

FILE COPY

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Appeal of the Denial of the	)	
Application on Behalf of Willow Creek Land	)	
LLC for a Major Variance (V 25-01) to Operate a	)	FINAL ORDER NO. 69-2024
Temporary Asphalt Batch Plant in the Surface	)	
Mining (SM) Zone Outside of Standard Operating	)	
Hours for a Period Not to Exceed 60 Days	)	

WHEREAS, on July 26, 2024, Bryan Kerr and John Arambul of Kerr Contractors, on behalf of Willow Creek Land LLC, (the “Applicant”), submitted an application to Columbia County seeking approval for a Major Variance in the Surface Mining (SM) Zone to operate a temporary asphalt batch plant between the hours of 7:00 PM and 6:00 AM for a period not to exceed 60 days between April 1, 2025 and September 30, 2025 (the “Application”); and

WHEREAS, the temporary asphalt batch plant would be operated at the existing Goble Pit, located in the Surface Mining (SM) Zone on the north side of Nicolai Road at its intersection with Goble School Road, said property identified as Tax Map No. 6212-00-01100, Acct. No. 19332 (the “Property”); and

WHEREAS, Columbia County Zoning Ordinance (“CCZO”) Section 1042.8 authorizes the operation of temporary asphalt batch plants for a period not to exceed 60 days as a permitted use in the Surface Mining (SM) Zone; and

WHEREAS, CCZO Section 1044.5 limits normal hours of operations to between 7:00 AM and 