yes;
CM Fregulia – Yes;**

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Motion Passes 5-0-0]

The Planning Commission approves the Findings Report for APP#23-01.

2. APP#23-02 OF LLA#23-01 BURNS-DUBY/DOLLAR GENERAL

PD Goebel presents the Findings Report.

CM Phillips moves to approve the Findings Report for APP#23-02.

CM Tippett seconds the motion.

[**CM Nave – Yes;**
CM Tippett – Yes;
CM Turner – Yes;
CM Phillips – Yes;
CM Fregulia – Yes;

Motion Passes 5-0-0]

The Planning Commission approves the Findings Report for APP#23-02.

CM Tippett moves to adjourn the meeting.

CM Phillips seconds the motion.

[**CM Nave – Yes;**
CM Tippett – Yes;
CM Turner – Yes;
CM Phillips – Yes;
CM Fregulia – Yes;

Motion Passes 5-0-0]

Meeting adjourns at 2:47 PM

Jean Jancaitis

Date



WALLOWA COUNTY
Planning Department
101 S River Street #105
Enterprise, Oregon 97828
541-426-4543 ext. 1170

FINDINGS
APP#23-01
Cederstam et al.

**IN THE MATTER OF THE APPEAL OF THE
APPROVAL OF ZONE PERMIT APPLICATION
(ZP#23-13) OF A 10,640 SQUARE FOOT
BUILDING AND PARKING AREA FOR A
RETAIL STORE**

)
) **FINDINGS OF FACT, CONCLUSIONS, AND**
) **DECISION OF THE WALLOWA COUNTY**
) **PLANNING COMMISSION**
)
)

RE: Cederstam et al. Appeal, App#23-01

APP#23-01 concerns the appeal of a decision issued by the Wallowa County Planning Director approving ZP#23-13. The initial application was deemed to be complete on March 20, 2023, with notice then provided to City of Wallowa (“City”) on March 21, 2023 pursuant to the Wallowa Urban Growth Boundary Agreement (“WUGBA”). After receiving no comments from the City, ZP#23-13 was approved on March 30, 2023 following Wallowa County’s Ministerial Review process as set forth in Article 3 of the Wallowa County Land Development Ordinance (“WCLD”).

On November 12, 2023, eight appellants submitted a letter appealing ZP#23-13. The Wallowa County Planning Commission (“Commission”) conducted a public hearing on January 30, 2024, followed by an open record period concluding on March 5, 2024. During the open record period, landowners within 100 ft of the subject property were provided notice of the proceedings. On March 26, 2024, the Commission conducted deliberations and voted via oral motion to deny APP#23-01, thereby affirming the Planning Director’s approval of ZP#23-13. That decision was memorialized in writing, and approved by the Commission on April 10, 2024.

The Commission, having reviewed the materials introduced in the above-referenced hearing and during the subsequent open-record period, having heard and considered all testimony, and being fully advised, makes the following findings of fact and decision.

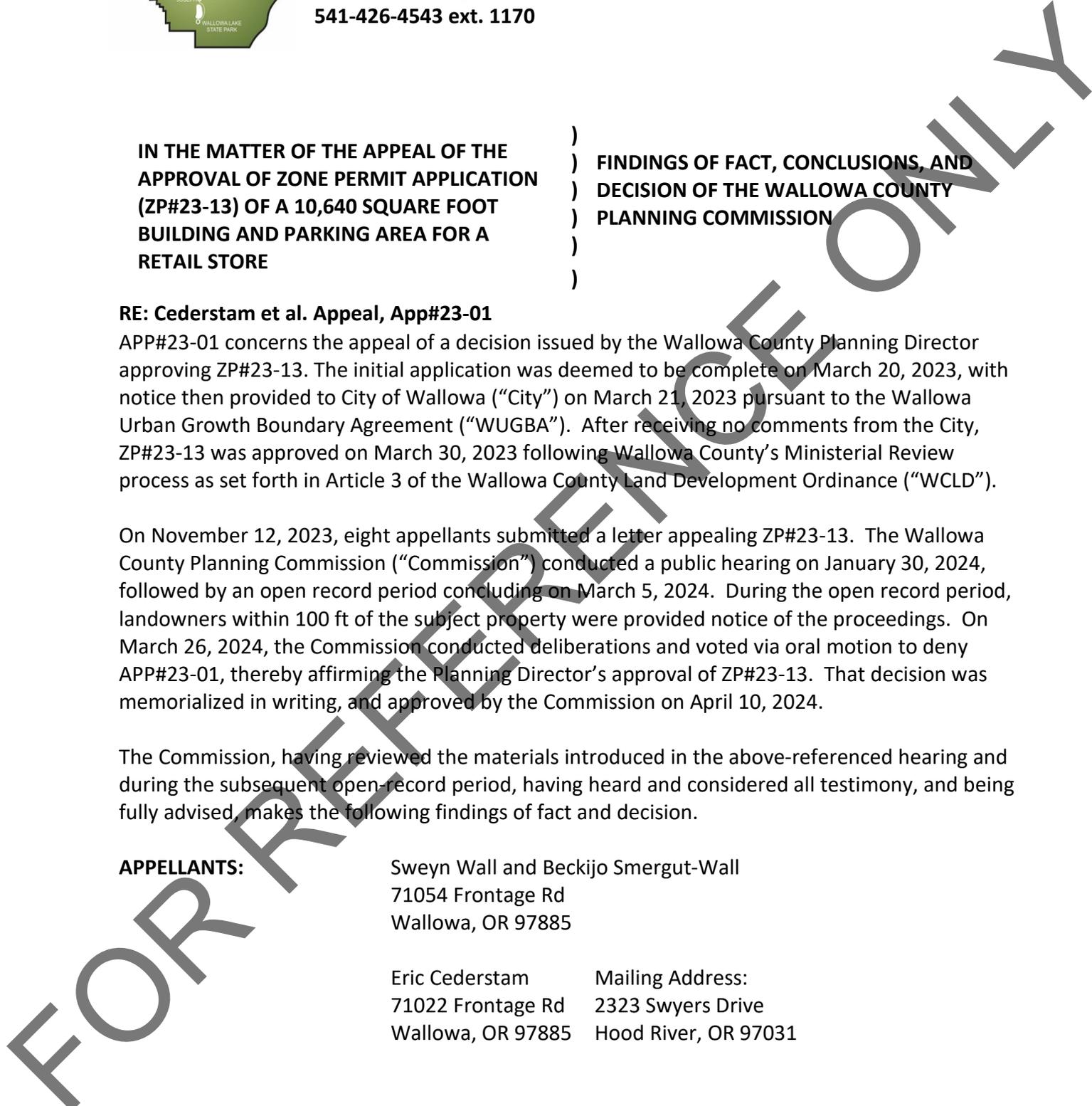
APPELLANTS:

Sweyn Wall and Beckijo Smergut-Wall
71054 Frontage Rd
Wallowa, OR 97885

Eric Cederstam Mailing Address:
71022 Frontage Rd 2323 Swyers Drive
Wallowa, OR 97885 Hood River, OR 97031

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Kelly and Connie Guentert
71084 Frontage Rd
Wallowa, OR 97885

Kelly Johnson
71072 Frontage Rd
Wallowa, OR 97885

Karin Nix
71220 Frontage Rd (PO Box 417)
Wallowa, OR 97885

Bill Smergut
70988 Frontage Rd
Wallowa, OR 97885

APPLICANT: John Burns and Donna Duby (prior to the sale of property to Dollar General)

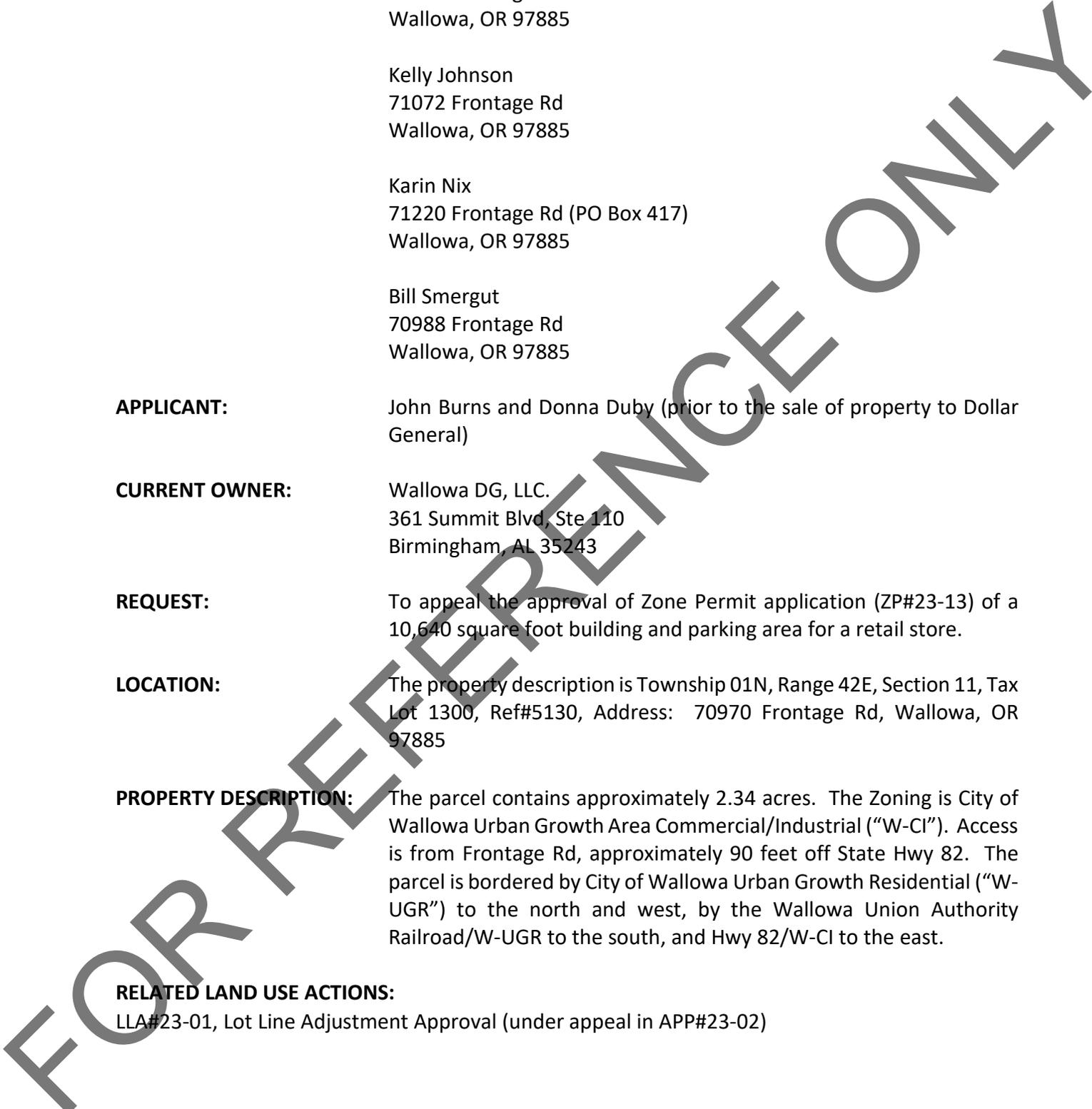
CURRENT OWNER: Wallowa DG, LLC.
361 Summit Blvd, Ste 110
Birmingham, AL 35243

REQUEST: To appeal the approval of Zone Permit application (ZP#23-13) of a 10,640 square foot building and parking area for a retail store.

LOCATION: The property description is Township 01N, Range 42E, Section 11, Tax Lot 1300, Ref#5130, Address: 70970 Frontage Rd, Wallowa, OR 97885

PROPERTY DESCRIPTION: The parcel contains approximately 2.34 acres. The Zoning is City of Wallowa Urban Growth Area Commercial/Industrial (“W-CI”). Access is from Frontage Rd, approximately 90 feet off State Hwy 82. The parcel is bordered by City of Wallowa Urban Growth Residential (“W-UGR”) to the north and west, by the Wallowa Union Authority Railroad/W-UGR to the south, and Hwy 82/W-CI to the east.

RELATED LAND USE ACTIONS:
LLA#23-01, Lot Line Adjustment Approval (under appeal in APP#23-02)



REVIEW CRITERIA:

City of Wallowa Urban Growth Boundary Agreement (“WUGBA”)

City of Wallowa Zoning Ordinance (“WZO”)

Article 1

Article 2

Article 3, Section 3.5

Article 4

Article 8

Other Applicable zoning ordinances or goals of Wallowa County Land Development Ordinance (“WCLD”) and/or laws of the State of Oregon

1. PROCEDURAL FINDINGS AND CONCLUSIONS OF LAW

ORS 215.416: Permit application; fees; consolidated procedure; hearings; notice; approval criteria; decision without hearing.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. ***

FINDING 1: Along with the subject ZP#23-13, the Applicant submitted a second application for lot line adjustment, LLA#23-01. The Appellants herein also appealed the approval of LLA#23-01, i.e., APP#23-02. Consistent with ORS 215.416(2), the Commission at the outset of the January 30, 2024 public hearing indicated its intent to consolidate the hearing and record for both APP#23-01 and APP#23-02, but then issue two separate decisions for each of the two separate appeals. No party objected to that stated intention.

As the record and hearing were consolidated, arguments raised by all parties were co-mingled. Accordingly, the Commission incorporates by reference all findings contained in its decision under APP#23-02, to the extent such findings do not conflict with any findings issued herein.

WUGBA 2.010: Urban Growth Boundary Administration

The City of Wallowa shall administer all lands within the corporate limits. The County, through its designated officials, shall retain the responsibility for administration of all unincorporated lands within the Urban Growth Boundary. The County’s administrative responsibilities shall cease immediately upon annexation to the City.

WUGBA 2.030: Use Regulations

Within the Urban Growth Areas, designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map

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Cederstam et al. appeal APP#23-01 (ZP#23-13)

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and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situated within the corporate limits of the City and within the designated zone.

Finding 2: Throughout these proceedings, a frequent point of confusion amongst the Appellants and opponents pertains to the specific land use regulations that apply to the subject application, i.e., ZP#23-13. The Commission interprets WUGBA 2.010 and 2.030 as adopting and incorporating the City of Wallowa Zoning Ordinance (“WZO”) as part of the Wallowa County Land Development Ordinance (“WCLDO”) for those properties within the Urban Growth Area designated as Commercial/Industrial, Residential, and UGB Residential. The Commission finds that the subject property is within the Urban Growth Area and zoned Commercial/Industrial. Accordingly, the Commission finds that the WZO provides all substantive provisions applicable to ZP#23-13. As the subject property is still subject to the County’s jurisdiction, however, the Commission further finds that the WCLDO provides all procedural requirements applicable to the subject application, i.e., ZP#23-13, and likewise to the subject appeal, i.e., APP#23-01.

WCLDO 3.010: Purpose

The purpose of the Ministerial Review process is to provide assurance that a proposed use or development is in compliance with provisions of this ordinance prior to commencement of the use or development or issuance of other required local or state permits. The process provides little or no discretion to the review authority and entails reviewing the applicant’s compliance with specified site use or development standards as set forth in this ordinance.

Finding 3: As understood by the Commission, the Appellants and many opponents objected to the County processing ZP#23-13 utilizing the Ministerial Review process as set forth in Article 3 of the WCLDO because it does not require mailed notice to neighboring property owners. The Applicant took no position on the issue other than noting during the January 30, 2024 hearing that any procedural issues were cured by the Commission conducting a *de novo* appeal public hearing followed by a lengthy open record period wherein all Appellants and any opponents were provided ample opportunity to provide comments and arguments to the Commission.

The Commission agrees with the Applicant’s comments. The Commission further notes that had County staff utilized the Administrative Review process as asserted by the Appellants and other opponents, not one of the Appellants would have received mailed notice pursuant to WCLDO 4.020(01)(A) because not one Appellant owns property within 100 feet of the subject property. The Commission also notes that the record includes a letter sent by County staff during the open record period inviting all such property owners within 100 feet of the subject property to participate in the appeal proceedings and/or to provide comments regarding ZP#23-13. To date, not one of those property owners within 100 feet of the subject property elected to provide such comments or otherwise participate in these proceedings.

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The Commission finds that County staff correctly utilized the Ministerial Review process for ZP#23-13 because the Applicant sought approval of a retail store, a use that is permitted outright in the Commercial/Industrial zone. See WZO 3.5(1) and 3.4(1)(A) (permitted uses in the Commercial/Industrial zone include “Retail trade establishments in which the operation takes place solely within an enclosed building”). Because the proposed use is allowed outright, the singular purpose of ZP#23-13 was to assure that the subject application is in compliance with the applicable provisions of the WZO prior to the commencement of the proposed use. The Commission finds that the review process provided little or no discretion to County staff. The Commission further finds no Appellant or other opponent’s substantial rights were harmed by the County utilizing the Ministerial Review process instead of the Administrative Review process because no Appellant or opponent who participated in these proceedings owns property within 100 feet of the subject property.

WCLDO 7.020: Initiation of Appeal

01. A decision of a review authority pursuant to this ordinance may be appealed by parties with standing to appeal (WCOA 1.065(101)) for noticed decisions, and by parties who are adversely affected (WCOA 1.065(005)) for decisions which are not noticed. Appeals must be received within the prescribed time limits:

*** * ***

B. For decisions which are not noticed an appeal must be received:

*** * ***

(02) Within 21 days of the date a person knew or should have known of the decision.

Finding 4: The Appellants’ November 12, 2023 letter references WCLDO Section 7.020 as establishing their right to appeal ZP#23-13. The Applicant’s rebutted in their final legal argument submitted on March 5, 2024 argued that WCLDO 7.020 only applies to “decisions which are not noticed * * *,” meaning that WCLDO 7.020 is inapplicable because the County did provide notice of ZP#23-13 at least to the Applicant after the Planning Director approved that decision on March 30, 2023. The Applicant further argued that the question was not whether notice was provided; the question instead was whether all parties who were so entitled received such notice. Rather than WCLDO 7.020, the Applicant argued that WCLDO 3.030 should govern these proceedings, with that provision only providing “affected parties” ten days to appeal the Planning Director’s ministerial decision.

According to the Applicant’s legal analysis, ZP#23-13 was a final land use decision in April 2023, 10 days after that decision was issued, thereby precluding any further local proceedings. Accordingly, the Applicant argued the Appellants’ recourse was to file an appeal with the State Land Use Board of Appeals pursuant to state statutes. The Applicant also argued that interpreting WCLDO Section 7.020 to apply to this case would lead to an absurd result because such an interpretation would allow any would-be appellant at any time to appeal through the County’s local process any land

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Cederstam et al. appeal APP#23-01 (ZP#23-13)

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use decision by arguing that notice of that decision was faulty, thereby precluding the County from ever issuing a final land use decision within 150 days as required by ORS 215.427.

The Commission finds that WCLDO 7.020 applies.

Finding 5: Applying WCLDO 7.020, the Commission notes that there was disagreement amongst the parties as to whether the Appellants timely filed their November 12, 2023 appeal letter “within 21 days of the date the [Appellants’] knew or should have known of the decision.” The Appellants argued that they were only made aware of ZP#23-13 when observing heavy equipment operating on the subject property in late October and early November of 2023 when each of the Appellants individually traveled past the subject property. The Applicant, however, argued that similar heavy equipment was utilized on the subject property on numerous occasions dating back to December 2022, March 2023, and June 2023. The Applicant further argued that if use of heavy equipment on the subject property was sufficient to put the Appellants on notice, then the Appellants “should have known” of the pending application or decision approving ZP#23-12 and then waited well beyond the 21 days provided by WCLDO 7.020 to either participate in the proceedings or ultimately file an appeal.

On a split-vote (5 for, 2 against), the Commission agrees with the Appellants because it finds that it is plausible that the appellants might not have understood that early development activities might be related to the issue of a permit, even if that included well-drilling and excavation of test pits.

Finding 6: One Appellant argued during the open record period that it would be prejudicial to address the standing issue because of comments made by the Planning Commission Chair at the outset of the January 30, 2024 hearing. The Applicant disagreed with that assertion, and argued that the Chair’s comments indicated an intent to proceed with public hearing without first addressing the threshold standing issue, thereby allowing the parties to provide further evidence and argument on the standing issue during the hearing and following in the open record period. The Applicant further asserted that the Chair’s introductory comments clearly did not indicate that the Commission would never address the threshold standing issue.

The Commission agrees with the Applicant’s characterizations of the Chair’s introductory comments during the January 30, 2024 hearing. Even if misunderstood by certain Appellants, the Chair’s comments clearly did not indicate that the Commission as a whole had taken any action or made any decision addressing the threshold standing issue. Stated simply, the Chair’s comments reflected only the Chair’s perspective on when and how to address the threshold standing issue. The Commission finds that it was required to address all relevant issues raised by any of the parties, which then includes the threshold standing issue first raised by County staff’s report prepared in advance of the January 30, 2024 hearing. Accordingly, the Commission finds that addressing the threshold standing issue following the close of the public record was not prejudicial to any party.

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2. SUBSTANTIVE FINDINGS AND CONCLUSIONS OF LAW

WCLDO 7.045: Appeal Authority Decision

01. Upon review; the appeal authority may by order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision that is under review. When the appeal authority renders a decision that reverses a decision of the hearing body, the appeal authority, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order.

Finding 7: After thoroughly reviewing the record and all arguments made by the parties, the Commission unanimously finds that the subject application meets all applicable criteria as set forth in the WZO. Accordingly, the Commission denies AP#23-01 and affirms the Planning Director's approval of ZP#23-13. The Commission further incorporates the Planning Director's decision as part of this decision, including any legal interpretation and conclusions of law therein.

The Commission provides the following supplemental findings and conclusion of law to further address relevant arguments set forth by Appellants and opponents during these proceedings that were sufficiently developed to warrant review and that were related to applicable criteria set forth in the WZO. The Commission finds that any argument not address below was summarily dismissed as being either insufficiently developed and/or unrelated to applicable criteria.

a. TRAFFIC ANALYSIS

WZO 4.15: Traffic Impact Studies

(1) An applicant shall submit a traffic impact study when a proposed land use action affects a transportation facility. The following vehicle trip generation thresholds shall determine the level and scope of transportation analysis required for a new or expanded development:

(A) Transportation Impact Study (TIS): If a proposed development will generate 400 or more daily trips, as defined by the Institute of Transportation Engineers (ITE), Trip Generation Manual or trip generation studies of comparable uses prepared by an engineer, then a TIS shall be required. The requirements of a TIS shall be established by ODOT and the City of Wallowa.

WZO 8.7: Zoning Permit Approval Criteria

(1) The proposed use shall not impose an undue burden on the public transportation system. For developments that are likely to generate more than 400 average daily motor vehicle trips (ADTs), the City of Wallowa may require the applicant to provide adequate information, such as traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding street

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system. The City of Wallowa may require the developer to mitigate any impacts attributed to the project.

*** * ***

(4) Improvements such as paving, curbing, and installation or contribution to traffic signals, construction of sidewalks, bikeways, accessways, paths, or streets that serve the proposed use where the existing transportation system may be burdened by the proposed use.

Finding 8: Multiple Appellants and opponents argued during the January 30, 2024 hearing that the Applicant should have been required to submit a Traffic Impact Study (“TIS”) pursuant to WZO 4.15 and 8.7(1). The Commission finds that the Applicant was never instructed to provide such a TIS, nor was either WZO 4.15 or 8.7(1) identified as relevant approval criteria by either County of City staff. This is an important consideration because of the unique permitting scheme imposed for properties subject to the WUGBA, with WUGBA 3.010(1) specifically directing that an applicant must be informed of “the criteria for a complete application * * *, criteria to be applied by the review authority, the review process and deadlines to be followed, and application fees to be paid.”

Despite the ambiguity of WZO 4.15 and 8.7(1)’s applicability, the Applicant voluntarily provided a TIS during the open record period. Accordingly, the Commission finds that both WZO 4.15 and 8.7(1) are met. The Commission further finds that the TIS demonstrates that additional improvements beyond those shown on the original application are not required because the Applicant’s proposed retail store will not impose an undue burden on the public transportation system, thereby further satisfying WZO 8.7(1), 8.7(4), and the County’s Transportation System Plan.

Finding 9: After submitting the TIS during the open record period, Appellants and opponents continued to object to the veracity of both the TIS and a turning movement study provided by the Applicant as part of the initial application. The Commission specifically notes that both aforementioned Applicant submittals were prepared and stamped by professional traffic engineers registered in the State of Oregon. Considering the substantial evidence in the entire record, the Commission is not persuaded by the Appellants and opponents’ arguments attempting to undermine those documents, with those arguments primarily relying on a letter from a retired traffic engineer and an email exchange with an Oregon Department of Transportation (“ODOT”) employee. The Commission finds that the letter from the retired traffic engineer is on its face less credible than the Applicant’s submittals because it is impossible to verify when that traffic engineer retired and thereby if the opinions stated in the letter represents currently accepted best practices. The Commission further finds that the email exchange with the ODOT employee is even less credible because there is no way to verify what documentation that ODOT employee reviewed. Additionally, that email exchange directly concludes that Frontage Road is not within ODOT’s jurisdiction, and that ODOT would have formally provided comments to the County if ODOT itself was concerned.

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Finding 10: Several Appellants asserted error in allowing the Applicant to submit the TIS during the open record period because it did not provide those Appellants sufficient time to respond. The Commission is not persuaded by that argument. The Commission notes that the Appellants first raised traffic as an issue during the January 30, 2023 hearing, and thereby had ample time to coordinate with a traffic engineer so that the engineer would be prepared to review the Applicant's TIS submitted at the close of the rebuttal period on February 27, 2024. The Commission further notes that it appears that the Appellants followed that exact process, but coordinated the services of a *retired* traffic engineer instead of coordinating with a duly licensed traffic engineer in the State of Oregon.

Finding 11: Several Appellants asserted that the Applicant failed to coordinate with the City of Wallowa or ODOT prior to submitting the TIS as required by WZO 4.15. The Commission finds that such arguments ignore the context of the WUGBA, which applies WZO 4.15 to properties and roads within the County's jurisdiction. Accordingly, the Commission finds that the Applicant satisfied WZO 4.15 because the Applicant's engineer coordinated with County staff prior to submitting the TIS.

b. Pedestrian and Bicyclist Safety

WZO 3.5(6)(B): Bicycle Parking.

Bicycle parking shall be provided as per Section 4.12 of this Ordinance.

WZO 4.12: Bicycle Parking

Unless otherwise specifically established at the time of erection of a new structure, bicycle parking may be provided as follows:

(1) A minimum of 2 bicycle parking spaces per use shall be required for all uses with greater than ten (10) vehicle parking spaces.

**** * ****

WZO 4.13(8): Pedestrian and Bicycle Circulation

(A) Safe and convenient pedestrian and bicycle access shall be provided within new subdivision, multi-family developments, planned developments, shopping centers, and commercial districts. Bicycle and pedestrian access shall provide safe and convenient connections to adjacent streets as well as residential areas and neighborhood activity centers within one-half mile of the development. Residential developments shall include streets with walkways and accessways. Pedestrian circulation through parking lots shall be provided in the form of accessways.

(B) Internal pedestrian circulation shall be provided in new commercial, office and multi-family residential developments through the clustering of buildings, construction of hard surface walkways, landscaping, accessways, or similar techniques.

(C) Bikeways shall be required along arterials.

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(D) Walkways shall be required along arterials, collectors and local streets.

(E) The City of Wallow may modify or waive the requirements of this section if it is determined that bicycle and pedestrian access is impracticable due to physical or topographic conditions (e.g. freeways, railroads, extremely steep slopes, sensitive lands, and similar physical constraints); or where the characteristic or layout of abutting properties would prevent a connection now or in the future, considering the potential for redevelopment; and sites where the provisions of recorded leases, easements, covenants, restrictions, or other agreements recorded as of the effective date of this Code prohibit pathway connections.

Finding 12: Several Appellants argued that the proposed application is generally unsafe for pedestrians and bicyclists. Additionally, Appellants further argued that the required bicycle parking was not included. The Applicant responded by providing a Traffic Study Addendum (again prepared and stamped by a professional traffic engineer licensed in the State of Oregon) and additional landscaping and site plans detailing the required bicycle parking and other walkway improvements for pedestrians and bicyclists. The Commission is persuaded by those submittals, and finds that safe and convenient pedestrian and bicycle access will be provided by the proposed development, consistent with WZO 4.13(8). The Commission further finds that the required bicycle parking will be provided, consistent WZO 3.4(5)(D) and WZO 4.12. Last, pursuant to WZO 4.13(8)(E), the Commission finds that additional improvements for bicyclists and pedestrians beyond those shown on the Applicant's submittals are not required due to physical constraints and limited opportunities for interconnection with adjacent properties.

c. 50 FOOT SETBACK

WZO 3.5(5): Setback Requirements

In the Industrial zone, setbacks shall be as follows:

**** * ****

(D) No building shall be closer to a lot in a residential or agricultural zone than a distance equal to the height of the building or 50 feet, whichever is greater.

Finding 13: Several Appellants argued that the subject application does not comply with WZO 3.5(5)(D) because the proposed retail store is less than 50 feet from the western lot line. In response, the Applicant argued in its March 5, 2024 final legal argument that WZO 3.5(5)(D) does not apply to the subject application because the subject property is bordered by the City's "UGB-Residential" zone, not the City's separate "Residential" zone as referenced by WZO 3.5(5). The Applicant also argued that in the alternative, the 50 foot setback imposed by WZO 3.5(5)(D) is not violated in this case because the neighboring property is split zone. The evidence in the record shows that the proximate portion of the adjacent Tax Lot 300 is zoned "Commercial/Industrial"

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Cederstam et al. appeal APP#23-01 (ZP#23-13)

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and that the proposed retail store is more than 50 feet from the “UGB-Residential” zoned portion of Tax Lot 300.

The Commission finds that the provision is silent on how to address split-zoned properties, the Commission interprets WZO 3.5(5)(D) as applying the 50 foot setback to the nearest portion of an adjacent parcel actually “in the residential zone.” The Commission is persuaded by evidence in the record demonstrating that both City of Wallowa and County staff similarly interpret WZO 3.5(5)(D), thereby ensuring a consistent interpretation of that provision throughout the UGB and within City limits. Based on that interpretation (and even though the Commission previously determined that WZO 3.5(5)(D) does not apply), the Commission further finds that the subject application would have complied WZO 3.5(5)(D) because the proposed retail store is more than 50 feet from the portion of Tax Lot 1300 zoned “UGB-Residential.”

d. ODOT NOTICE

WZO 8.9: Notice Regarding Land Use Actions

(1) Notice shall be sent to the Oregon Department of Transportation regarding any land use action on or adjacent to a state transportation facility.

Finding 14: Several Appellants argued that the County failed to provide notice to ODOT, as required by WZO 8.9(1). As discussed above, the Commission previously found that the WUGBA dictates that the WZO provides substantive standards governing the subject application, with all procedural requirements still governed by the WCLDO. As WZO 8.9(1) is a procedural requirement without a corresponding provision in the WCLDO, the Commission finds that WZO 8.9(1) does not apply to the subject application. As a practical matter, the Commission further finds that the record clearly demonstrates that ODOT is aware of the subject application.

a. SALMON HABITAT RESTORATION

WCLDO 12.020: Review Criteria

In granting a Zoning Permit the following criteria must be satisfied :

(3) The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration, or the review authority finds Ministerial Review to be adequate. In determining if the Ministerial Review is allowed, the review authority shall find all the following:

A. Except where excavation or fill does not exceed 50 yards, the proposed structure or use is at least 300 feet from any surface water (as identified on the USGS Topographical Map) and is at least 300 feet from wetlands (as identified on the National Wetlands Inventory); and

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B. The structure or use will not be sited on a slope that exceeds 35 percent; and

C. No road construction will be required in conjunction with the proposed use.

Finding 15: Multiple Appellants and opponents throughout these proceedings argued that the subject application did not address WCLDO 12.020(3), which requires compliance with WCLDO Article 36 governing salmon habitat restoration. As discussed above, the Commission previously found that the WUGBA dictates that the WZO provides substantive standards governing the subject application. As neither WZO 12.020(3) nor WCLDO Article 36 have corresponding provisions in the WZO, the Commission finds that those requirements cannot be applied to the subject application.

a. **MISCELLANEOUS ARGUMENTS – STORM WATER AND SEPTIC**

Finding 16: Several Appellants and opponents raised issues relating to storm water runoff and to the Applicant’s proposed septic system. Although those arguments did not include citations to applicable WZO provisions and were not sufficiently developed to warrant a response, the Applicant nevertheless provided documentation during the open record period demonstrating that storm water runoff was comprehensively addressed for the entire development. Additionally, the Applicant provided an updated septic permit approved by the State Department of Environmental Quality removing incorrect language included in a previous permit suggesting that the proposed retail store would not include customer bathrooms. Based on the substantial evidence in the record, the Commission finds that the Appellants and opponents’ arguments relating to storm water and septic issues provide no basis for the denial of ZP#23-13.

DECISION:

Based upon the information submitted to the record, the comments of interested parties and the findings, the Commission finds the subject application satisfies all applicable review criteria. Accordingly, APP#23-01 is denied, and the Commission affirms the Planning Director’s approval of ZP#23-13.

The March 26, 2024 verbal vote to deny the appeal and approve the application is 7 in favor and 0 opposed with 0 abstaining.

The April 10, 2024 vote to approve the Findings Report is 5 in favor and 0 opposed with 0 abstaining.

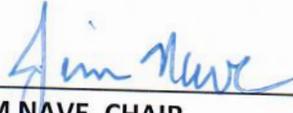
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April 10, 2024
DATE OF ACTION



JIM NAVE, CHAIR
WALLOWA COUNTY PLANNING COMMISSION

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeals. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 pm April 22, 2024.

FOR REFERENCE ONLY

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WALLOWA COUNTY
Planning Department
101 S River Street #105
Enterprise, Oregon 97828
541-426-4543 ext. 1170

FINDINGS
APP#23-02
Cederstam et al.

**IN THE MATTER OF THE APPEAL OF THE
APPROVAL OF LOT LINE ADJUSTMENT
APPLICATION (LLA#23-01)**

)
) **FINDINGS OF FACT, CONCLUSIONS, AND**
) **DECISION OF THE WALLOWA COUNTY**
) **PLANNING COMMISSION**
)
)

RE: Cederstam et al. Appeal, App#23-02

APP#23-02 concerns the appeal of a decision issued by the Wallowa County Planning Director approving LLA#23-01. The application sought to increase the acreage for the Acquiring Parcel (i.e. Tax Lot 300) from approximately 1.677 acres to 2.172 acres, and to correspondingly reduce the Parent Parcel (i.e. Tax Lot 1300) from approximately 2.830 acres to 2.335 acres. The initial application was deemed to be complete on January 24, 2023, with notice then provided to City of Wallowa (“City”) on January 24, 2023, pursuant to the Wallowa Urban Growth Boundary Agreement (“WUGBA”). After receiving no comments from the City, LLA#23-01 was approved on March 6, 2023 following Wallowa County’s Ministerial Review process as set forth in Article 3 of the Wallowa County Land Development Ordinance (“WCLD”).

On November 20, 2023, eight appellants submitted a letter appealing ZP#23-13. The Wallowa County Planning Commission (“Commission”) conducted a public hearing on January 30, 2024, followed by an open record period concluding on March 5, 2024. During the open record period, landowners within 100 ft of the subject property were provided notice of the proceedings. On March 26, 2024, the Commission conducted deliberations and voted via oral motion to deny APP#23-02, thereby affirming the Planning Director’s approval of LLA#23-01. That decision was memorialized in writing, and approved by the Commission on April 10, 2024.

The Commission, having reviewed the materials introduced in the above-referenced hearing and during the subsequent open-record period, having heard and considered all testimony, and being fully advised, makes the following findings of fact and decision.

APPELLANTS: Sweyn Wall & Beckijo Smergut-Wall
71054 Frontage Rd
Wallowa, OR 97885

Eric Cederstam Mailing Address:

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71022 Frontage Rd 2323 Swyers Drive
Wallowa, OR 97885 Hood River, OR 97031

Kelly & Connie Guentert
71084 Frontage Rd
Wallowa, OR 97885

Kelly Johnson
71072 Frontage Rd
Wallowa, OR 97885

Karin Nix
71220 Frontage Rd (PO Box 417)
Wallowa, OR 97885

Bill Smergut
70988 Frontage Rd
Wallowa, OR 97885

APPLICANT: John Burns & Donna Duby (prior to the sale of property to Dollar General)

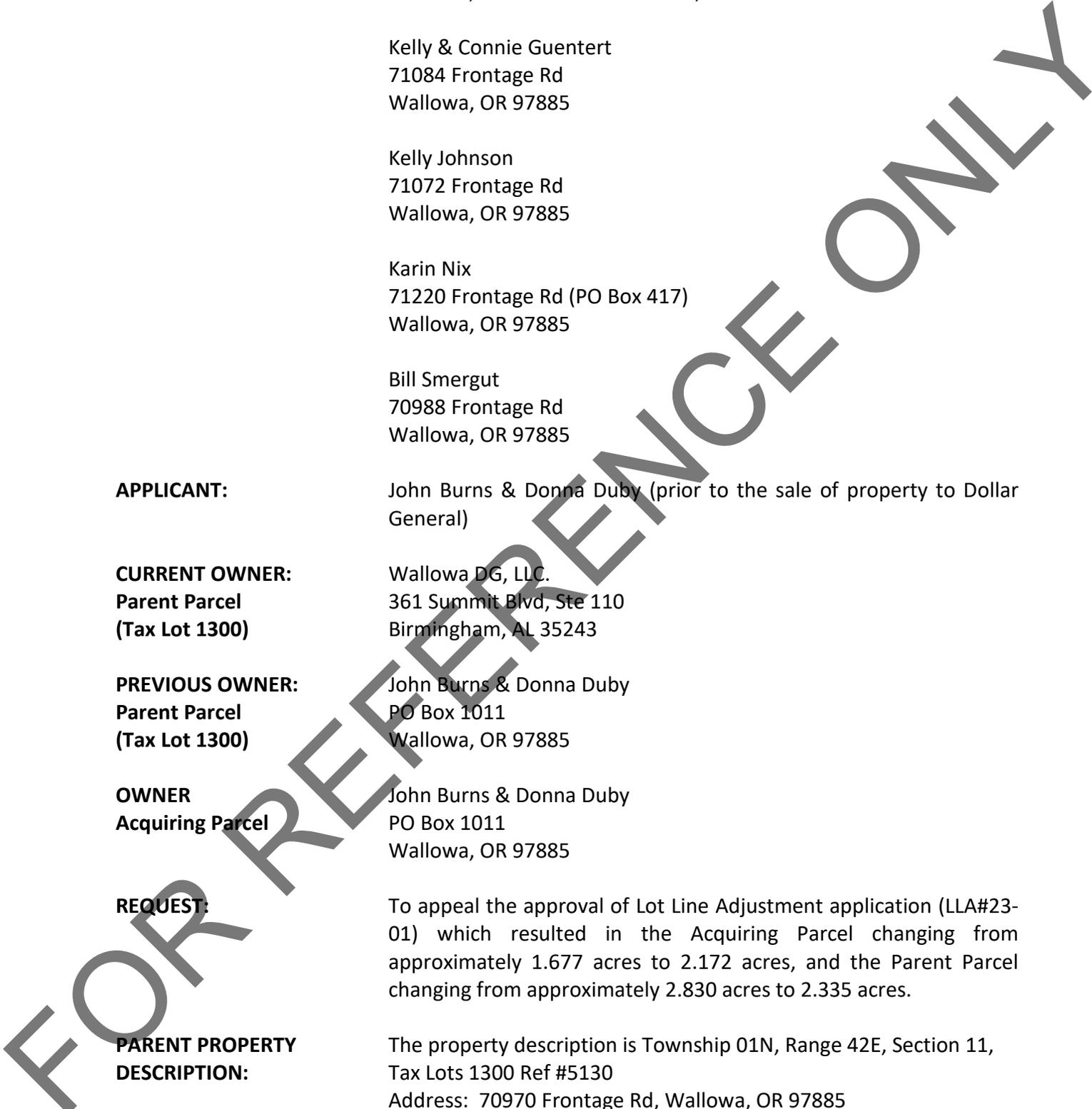
CURRENT OWNER: Wallowa DG, LLC.
Parent Parcel 361 Summit Blvd, Ste 110
(Tax Lot 1300) Birmingham, AL 35243

PREVIOUS OWNER: John Burns & Donna Duby
Parent Parcel PO Box 1011
(Tax Lot 1300) Wallowa, OR 97885

OWNER John Burns & Donna Duby
Acquiring Parcel PO Box 1011
Wallowa, OR 97885

REQUEST: To appeal the approval of Lot Line Adjustment application (LLA#23-01) which resulted in the Acquiring Parcel changing from approximately 1.677 acres to 2.172 acres, and the Parent Parcel changing from approximately 2.830 acres to 2.335 acres.

PARENT PROPERTY DESCRIPTION: The property description is Township 01N, Range 42E, Section 11, Tax Lots 1300 Ref #5130
Address: 70970 Frontage Rd, Wallowa, OR 97885



Zoning: Wallowa Urban Growth Area Commercial/Industrial (“W-CI)
Access is from Frontage Rd, approximately 90 feet off State Hwy 82.

ACQUIRING PROPERTY DESCRIPTION:

The property description is Township 01N, Range 42E, Section 11, Tax lot 300 Ref #5228
Address: 70972 Frontage Rd, Wallowa, OR 97885
Zoning: Wallowa Urban Growth Residential (“W-UGR”), and after LLA a small area of about 0.6 acres on the east side remaining W-CI

LOCATION:

Access to both properties is from Frontage Rd, approximately 90 feet off State Hwy 82. The properties are bordered by County Rural Residential (“R-1”) to the west (west side of Bear Creek), W-CI to the north and east (east side of Hwy 82), and the Wallowa Union Authority (WURA) railroad to the south. South of the WURA is also W-UGR.

RELATED LAND USE ACTIONS:

ZP#23-13, Zoning Plan Approval (under appeal in APP#23-01)

REVIEW CRITERIA:

- City of Wallowa Urban Growth Boundary Agreement (“WUGBA”)
- City of Wallowa Zoning Ordinance (“WZO”)
 - Article 1
 - Article 2
 - Article 3, Section 3.5
 - Article 4
 - Article 8
- Other Applicable zoning ordinances or goals of Wallowa County Land Development Ordinance (“WCLD”) and/or laws of the State of Oregon

1. PROCEDURAL FINDINGS AND CONCLUSIONS OF LAW

ORS 215.416: Permit application; fees; consolidated procedure; hearings; notice; approval criteria; decision without hearing.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. ***

FINDING 1: Along with the subject LLA#23-01, the Applicant submitted a second application for zone plan approval, ZP#23-13. The Appellants herein also appealed the approval of ZP#13-13, i.e.,

FINDINGS

APP#23-01. Consistent with ORS 215.416(2), the Commission at the outset of the January 30, 2024 public hearing indicated its intent to consolidate the hearing and record for both APP#23-01 and APP#23-02, but then issue two separate decisions for each of the two separate appeals. No party objected to that stated intention.

As the record and hearing were consolidated, arguments raised by all parties were co-mingled. Accordingly, the Commission incorporates by reference all findings contained in its decision under APP#23-01, to the extent such findings do not conflict with any findings issued herein.

WUGBA 2.010: Urban Growth Boundary Administration

The City of Wallowa shall administer all lands within the corporate limits. The County, through its designated officials, shall retain the responsibility for administration of all unincorporated lands within the Urban Growth Boundary. The County's administrative responsibilities shall cease immediately upon annexation to the City.

WUGBA 2.030: Use Regulations

Within the Urban Growth Areas, designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situation within the corporate limits of the City and within the designated zone.

Finding 2: Throughout these proceedings, a frequent point of confusion amongst the Appellants and opponents pertains to the specific land use regulations that apply to the subject application, i.e., LLA#23-01. The Commission interprets WUGBA 2.010 and 2.030 as adopting and incorporating the City of Wallowa Zoning Ordinance ("WZO") as part of the Wallowa County Land Development Ordinance ("WCLDO") for those properties within the Urban Growth Area designated as Commercial/Industrial, Residential, and UGB Residential. The Commission finds that the subject property is within the Urban Growth Area and zoned Commercial/Industrial. Accordingly, the Commission finds that the WZO provides all substantive provisions applicable to LLA#23-01. As the subject property is still subject to the County's jurisdiction, however, the Commission further finds that the WCLDO provides all procedural requirements applicable to the subject application, i.e. LLA#23-01, and likewise to the subject appeal, i.e., APP#23-02.

WCLDO 3.010: Purpose

The purpose of the Ministerial Review process is to provide assurance that a proposed use or development is in compliance with provisions of this ordinance prior to commencement of the use or development or issuance of other required local or state permits. The process provides little or no discretion to the review authority and entails reviewing the applicants compliance with specified site use or development standards as set forth in this ordinance.

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Cederstam et al. appeal APP#23-02 (LLA#23-01)

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Finding 3: As understood by the Commission, the Appellants and many opponents objected to the County processing LLA#23-01 utilizing the Ministerial Review process as set forth in Article 3 of the WCLDO because it does not require mailed notice to neighboring property owners. The Applicant took no position on the issue other than noting during the January 30, 2024 hearing that any procedural issues were cured by the Commission conducting a *de novo* appeal public hearing followed by a lengthy open record period wherein all Appellants and any opponents were provided ample opportunity to provide comments and arguments to the Commission.

The Commission agrees with the Applicant's comments. The Commission further notes that had County staff utilized the Administrative Review process as asserted by the Appellants and other opponents, not one of the Appellants would have received mailed notice pursuant to WCLDO 4.020(01)(A) because not one Appellant owns property within 100 feet of the subject property. The Commission also notes that the record includes a letter sent by County staff during the open record period inviting all such property owners within 100 feet of the subject property to participate in the appeal proceedings and/or to provide comments regarding LLA#23-01. To date, not one of those property owners within 100 feet of the subject property elected to provide such comments or otherwise participate in these proceedings.

The Commission finds that County staff correctly utilized the Ministerial Review process for LLA#23-01 as specifically contemplated by WCLDO 39.020. The Commission finds that the review process provided little or no discretion to County staff. The Commission further finds no Appellant or other opponent's substantial rights were harmed by the County utilizing the Ministerial Review process instead of the Administrative Review process because no Appellant or opponent who participated in these proceedings owns property within 100 feet of the subject property.

WCLDO 7.020: Initiation of Appeal

01. A decision of a review authority pursuant to this ordinance may be appealed by parties with standing to appeal (WCOA 1.065(101)) for noticed decisions, and by parties who are adversely affected (WCOA 1.065(005)) for decisions which are not noticed. Appeals must be received within the prescribed time limits:

B. For decisions which are not noticed an appeal must be received:

(02) Within 21 days of the date a person knew or should have known of the decision.

Finding 4: The Appellants' November 20, 2023 letter references WCLDO Section 7.020 as establishing their right to appeal LLA#23-01. The Applicant's final legal argument submitted on March 5, 2024 argued that WCLDO 7.020 only applies to "decisions which are not noticed ***," meaning that WCLDO 7.020 is inapplicable because the County did provide notice of LLA#23-01 at least to the Applicant after the Planning Director approved that decision on March 1, 2023. The Applicant further argued that the question was not whether notice was provided; the question

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Cederstam et al. appeal APP#23-02 (LLA#23-01)

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instead was whether all parties who were so entitled received such notice. Rather than WCLDO 7.020, the Applicant argued that WCLDO 3.030 should govern these proceedings, with that provision only providing “affected parties” ten days to appeal the Planning Director’s ministerial decision.

According to the Applicant’s legal analysis, LLA#23-01 was a final land use decision in March 2023, 10 days after that decision was issued, thereby precluding any further local proceedings. Accordingly, the Applicant argued the Appellants’ recourse was to file an appeal with the State Land Use Board of Appeals pursuant to state statutes. The Applicant also argued that interpreting WCLDO Section 7.020 to apply to this case would lead to an absurd result because such an interpretation would allow any would-be appellant at any time to appeal through the County’s local process any land use decision by arguing that notice of that decision was faulty, thereby precluding the County from ever issuing a final land use decision within 150 days as required by ORS 215.427.

The Commission finds that WCLDO 7.020 applies.

Finding 5: Applying WCLDO 7.020, the Commission notes that there was disagreement amongst the parties as to whether the Appellants timely filed their November 30, 2023 appeal letter “within 21 days of the date the [Appellants’] knew or should have known of the decision.” The Appellants argued that they were only made aware of LLA#23-01 during a meeting with County staff occurring on November 13, 2023. However, the Appellants’ November 12, 2023 letter initiation APP#23-01 noted that the Appellants were aware of the proposed development when first observing heavy equipment operating on the subject property in late October and early November of 2023, with those observations then leading the Appellants to schedule the aforementioned November 13 meeting with County staff. The Applicant, however, argued that similar heavy equipment was utilized on the subject property on numerous occasions dating back to December 2022, March 2023, and June 2023. The Applicant further argued that if use of heavy equipment on the subject property was sufficient to put the Appellants on notice, then the Appellants “should have known” of the pending application or decision approving LLA#23-01 and then waited well beyond the 21 days provided by WCLDO 7.020 to either participate in the proceedings or ultimately file an appeal.

On a split-vote (5 for, 2 against), the Commission agrees with the Appellants because it finds that it is plausible that the appellants might not have understood that early development activities might be related to the issue of a permit, even if that included well-drilling and excavation of test pits.

Finding 6: One Appellant argued during the open record period that it would be prejudicial to address the standing issue because of comments made by the Planning Commission Chair at the outset of the January 30, 2024 hearing. The Applicant disagreed with that assertion, and argued that the Chair’s comments indicated an intent to proceed with public hearing without first

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Cederstam et al. appeal APP#23-02 (LLA#23-01)

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addressing the threshold standing issue, thereby allowing the parties to provide further evidence and argument on the standing issue during the hearing and following in the open record period. The Applicant further asserted that the Chair's introductory comments clearly did not indicate that the Commission would never address the threshold standing issue.

The Commission agrees with the Applicant's characterizations of the Chair's introductory comments during the January 30, 2024 hearing. Even if misunderstood by certain Appellants, the Chair's comments clearly did not indicate that the Commission as a whole had taken any action or made any decision addressing the threshold standing issue. Stated simply, the Chair's comments reflected only the Chair's perspective on when and how to address the threshold standing issue. The Commission finds that it was required to address all relevant issues raised by any of the parties, which then includes the threshold standing issue first raised by County staff's report prepared in advance of the January 30, 2024 hearing. Accordingly, the Commission finds that addressing the threshold standing issue following the close of the public record was not prejudicial to any party.

2. SUBSTANTIVE FINDINGS AND CONCLUSIONS OF LAW

WCLDO 7.045: Appeal Authority Decision

01. Upon review; the appeal authority may by order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision that is under review. When the appeal authority renders a decision that reverses a decision of the hearing body, the appeal authority, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order.

Finding 7: After thoroughly reviewing the record and all arguments made by the parties, the Commission unanimously finds that the subject application meets all applicable criteria as set forth in the WZO. Accordingly, the Commission denies AP#23-02 and affirms the Planning Director's approval of LLA#23-01. The Commission further incorporates the Planning Director's decision as part of this decision, including any legal interpretation and conclusions of law therein.

The Commission provides the following supplemental finding and conclusion of law to further address relevant arguments set forth by Appellants during these proceedings that were sufficiently developed to warrant review and that were related to applicable criteria set forth in the WZO. The Commission finds that any argument not address below was summarily dismissed as being either insufficiently developed and/or unrelated to applicable criteria.

a. LOT LINE ADJUSTMENT DID NOT CREATE A USE

Finding 8: Although failing to cite any applicable legal authority supporting the argument, several Appellants asserted that LLA#23-01 should have been denied because it resulted in property zoned

FINDINGS

Cederstam et al. appeal APP#23-02 (LLA#23-01)

April 10, 2023

Page 7 of 8

Commercial/Industrial being used as an accessory residential use. The Applicant initially responded by arguing that the Appellants' argument was too undeveloped to warrant a response. The Applicant nevertheless further countered by arguing that a lot line adjustment does not create a "use" let alone an "impermissible use" as asserted by the Appellants. The Commission agrees with both of the Applicant's arguments, and finds that the Appellants' arguments regarding uses on Tax Lot 300 are too undeveloped and provide no bases to deny LLA#23-01.

DECISION:

Based upon the information submitted to the record, the comments of interested parties and the findings, the Commission finds the subject application satisfies all applicable review criteria. Accordingly, APP#23-02 is denied, and the Commission affirms the Planning Director's approval of LLA#23-01.

The March 26, 2024 verbal vote to deny the appeal and approve the application is 7 in favor and 0 opposed with 0 abstaining.

The April 10, 2024 vote to approve the Findings Report is 5 in favor and 0 opposed with 0 abstaining.

April 10, 2024
DATE OF ACTION



JIM NAVE, CHAIR
WALLOWA COUNTY PLANNING COMMISSION

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeals. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 pm April 22, 2024.

FINDINGS

Cederstam et al. appeal APP#23-02 (LLA#23-01)
April 10, 2023
Page 8 of 8

FOR REFERENCE ONLY



WALLOWA COUNTY
Planning Department
101 S River Street #105
Enterprise, Oregon 97828
541-426-4543 ext. 1170

STAFF REPORT
ZP#24-07
Providence Estates
Commercial Event

APPLICANT: D. Rahn Hostetter
PO Box 400
Enterprise, OR 97828

OWNER: Providence Estates Limited Partnership
66900 Hunter Rd
Summerville, OR 97876

REQUEST: To permit Commercial Events in the Exclusive Farm Use Zone for (6) events per year, for (2) years – a total of (12) events which would be held in one identified agricultural structure (a hay barn-type with open sides).

LOCATION: The property description is Township 03S, Range 45E, Section 02, Tax Lot 501, Ref#3648, Address: 62253 Knapper Rd, Joseph, OR 97846.

PARCEL CHARACTERISTICS: The parcel contains about 114.6 acres. The Zoning is Exclusive Farm Use (EFU) and access is from Knapper Rd, a county road. The parcel borders Exclusive Farm Use on all sides. There are (10) structures on the parcel, (3) of which are single-family residences.

OTHER INFORMATION:

Exhibits in this packet:
Permit application with narrative, maps and floor plans.

PREVIOUS PLANNING DEPARTMENT AND OTHER AGENCY ACTIONS:

CUP#18-13, HBO B&B – Denied by Planning Commission
ZP#05-93, Addition to Metal Bldg.
ZP#99-02 Replaced an Accessory Farm Dwelling
ZP#98-75 Agricultural Structure

STAFF COMMENT:

This zone permit application is for commercial event use in the EFU zone for up to (6) events per year, for (2) years – for a total of (12) events. ORS requires a review and renewal of an approved permit after (2) years. Per Wallowa County Land Use Ordinance (WCLDO), this would be a Zone Permit subject to Administrative Review, but the Planning Director is forwarding the application to the Planning Commission

for a Public Meeting given the required evaluation of the use not “**materially alter[ing] the stability of the land use pattern in the area.**” This requires a level of discretion that is inconsistent with a Type 1 (Ministerial or Administrative) land use review. Regarding review criteria of Article 36, there are no fish-bearing streams or wetlands on the parcel, so no requirements of Article 36 apply.

Notes: **Yellow** highlighting emphasizes specific areas that are important to the review, and red arrows  specifically point out applicable ORS criteria. **Grey** highlighting identifies ORS text approval options/criteria not being considered for this specific application.

REVIEW CRITERIA:

Article 1, Introductory Provisions

Article 4, Administrative Review

Article 5, Public Hearing Review

Article 15, Exclusive Farm Use

ORS 215.283(4) through (6)

ORS 215.296

Article 36, Salmon Habitat Recovery

Other applicable zoning ordinances or goals of Wallowa County Land Development Ordinance and/or laws of the State of Oregon

ARTICLE 1, INTRODUCTORY PROVISIONS

SECTION 1.030, ORDINANCE ADMINISTRATION AND INTERPRETATION: The Wallowa County Planning Director is responsible for the administration of this ordinance. The provisions of this ordinance are held to be the minimum requirements for fulfilling its objectives. Where conditions imposed by any provision of this ordinance are less restrictive than comparable provisions of this ordinance or any other ordinance, regulation, or law; the more restrictive provision will prevail.

[...]

ARTICLE 4, ADMINISTRATIVE REVIEW

SECTION 4.010, PURPOSE: The purpose of this article is to provide the procedural guidelines for reviewing applications for uses and developments which may impact neighboring properties and developments but not to the extent of requiring a public hearing review. The Administrative Review authority has some discretion regarding the applicant’s compliance by applicable review standards and criteria, setting forth conditions of approval, and requiring performance guarantees.

[...]

SECTION 4.045, REFERRAL BY REVIEW AUTHORITY: *Review of an application under the provisions of Administrative Review will be referred to the Planning Commission by the review authority should the review authority be unable to provide a fair or unbiased review due to conflict of interest, bias, or other substantial cause. An application so referred to the Commission is to be reviewed pursuant to the public hearing review procedures of Article 5, Public Hearing. An application shall be accompanied by an explanation of the conflict of interest, bias, or other substantial cause for rejection of Administrative Review.*

STAFF REPORT

ZP#24-07 PROVIDENCE Staff Report

April 30, 2024

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ARTICLE 5, PUBLIC HEARING REVIEW

SECTION 5.025, NOTICE OF PUBLIC HEARING:

- 01. *Public Hearing Review requires notice of hearing be given to all owners of property lying within:
[...]*
 - C. *Five hundred (500) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone;*

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

- 02. *Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.*
- 03. *Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.*

SECTION 5.045, CONDITIONS OF APPROVAL AND PERFORMANCE GUARANTEES:

- 01. *The Public Hearing Review authority may impose such conditions of approval upon a permit as are deemed necessary to ensure the use or development complies with the applicable standards and criteria.*

[...]

- 05. *The proposed use will not interfere with uses permitted on adjacent parcels.*
- 06. *The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.*

[...]

d. The business does not produce noise, dust, odor, or other nuisance that is in excess of that which is usual and customary in the zone where the property is located.

ARTICLE 15, EXCLUSIVE FARM USE

SECTION 15.015, PERMITTED USES: *In the Exclusive Farm Use Zone, the following uses and activities and their accessory buildings and uses are permitted subject to the general provisions and exceptions set forth by this ordinance:*

[...]

- 35. *Agri-tourism and other commercial events or activities subject to ORS 215.283(4) through (6) (Administrative Review).*

[...]

ORS 215.283 *Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules.*

STAFF REPORT

ZP#24-07 PROVIDENCE Staff Report

April 30, 2024

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[...]

(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

 (c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use

STAFF REPORT

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permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

- (A) Must be incidental and subordinate to existing farm use on the tract;
- (B) May not, individually, exceed a duration of 72 consecutive hours;
- (C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;
- (D) Must comply with ORS 215.296;
- (E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and
- (F) Must comply with conditions established for:
 - (i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;
 - (ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;
 - (iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;
 - (iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and
 - (v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

- (A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;
- (B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;
- (C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and
- (D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

- (a) Provide public notice and an opportunity for public comment as part of the review process; and
- (b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

- (a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not

STAFF REPORT

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April 30, 2024

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limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

ORS 215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.

(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) 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.

(2) An applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

(3) A person engaged in farm or forest practices on lands devoted to farm or forest use may file a complaint with the local governing body or its designee alleging:

- (a) That a condition imposed pursuant to subsection (2) of this section has been violated;
- (b) That the violation has:
 - (A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
 - (B) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- (c) That the complainant is adversely affected by the violation.

(4) Upon receipt of a complaint filed under this section or ORS 215.218, the local governing body or its designee shall:

- (a) Forward the complaint to the operator of the use;
- (b) Review the complaint in the manner set forth in ORS 215.402 to 215.438; and
- (c) Determine whether the allegations made in a complaint filed under this section or ORS 215.218 are true.

(5) Upon a determination that the allegations made in a complaint are true, the local governing body or its designee at a minimum shall notify the violator that a violation has occurred, direct the violator to correct the conditions that led to the violation within a specified time period and warn the violator against the commission of further violations.

(6) If the conditions that led to a violation are not corrected within the time period specified pursuant to subsection (5) of this section, or if there is a determination pursuant to subsection (4) of this section

STAFF REPORT

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April 30, 2024

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following the receipt of a second complaint that a further violation has occurred, the local governing body or its designee at a minimum shall assess a fine against the violator.

(7) If the conditions that led to a violation are not corrected within 30 days after the imposition of a fine pursuant to subsection (6) of this section, or if there is a determination pursuant to subsection (4) of this section following the receipt of a third or subsequent complaint that a further violation has occurred, the local governing body or its designee shall at a minimum order the suspension of the use until the violator corrects the conditions that led to the violation.

(8) If a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) is initiated without prior approval pursuant to subsection (1) of this section, the local governing body or its designee at a minimum shall notify the user that prior approval is required, direct the user to apply for approval within 21 days and warn the user against the commission of further violations. If the user does not apply for approval within 21 days, the local governing body or its designee shall order the suspension of the use until the user applies for and receives approval. If there is a determination pursuant to subsection (4) of this section following the receipt of a complaint that a further violation occurred after approval was granted, the violation shall be deemed a second violation and the local governing body or its designee at a minimum shall assess a fine against the violator.

(9)(a) The standards set forth in subsection (1) of this section do not apply to farm or forest uses conducted within:

(A) Lots or parcels with a single-family residential dwelling approved under ORS 215.213 (3), 215.284 (1), (2), (3), (4) or (7) or 215.705;

(B) An exception area approved under ORS 197.732; or

(C) An acknowledged urban growth boundary.

(b) A person residing in a single-family residential dwelling which was approved under ORS 215.213 (3), 215.284 (1), (2), (3), (4) or (7) or 215.705, which is within an exception area approved under ORS 197.732 or which is within an acknowledged urban growth boundary may not file a complaint under subsection (3) of this section.

ARTICLE 36, SALMON HABITAT RECOVERY

The application shall satisfy the pertinent criteria of Article 36, Salmon Habitat Restoration.

[Staff note: There are no fish-bearing streams in the vicinity of the site.]

If the Planning Commission approves the application:

STAFF SUGGESTED CONDITIONS OF APPROVAL:

- CUP terminates with the transfer or conveyance of the property.
- The permit expires 2 years from the issue date. The applicant must re-apply prior to the expiration of the permit.
- Because the parcel is bordered by the EFU zone, the applicant shall file a Conflict Acknowledgment Statement with the Wallowa County Clerk's office.

CONCLUSIONS: To be developed at the hearing.

STAFF REPORT

ZP#24-07 PROVIDENCE Staff Report

April 30, 2024

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ZONE PERMIT APPLICATION

WALLOWA COUNTY
 Planning Department
 101 S River Street #105
 Enterprise, Oregon 97828
 541-426-4543 ext. 1170

PERMIT#:	<u>ZP#24-07</u>
E-PERMIT#:	<u>903.24.000089. PLNG</u>
DATE FILED:	<u>3-7-2024</u>
TOTAL FEE:	<u>\$525.00</u>
CHECK #:	<u>5138</u>

LEGAL OWNER: PROVIDENCE ESTATES LIMITED PARTNERSHIP +

APPLICANT: D. Rahn Hostetter REF#: 3648 +

PROJECT ADDRESS: 62253 KNAPPER RD TWP: 03S +

MAILING ADDRESS: P.O. Box 400, Enterprise, OR 97828 + RANGE: 45E

APPLICANT PHONE NUMBER: (541) 426-4584 SECTION: 2

APPLICANT E-MAIL: office@hostetterlawgroup.com TAX LOT: 501 +

CONTACT/ PHONE NUMBER: (541) 426-4584 + ACRES: 114.6 +

CONTACT/ EMAIL: office@hostetterlawgroup.com + ZONE: EFU

PROJECT DESCRIPTION: Agri-tourism and other commercial events or activities (WCLDO 15.015.35 +

TO BE PROCESSED, YOUR APPLICATION MUST INCLUDE MAPS SHOWING:

1. PROPERTY LINES, ACCESS, AND EASEMENTS
2. EXISTING AND PROPOSED STRUCTURES WITH SETBACKS TO PROPERTY LINES
3. ANY LIVE WATER, SEPTIC SYSTEM, SURFACE WATER (RIVER, PONDS, DITCHES, ETC), AND DOMESTIC WATER
4. FLOOR PLAN WITH A DESCRIPTION OF THE INTENDED USE FOR ACCESSORY STRUCTURES.

NOTE: Zone permits expire after four (4) years. If substantial construction has taken place, an extension of 24 months is allowed. The extension request must be in writing and include justification.

I hereby certify that the information furnished by me is correct to the best of my knowledge and issuance of this permit is based on this information and compliance with the below conditions of approval. Any error committed by the issuing authority shall not excuse me from complying with any other applicable state and local laws and ordinances. I understand that any deviation other than that allowed by law may nullify the validity of this permit. I understand that if processing this permit requires more than 5 hrs. of staff time and \$25 in supplies and materials, I am responsible for the additional fee and will be charged staff time at \$35 per hour and other items at cost.

 APPLICANT February 22, 2024
DATE

COUNTY USE ONLY: ACTION TAKEN
 Planning Department: _____ Planning Commission: _____ Approved: _____ Denied: _____

Conditions of Approval: _____

PERMIT AUTHORIZATION: _____

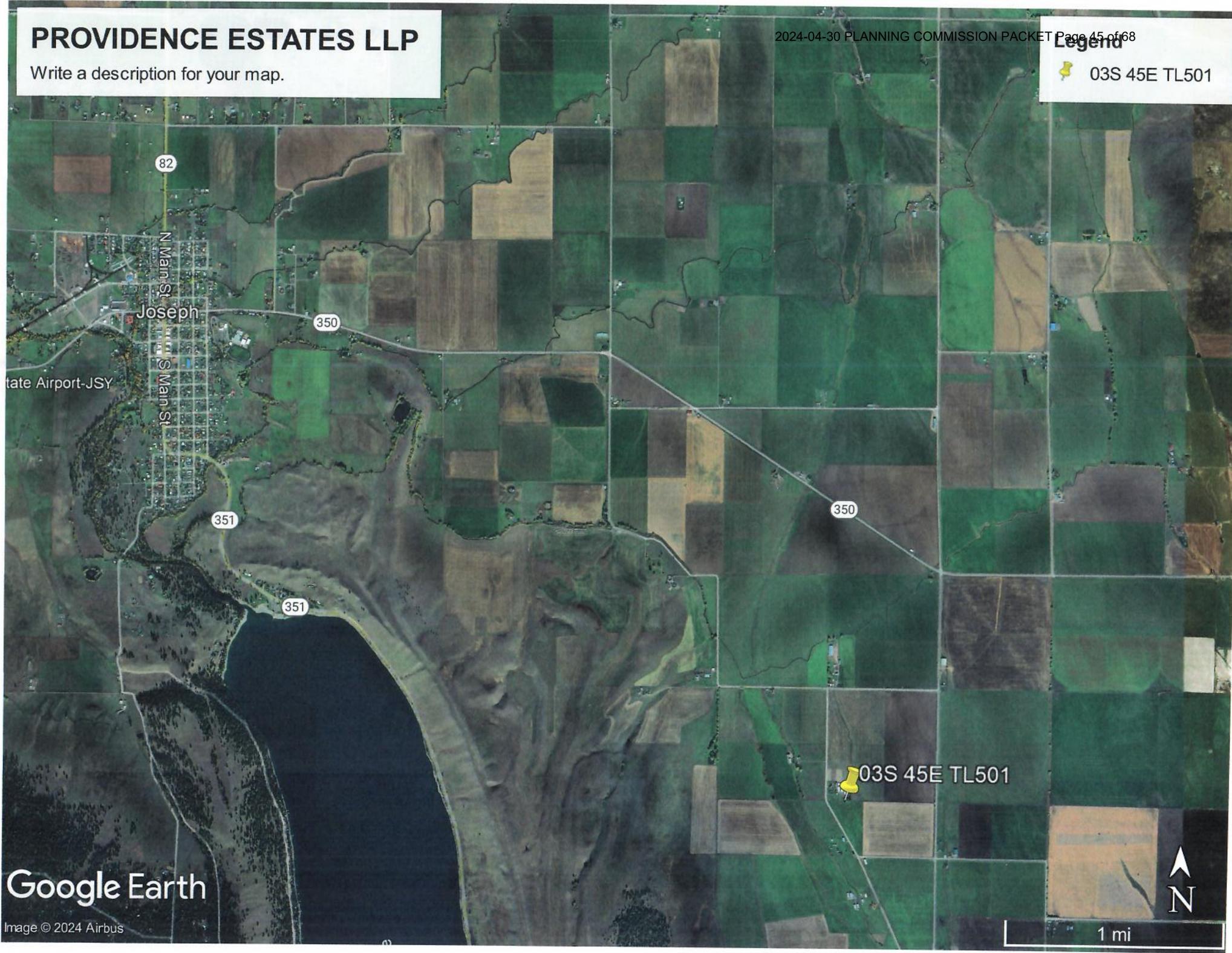
 DATE OF ACTION DATE OF EXPIRATION

PROVIDENCE ESTATES LLP

Write a description for your map.

Legend

 03S 45E TL501



Google Earth

Image © 2024 Airbus



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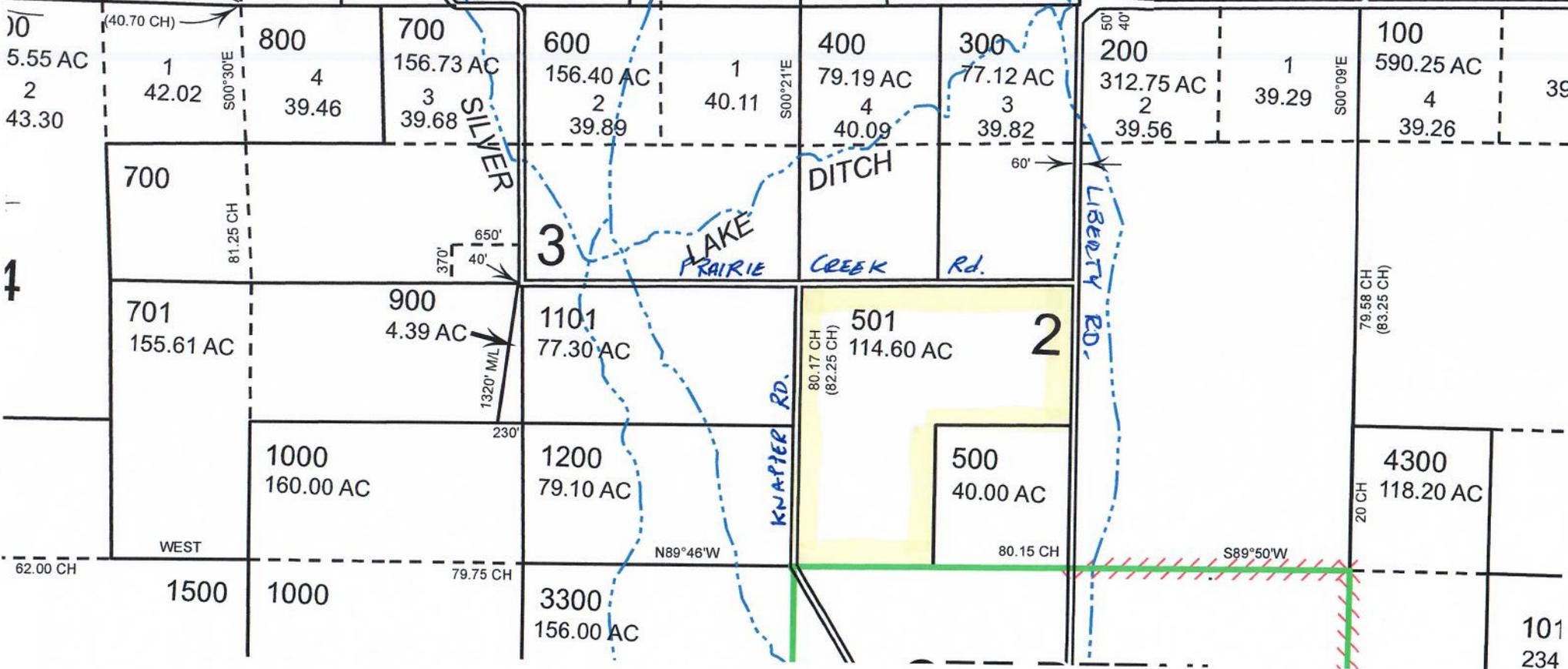
T.3S. R.45E. W.M. WALLOWA COUNTY

1" = 2000'



SEE MAP 2S 45E

LITTLE SHE





D. Rahn Hostetter
Partner

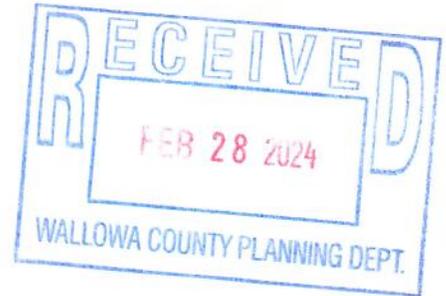
D. Zachary Hostetter
Partner
Also admitted in Washington

Benjamin Boyd
Associate
Also admitted in Wyoming

February 28, 2024

HAND-DELIVERED

Mr. Franz Goebel, Planning Director
Wallowa County Planning Department
101 S. River Street, Room 105
Enterprise, OR 97828



Re: Providence Estates Limited Partnership Zoning Application
Our File No. 641-02

Dear Franz:

This is to supplement the above-referenced application, to offer evidence that the commercial events that are proposed in the application will be “incidental and subordinate” to the existing farm use on the property.

Applicant’s farm income from the property in 2022 (as shown on Schedule F to applicant’s 2022 federal tax return) was \$58,679.00 (\$34,679.00 from sale of farm crops and \$24,000.00 from equestrian related services). *See* WCLDO Section 15.040.05(C)(1).

Applicant’s farm income from the property in 2023 (as shown on Schedule F to applicant’s 2023 federal tax return) was \$53,490.00 (\$29,490.00 from sale of farm crops and \$24,000.00 from equestrian related services). I can provide copies of the referenced Schedule Fs if you so desire.

The income from each commercial event is estimated to be \$1,000.00, for a total of \$6000.00 to \$8,000.00 annually.

I have enclosed a copy of an approved building plan for the structure in which the commercial events will take place. The application is for up to six events in 2024.

There is generally no traffic on Knapper Road, that is, a traveler to the subject property rarely encounters another motor vehicle. On days of any event, one traffic control person will be engaged for every 200 persons reasonably expected to attend in order to assure that there will be no impact on local “traffic” (so much as there is). The property is equipped with extensive space for “off-street” parking sufficient to assure that no motor vehicles will ever need to be parked off site.

Stephen Tollefson
Senior Legal Assistant

Angela Eckhardt
Legal Assistant

PO Box 400, 203 E. Main St., Suite 2, Enterprise, OR 97828
P (541) 426-4584 F (541) 426-3281
office@hostetterlawgroup.com
hostetterlawgroup.com



HOSTETTER
LAW GROUP, LLP

D. Rahn Hostetter
Partner

D. Zachary Hostetter
Partner
Also admitted in Washington

Benjamin Boyd
Associate
Also admitted in Wyoming

Mr. Franz Goebel
February 28, 2024
Page 2

All neighboring properties and owners will be provided prior notice of proposed date events in order to assure that any scheduled events will not impact their farm practices on the scheduled date. See WCLDO 5.040.05(H)2d.

Applicant acknowledges and accepts all of the conditions of approval set out in WCLDO 5.040.05(H), which need not be reprinted or restated for purposes of this application.

As always, please contact me with any comments or questions.

Sincerely yours,

D. Rahn Hostetter

D. Rahn Hostetter

A handwritten signature in blue ink, appearing to be 'DRH', enclosed in a blue circular scribble.

DRH/smt

Enclosure

cc: Client

**Supplement to Application for Agri-Tourism and Commercial Events
Pursuant to Wallowa County Land
Development Ordinance § 15.040.05(C)**

1. The proposed commercial events will include weddings, graduations, and other similar celebratory events that will be incidental to, and subordinate to, the production of farm crops and the equine related services and activities on the farm use tract.

2. The events will generally not exceed 12 hours in duration, but will always be less than 72 hours in duration.

3. The events will be conducted in existing (and permitted) facilities and structures. No new or additional structures will be constructed to accommodate the events.

4. The events will be conducted in an area which is free of all combustible material (use area surfaces are either gravel or irrigated and maintained lawns) and, therefore, will not significantly increase any fire hazard, fire suppression costs, or risks to fire suppression personnel.

5. The land use pattern of the area is exclusively agricultural. No other agri-tourism or commercial events or activities are authorized in the area. The agricultural and land use patterns of the area will not, therefore, be materially impacted.

6. a) The proposed commercial activities are weddings, graduations ceremonies, and similar celebratory events. There will generally be no more than 300 attendees. The revenues from the events will be used to support the agricultural, equine, and proposed viticultural uses of the tract.

b) The events will be conducted on grounds and in existing structures that are well designed and maintained to display (and assist in marketing) the agricultural and farm related land uses and land use patterns for the tract and the surrounding area.

c) Access to the venue will be from Knapper Road (a county maintained road).



BLUE EAGLE ENGINEERING COMPANY, INC

PROFESSIONAL ENGINEERING & ENVIRONMENTAL SERVICES
69631 Summerville Road ♦ Summerville, Oregon ♦ 97876

March 7, 2024

To Whom it May Concern:

I have inspected the venue pole building situated at 62253 Knapper Road, Joseph, Oregon. At the time of my visual, cursory inspection in July 2021, I was a duly licensed and certified engineer.

The Venue Building is constructed as an open style building consisting of three open-wall sides and a wall structure at the south end of the structure. My professional opinion is that the Venue Building at the time of my inspection was constructed in a manner which complies with applicable structural building standards and is safe for use by the public as a place of congregation.

Blue Eagle Engineering Company, Inc.

Les Tipton, P.E.
Engineer

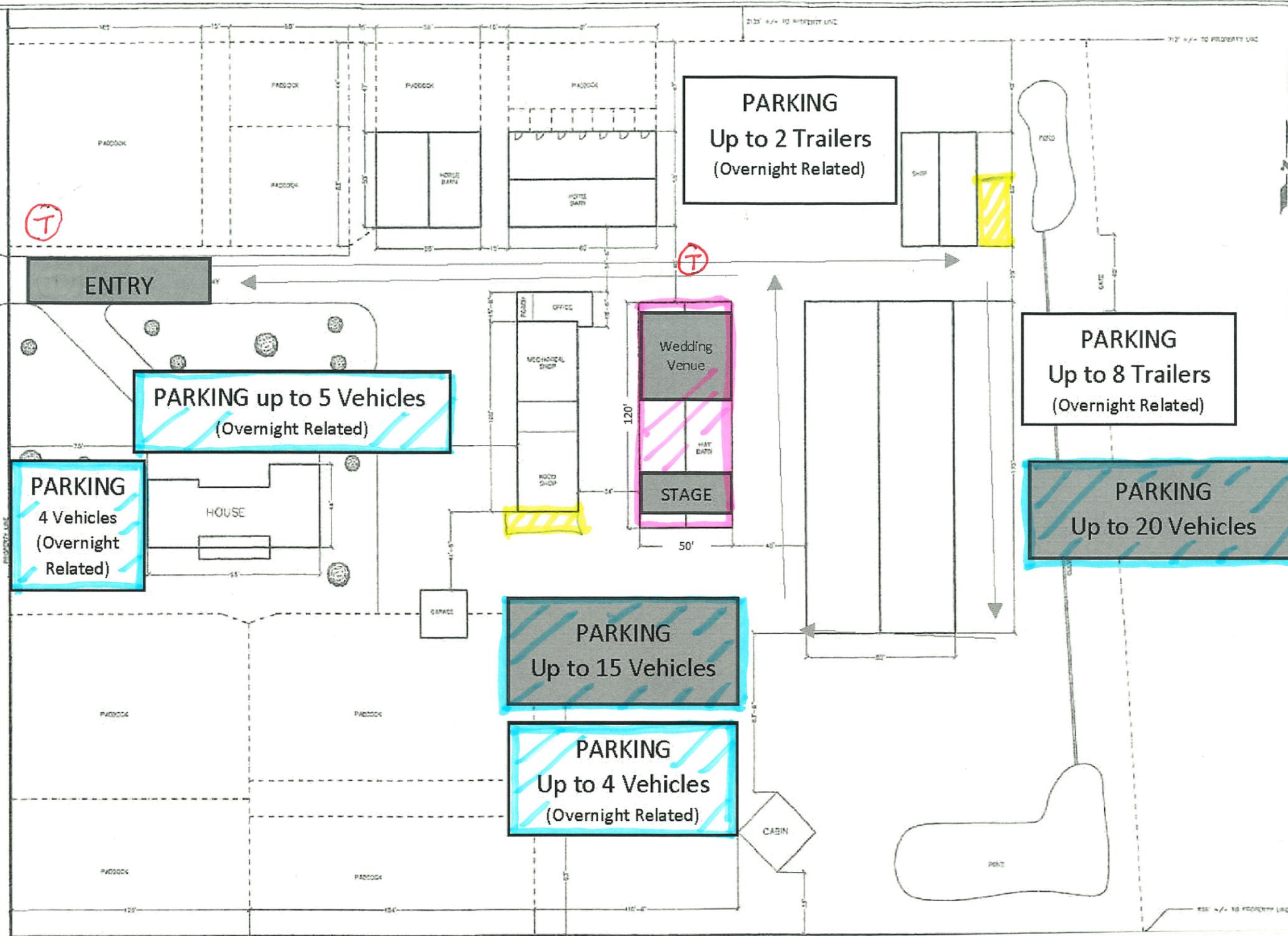
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EXPIRES: 6/30/24

(Every identification in this color is venue related)

KNAPPER ROAD



PARKING
Up to 2 Trailers
(Overnight Related)

PARKING
Up to 8 Trailers
(Overnight Related)

PARKING up to 5 Vehicles
(Overnight Related)

PARKING
Up to 20 Vehicles

PARKING
4 Vehicles
(Overnight Related)

PARKING
Up to 15 Vehicles

PARKING
Up to 4 Vehicles
(Overnight Related)

Wedding Venue
STAGE
RESTROOMS

ENTRY

1 SITE PLAN
C-1 SCALE: 1" = 25'-0"

LEGEND

- Venue Building 
- Parking 
- Traffic Control 
- Restrooms 

KARL JUVE CADESIGN
64351 ALDER SLOPE ROAD
ENTERPRISE, OR 97828
PHONE (541) 882-8888
FAX (541) 828-0130
© 2008 KARL JUVE CAD/VP

PROVIDENCE ESTATES, MARI-ANNE & AL ADELSBERGER
SITE PLAN
62253 KNAPPER ROAD
JOSEPH, OREGON 97846
SCALE: 1" = 25'-0"
DATE: OCTOBER 15, 2013

SITE PLAN

C-1B

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WALLOWA COUNTY
Planning Department
101 S River Street #105
Enterprise, Oregon 97828
541-426-4543 ext. 1170

STAFF REPORT
ZP#24-16
Wallowa County
Moraine Pit Toilets

- APPLICANT:** Katy Nesbitt
Manager, East Moraine Community Forest
101 S. River Street, 3rd Floor
Enterprise, OR 97828
- OWNER:** Wallowa County
101 S. River Street
Enterprise, OR 97828
- REQUEST:** To permit a pit toilet structure in the parking area accessing the east side of the East Moraine Community Forest – an improvement of a Pre-existing Non-conforming Use.
- LOCATION:** The property description is Township 03S, Range 45E, Section 00, Tax Lot 1500, Ref#s 3665 & 7800
- PARCEL CHARACTERISTICS:** The parcel contains about 1,387 acres. The parcel Zoning is both Timber Grazing (T/G) Exclusive Farm Use (EFU); however, the project is on T/G only. Access is from Turner Ln, a county road accessing the east side of the east moraine. The parcel borders EFU zone on North and South sides, T/G zone to the East, Park Restricted to the Southwest and Wallowa Lake to the West.

OTHER INFORMATION:

Exhibits in this packet:
Permit application with narrative, maps and floor plans.

PREVIOUS PLANNING DEPARTMENT AND OTHER AGENCY ACTIONS:

CUP#10-08 Wireless Internet Tower

STAFF COMMENT:

This zone permit application is for an improvement to a pre-existing non-conforming use on the East Moraine Community Forest – a pit toilet in the parking area off of Turner Ln. Per Article 11, an expansion of a Non-conforming use is subject to a public hearing process. This is therefore a Zone Permit (not a Conditional Use Permit) coming before the Planning Commission to fulfil the requirement of a public hearing review. This allows the Commission to evaluate community concerns, and apply conditions of approval if necessary.

REVIEW CRITERIA:

- Article 1, Introductory Provisions
- Article 5, Public Hearing Review
- Article 11, Non-Conforming Uses
- Article 36, Salmon Habitat Recovery
- Other applicable zoning ordinances or goals of Wallowa County Land Development Ordinance and/or laws of the State of Oregon

FOR REFERENCE:

- Article 16, Timber Grazing

ARTICLE 1, INTRODUCTORY PROVISIONS

SECTION 1.030, ORDINANCE ADMINISTRATION AND INTERPRETATION: The Wallowa County Planning Director is responsible for the administration of this ordinance. The provisions of this ordinance are held to be the minimum requirements for fulfilling its objectives. Where conditions imposed by any provision of this ordinance are less restrictive than comparable provisions of this ordinance or any other ordinance, regulation, or law; the more restrictive provision will prevail.

[...]

SECTION 1.065, DEFINITIONS: For the purpose of this ordinance and as used in this ordinance, the following words and phrases are so defined:

[...]

091. NON-CONFORMING STRUCTURE OR USE - *A lawful existing structure or use at the time this ordinance or any amendment thereto becomes effective and not conforming to the requirements of the zone in which it is located.*

ARTICLE 5, PUBLIC HEARING REVIEW

SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. *Public Hearing Review requires notice of hearing be given to all owners of property lying within:*

[...]

C. *Five hundred (500) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone;*

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. *Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.*

STAFF REPORT

ZP#24-16 East Moraine Toilet Staff Report

April 30, 2024

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03. *Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.*

SECTION 5.040, APPLICABLE REVIEW CRITERIA:

01. *SALMON HABITAT RESTORATION: Applications must satisfy any applicable criteria of Article 36, Salmon Habitat Restoration.*
02. *SCENIC WATERWAYS, WILDLIFE HABITAT, WETLANDS AND RIPARIAN CORRIDORS: Applications must satisfy any applicable criteria of Article 28, Goal 5 and 6 Resource Overlay Zone.*

ARTICLE 11, NON-CONFORMING USES

SECTION 11.010, PURPOSE: Non-Conforming Uses are those buildings and structures including: signs, land use, or continuing activities which were lawfully established or conducted prior to the effective date of this ordinance but do not conform with one or more standards or permit requirements of this ordinance. The purpose of this article is to control, improve, or terminate Non-Conforming Uses.

SECTION 11.015, RIGHT TO CONTINUE NON-CONFORMING USE: A Non-Conforming Use established prior to the effective date of this ordinance, or prior to any subsequent amendment which creates such nonconformity, may be continued and maintained except as otherwise provided by this article. Continuation of a Non-Conforming Use may include a change of ownership, tenancy, or management where the previous line of business or other function is substantially unchanged.

ARTICLE 16, TIMBER GRAZING

SECTION 16.010, PURPOSE: The purpose of the Timber Grazing zone is to protect and maintain forest lands for grazing, and rangeland use and forest use, consistent with existing and future needs for agricultural and forest products. The Timber Grazing zone is also intended to allow other uses that are compatible with agricultural and forest activities, to protect scenic resources and fish and wildlife habitat, and to maintain or improve the quality of air, water and land resources of the county. The intention of the Timber Grazing Zone is to guarantee the preservation of the areas so classified for farm and forest use free from conflicting non-farm, non-forest use.

STAFF NOTE: *Community access, including the trail system, is identified by the East Moraine Community Forest Management Plan as a pre-existing non-conforming use. This use is not an application for the use itself, only for an expansion of that non-conforming use.*

ARTICLE 36, SALMON HABITAT RECOVERY

The application shall satisfy the pertinent criteria of Article 36, Salmon Habitat Restoration.

[Staff note: There are no fish-bearing streams or riparian areas in the vicinity of the use expansion.]

STAFF SUGGESTED CONDITIONS OF APPROVAL:

STAFF REPORT

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Staff has no suggested conditions of approval.

CONCLUSIONS: To be developed at the hearing.



ZONE PERMIT APPLICATION

WALLOWA COUNTY
 Planning Department
 101 S River Street #105
 Enterprise, Oregon 97828
 541-426-4543 ext. 1170

PERMIT#:	<u>ZP# 24-16</u>
E-PERMIT#:	<u>903.24.000100.PLNG</u>
DATE FILED:	<u>3-25-2024</u>
TOTAL FEE:	<u>\$600</u>
CHECK #:	_____

LEGAL OWNER:	<u>Wallowa County</u>		
APPLICANT:	<u>Katy Nesbitt</u>	REF#:	<u>3665 and 7800</u>
PROJECT ADDRESS:	<u>85300 Turner Ln, 60505 Wallowa Lake Hwy/Hwy 351</u>	TWP:	<u>03S</u>
MAILING ADDRESS:	<u>101 South River Street, Third Floor</u>	RANGE:	<u>45E</u>
APPLICANT PHONE NUMBER:	<u>541-263-0126</u>	SECTION:	<u>00</u>
APPLICANT E-MAIL:	<u>knesbitt@co.wallowa.or.us</u>	TAX LOT:	<u>1348+381500</u>
CONTACT/ PHONE NUMBER:	<u>541-263-0126</u>	ACRES:	<u>~13870</u>
CONTACT/ EMAIL:	<u>knesbitt@co.wallowa.or.us</u>	ZONE:	<u>mix T/G+EFU</u>
PROJECT DESCRIPTION:	<u>East Moraine Community Forest Public Access Improvement Project</u>		

- TO BE PROCESSED, YOUR APPLICATION MUST INCLUDE MAPS SHOWING:
1. PROPERTY LINES, ACCESS, AND EASEMENTS
 2. EXISTING AND PROPOSED STRUCTURES WITH SETBACKS TO PROPERTY LINES
 3. ANY LIVE WATER, SEPTIC SYSTEM, SURFACE WATER (RIVER, PONDS, DITCHES, ETC), AND DOMESTIC WATER
 4. FLOOR PLAN WITH A DESCRIPTION OF THE INTENDED USE FOR ACCESSORY STRUCTURES.

NOTE: Zone permits expire after four (4) years. If substantial construction has taken place, an extension of 24 months is allowed. The extension request must be in writing and include justification.

I hereby certify that the information furnished by me is correct to the best of my knowledge and issuance of this permit is based on this information and compliance with the below conditions of approval. Any error committed by the issuing authority shall not excuse me from complying with any other applicable state and local laws and ordinances. I understand that any deviation other than that allowed by law may nullify the validity of this permit. I understand that if processing this permit requires more than 5 hrs. of staff time and \$25 in supplies and materials, I am responsible for the additional fee and will be charged staff time at \$35 per hour and other items at cost.

Katherine Nesbitt
 APPLICANT

March 21 2024
 DATE

COUNTY USE ONLY: ACTION TAKEN

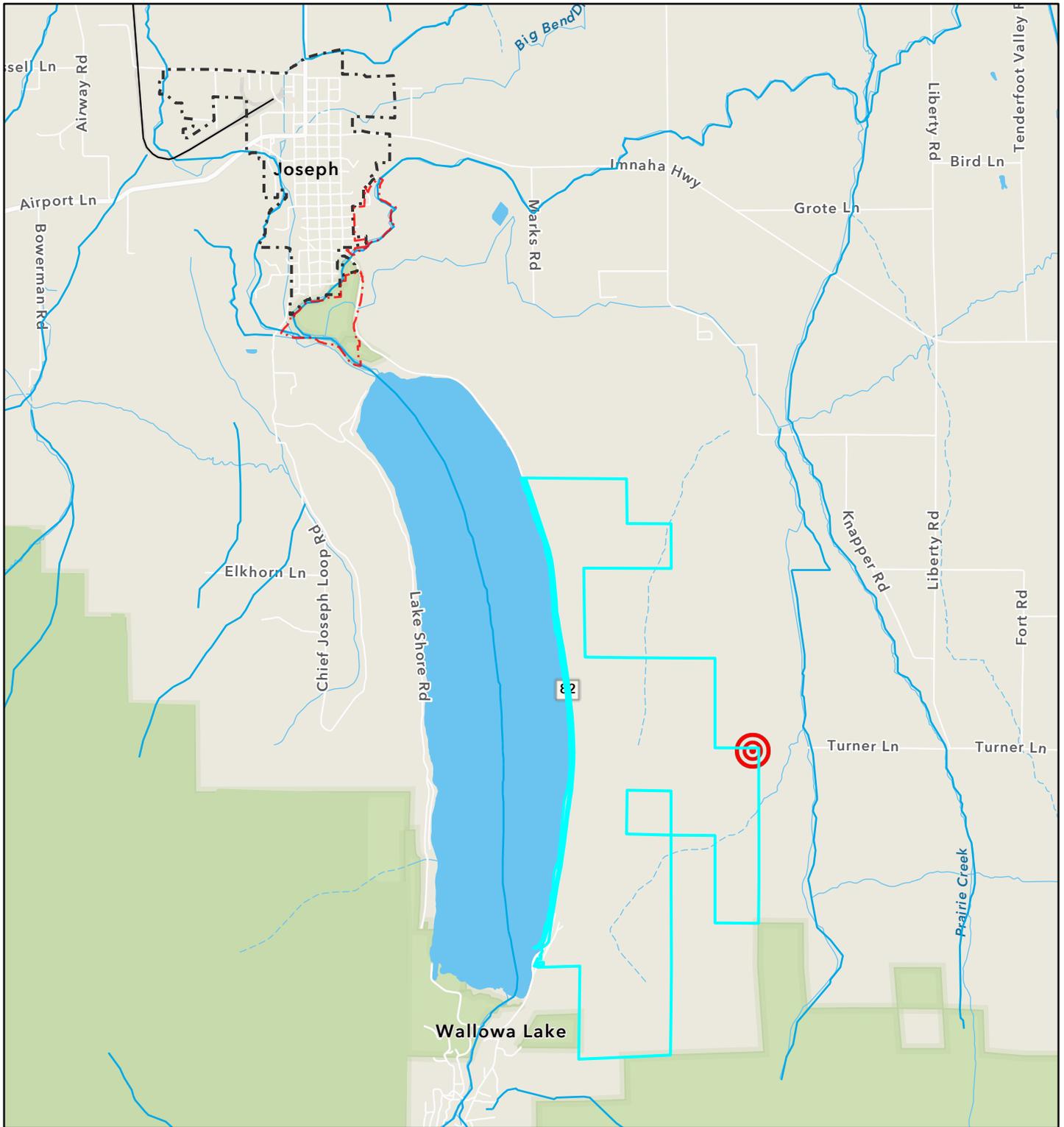
Planning Department: _____ Planning Commission: _____ Approved: _____ Denied: _____

Conditions of Approval: _____

PERMIT AUTHORIZATION: _____

DATE OF ACTION

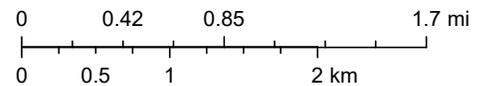
DATE OF EXPIRATION



3/26/2024, 2:09:32 PM

1:72,224

-  Toilet
-  City Limits
-  County
-  Railroad
-  Boundary UGB
-  County Streams



Oregon State Parks, State of Oregon GEO, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA, USFWS

Addendum to the East Moraine Community Forest Public Access Improvement Zone Permit Application.

The East Moraine Community Forest (EMCF) Public Access Improvement Project (Project) Zone Permit Application meets the following applicable criteria as detailed in the Wallowa County Comprehensive Land Use Plan:

Article 1 – Introductory of Provisions

Article 1 Sec. 1.06.091 RIGHT-OF-WAY - The area between the boundary lines of an alley, easement, street, road, or highway.

The Project meets the definition of SECTION 11.010, PURPOSE: *Non-Conforming Uses are those buildings and structures including: signs, land use, or continuing activities which were lawfully established or conducted prior to the effective date of this ordinance but do not conform with one or more standards or permit requirements of this ordinance. The purpose of this article is to control, improve, or terminate Non-Conforming Uses.*

SECTION 1.025, COMPLIANCE WITH THE LAND USE PLAN: Actions initiated under this ordinance shall be consistent with the Wallowa County Comprehensive Land Use Plan.

All aspects of the Project will be consistent with the Wallowa County Comprehensive Land Use Plan.

Article 11 – Non-conforming Uses

SECTION 11.010, PURPOSE: Non-Conforming Uses are those buildings and structures including: signs, land use, or continuing activities which were lawfully established or conducted prior to the effective date of this ordinance but do not conform with one or more standards or permit requirements of this ordinance. The purpose of this article is to control, **improve**, or terminate Non-Conforming Uses.

The East Moraine Community Forest road and trail system is a pre-existing non-conforming use. Installing a vault toilet at the trailheads will improve a non-conforming use by providing sanitation facilities for trail users.

SECTION 11.015, RIGHT TO CONTINUE NON-CONFORMING USE: A Non-Conforming Use established prior to the effective date of this ordinance, or prior to any subsequent amendment which creates such nonconformity, may be continued and maintained except as otherwise provided by this article. Continuation of a Non-Conforming Use may include a change of ownership, tenancy, or management where the previous line of business or other function is substantially unchanged.

The function of the East Moraine Community Forest complies with the property's historic uses – timber harvest, cattle grazing, and recreation. Existing roads and trails on the property provide access to these historic uses.

Page 11 of the East Moraine Community Forest Management Plan, under Summary of Zone Designations and Resource Overlays, states:

“The trails (**See Appendix T: Existing Roads and Trails Map**) along the moraine are considered a pre-existing non-conforming use. Wallowa County Ordinance Article 11, Non-Conforming Uses, adopted in 1988, establishes the *right to continue that use, and codifies the ability to restore, repair, or make repairs necessary to comply with any lawful requirement for continued use.*”

The Community Forest is subject to various and sundry land use designations developed by the Wallowa County Planning Department and citizens, and adopted by the Commissioners, in order to protect the custom, culture, and community stability of the county; maintain the agricultural and timber basis of the county; accommodate anticipated development; and make provisions for those uses which may be needed by the county, but which may have such undesirable characteristics as noise, smoke, and odor (Wallowa County, 2019).

In order to best meet the needs of the EMCF existing roads trails and parking lot users, the managers of the property request the right to *expand the pre-existing, non-conforming use of the roads, trails and parking lot* by installing a vault toilet at the Wallowa Lake Highway and Turner Lane trailheads.

SECTION 11.020, NON-CONFORMITY DUE TO LACK OF CONDITIONAL USE PERMIT: Any Non-Conforming Use which is non-conforming only because of the absence of a conditional use permit shall be deemed a conforming use upon securing the approval of such permit.

Does not apply

SECTION 11.025, NON-CONFORMING EXPANSION OR CHANGE: A non-conforming structure or use may be expanded or changed to another Non-Conforming Use subject to the public hearing review process. A request for expansion or change of use of a Non-Conforming Use shall be reviewed for compliance with the following:

01. The existing development is sufficiently substantial so that compared to the cost of conversion to comply with requirements for new development makes conversion impractical.

Conversion is not possible.

02. The proposed development and its use will be more compatible with the surrounding area than the current development and use considering the following:

- A. The character and history of the use and of development in the surrounding area. **The history and use of the land has always included human activity, whether through management or recreation. Toilets at the trailheads will eliminate the recreational and administrative users of the community forest from relieving themselves on public land. This will enhance the visual, ecological, health and safety values of the Community Forest.**

- B. The comparing degree of noise, vibration, dust, odor, fume, glare, or smoke detectable at the property boundary.

Toilets at the East Moraine Community Forest trailheads will not create or increase noise, vibration, dust, odor, fumes, glare or smoke at the property

boundary. The toilet will be located at least 25 feet from the [property][KN1] boundary.

- C. The comparing amount and nature of outside storage, loading, and parking.
There will be no outside storage, nor loading of any kind related to the vault toilets. Parking at the trailheads will remain as is.
- D. The comparing visual appearance, hours of operation, and traffic generation.
The toilets located at the Turner Lane and the Wallowa Lake trailheads will be fashioned in the classic, rustic design of the early twentieth century popular at state parks and national forest trailheads. See attached photos and schematics. Traffic will be consistent with the existing traffic to the trailheads; toilets should not increase traffic.
- E. Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.
Toilets will reduce conflict between the ecological, health and safety concerns of human waste left on public land and its risk to humans, pets, livestock, wildlife, native plants and water.

- 03. The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.
The Project is more than 100 feet from a wetland and is not near any fish bearing streams or live water.

SECTION 11.035, RESTORATION AND REPAIR: Restoration and repair to a non-conforming structure will be permitted, subject to Ministerial Review, where the restoration or repair is necessary to continue the use in a reasonable manner, subject to Section 11.015, or where the restoration or repair is necessary to comply with any lawful requirement for continued use.
Any future restoration and repair of the vault toilet will be overseen by the EMCF manager in consultation with the EMCF executive committee and the Wallowa County Board of Commissioners.

Article 12 - Zoning Permit

SECTION 12.025, AUTHORIZATION OF SIMILAR USES: The public review authority may permit in a particular zone a use not listed in that zone provided the use is of the same general type as the uses permitted in that zone by this ordinance and further provided that it is not specifically listed as an allowed use in any other zone.
Installing toilets on the Community Forest is of the same general type/similar use as currently exists – human use of the property on existing roads and trails.

SECTION 12.030, TIME LIMIT ON ZONE PERMITS:
The managers of the East Moraine Community Forest understand the time limit and zone permit perfection requirements of section 12.030.

Article 16 – Timber Grazing

**Project complies with Section 16.015, (03) Permitted Uses
Nonresidential buildings customarily provided in conjunction with farm and forest uses
subject to the provisions of Article 3, Ministerial Review; and Article 4, Administrative
Review.**

Article 25

SECTION 25.090 Wildfire Hazard Overlay Zone

06. Where Level 1 and Level 2 Design Standards Apply.

A. Level 1 fire safety design standards shall apply to land within:

1. **Timber Grazing (TG)** or Timber Commercial (TC) zones;
- and 2. CARs and WUI Zones classified as having a “high” or “**extreme**” risk of wildfire occurrence as documented in the 2017 CWPP.

The EMCF proposed project is within the Timber Grazing Zone and considered at extreme risk of wildfire occurrence.

The following standards shall apply to

- (a) all new structures associated with private businesses and additions to structures associated with private businesses, and all new dwellings and additions to dwellings,
- (b) accessory structures greater than 1,000 square feet, and additions to structures greater than 1,000 square feet, and
- (c) public and private infrastructure projects. The Projects is a public infrastructure project.**

A. Access: Roads and driveways must be wide enough for fire equipment passage, and dead end roads and cul-de-sacs must be large enough for fire equipment to turn around. (See 18.035.03 and Article 32, Road Design, for standards). There shall be more than one functioning entrance/exit to a dwelling, business or public building.
Access to the Wallowa Lake Highway Trailhead is via Highway 351, a paved road accessible from the Wallowa Lake Fire Department or the Joseph Fire Department. The Turner Lane Trailhead is access from Highway 351 by maintained, gravel county roads.

B. Fuel Break Areas: Fuel-free break areas shall be provided surrounding new primary structures of any size and accessory structures of 100 square feet or greater, as follows:

1. Primary Fuel Break Area. A primary fuel-free break area shall be maintained for a distance of 30 feet surrounding any new structure as defined in Subsection 07 above.

The Project will comply with the primary fuel-free break area of 30 feet surrounding the footprint of the toilet facility.

2. Secondary Fuel Break Area. A secondary fuel-free break area shall be cleared and maintained on land surrounding the structure, provided that the land is owned or controlled by the applicant.

The Project will comply with the secondary fuel-free break area of 100 feet surrounding the footprint of the toilet facility.

Vegetation within the secondary fuel-free break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger

trees. Dead fuel shall be removed. The minimum width of the secondary fuel-free break is 100 feet around the primary fuel break area.

3. The fuel-free break standards shall be completed and approved by the Planning Director prior to issuance of any septic, building, or manufactured dwelling permits.

Maintenance of the fuel-free breaks shall be the continuing responsibility of the property owner.

Forestry - harvest, hazardous removal, fuel-breaks, timber stand improvement, and the like are being assessed and managed on a regular basis across the entire EMCF.

4. Structures shall not be sited on slopes of 40 percent or greater under any circumstances.

The Project will not be sited on slopes of 40 percent or greater.

C. Building Requirements:

1. Roofs of new or expanded structures shall be made of non-flammable fire-resistive [updated 09/23/2021 to match Building Code] material. **Project will comply**

2. All building vents and other openings shall be screened.

Project will comply

All chimneys shall have a spark arrestor. **Not applicable**

D. Water for Fire Suppression. The dwelling shall be located on a parcel within a fire protection district or shall be provided with fire protection by contract.

Project is in a fire protection district.

Article 28 GOAL V and VI Resource Overlay

Per Article 28, SECTION 28.020 (01) RIPARIAN MANAGEMENT CORRIDORS:

Except as provided under Residential zoning Articles 18, 19, 21, 38, and 42, and except in the R-1 and UG-R zones where the setback shall be 25 feet, there shall be *a 100 foot setback for structures, from the top of each bank* (synonymous with normal high water, see definitions, Article 1), from fish bearing streams for the purpose of preserving habitat and water quality for game birds, fur bearers, fish, and non-game wildlife. This setback may be varied to the minimums listed below in accordance with Article 36 upon recommendation by the WCNRTAC.

The project locations are more than 100 feet from fish bearing streams, live water bodies, and wetlands.



606 N. Pines Road, Suite 202
Spokane Valley, WA 99206
800.696.5766
www.cxtinc.com

INSTALLATION SUGGESTIONS FOR CASCADIAN VAULT RESTROOM

1.0 MEASUREMENTS

A. Vault

Check drawing for actual dimensions and weight.

Height:	4' 4"
Width:	6' 6"
Length:	14' 7½"
Weight:	17,400 lb.

B. Building

Check drawing for actual dimensions and weight.

	<u>One Piece</u>	<u>Two Piece</u>	
		<u>Top</u>	<u>Bottom</u>
Weight:	28,600	15,700	12,900
Width:	8' 6"	8' 6"	6' 6"
Length:	15' 2¾"	14' 10½"	14' 7½"
Height:	11' 6"	7' 1"	4' 5"

2.0 INSTALLATION

A. Placement

The floor of the building and the top of the vaults should be the high spot of the site chosen. Finished floor elevation should be 4- 6" above natural grade measured at the front entrance of the floor. Both the floor and the top of the vault should be above the surrounding ground level with the pathway sloped up to meet the entryway. Ideally, the back of the building should be slightly higher to allow water to freely drain out of the toilet rooms.

B. Excavation, Backfill and Compaction

The hole dug to accommodate the vaults must be large enough to be workable and to allow the floor to the building to fit on the vaults when placed, but small enough to avoid excessive backfill after placement (use your own judgement). Compact the natural ground at the bottom of the vault excavation with a minimum of three passes with a whacker-type mechanical compactor or equivalent approved by the customer.

Install aggregate bedding material for building support. Compact aggregate course with two passes with a whacker-type mechanical tamper or equivalent approved by the customer. Install leveling course of sand so there will be no high spots in the middle of the vault bottom. Set vault in place. Ideally, the containment area end of the vault should be slightly higher; ¼" per foot of run to allow the building to sit higher. Ensure vault is level, side to side. Backfill around the structure. Use excavated material for backfill, rocks larger than 6" in maximum dimension shall not be placed within 6" of the exterior vault walls. Fill, adjacent to the building entry will have excavated material placed in 8" loose lifts and compacted with a minimum of two (2) passes with a whacker-type mechanical compactor or equivalent approved by customer. After the vault is placed in the hole and backfilled, place the supplied butyl tape around the entire top surface of the vault. Make sure that the area is free of debris.

C. Setting and Assembling the Building

Set bottom building section onto vault lining up the back corners of the building section with the back corners of the vault (the vault section with ABS liner). Place rebar (included) into the holes provided on the top of the walls of the bottom section, then squeeze epoxy (included) into each hole. Lift top section of building, squeeze epoxy into the holes provided in the bottom of this section, line up the holes with the rebar on the bottom section of building and set.

D. Hardware Installation

Doors

1. Place door frame into door opening. Ensure that door frame is centered within opening. Make sure frame is plumb.
2. Use $\frac{3}{8}$ " x 6" masonry bit in a roto hammer to drill through holes in the frame (three per side).
3. Take door anchor bolt, hammer into the holes. Take flat blade screwdriver and turn to expand anchors. Place black cover over each screw head.
4. Attach hinges to doorframe.
5. Attach door to hinges. Depending on what hand the door frame is, you might need to remove hinge plate from door and rotate it 180° and return to door. Ensure that door swings freely within the frame. If door binds, use shims underneath hinges to correct the problem.
6. Attach deadbolt and privacy latch handle per enclosed instructions.
7. Attach door sweep using a $\frac{1}{8}$ " steel bit. Adjust door sweep so that it lightly brushes the ground.
8. Caulk around door frame with provided caulk.
9. Open door fully to privacy wall, where privacy latch hits privacy wall. Attach doorstop with a $\frac{3}{16}$ " bit and roto hammer.

Signs

1. Attach signs using a $\frac{1}{4}$ " bit and roto hammer to pre-drill holes, tap attachment bolts through the sign into the drilled holes.

I.D. Tag

1. Attach I.D. tag to the inside top door frame using provided rivets.

E. Other Important Points

- Southern exposure for the vent stack is ideal, as this allows for heating of the vent stack. Heating of the vent stack aids in the venting of the building. Whenever possible, the placement of the building should be chosen with this in mind.
- Aggregate bedding material provides a solid base for the vault.
- Sand is preferable for use in leveling the bottom of the hole excavated for the vault, as it is easier to level.
- Use of softeners when lifting the building is critical to prevent spalling to the roof of the building, if nylon leads are not available.

- When lining up the vault and the floor of the building, lining up the rear corners of the vault (the containment portion) and floor (by the clean-out and vent stack) is the easiest and best way to set the building.
- **Important:** Check the seal of the containment portion of the vault by getting into the vault through the clean-out cover in the back of the building after building placement. There should be no light leaking through, with the exception of the riser and vent stack holes.
- Use the caulk provided to seal around the riser and vent stack where it joins the floor and roof panels. When sealing the vent stack, be sure to put a bead of caulk in the floor vent hole, insert vent stack, then caulk around vent stack.
- Prior to use, it is recommended you place water in a sufficient amount as to cover the entire bottom of the vault containment area to assist in keeping waste material fluid, making it easier to pump out when needed.

3.0 RECOMMENDED LIFTING EQUIPMENT

CXT can provide a drawing of the recommended lifting/rigging arrangement. Four lifting plates and four $\frac{3}{4}$ " coil bolts 6" long for the building can be provided for a refundable deposit of \$1,000.

1. Crane of appropriate capacity to lift and place vault and building onto designated site.
2. Four equal lengths of cable or nylon leads for a minimum of 25'.
3. Four lifting plates (CXT can provide).
4. Four softeners (wood or plastic) to protect roof edge where leads make contact if cable is used.
5. Four $\frac{3}{4}$ " coil bolts 6" long (CXT can provide).



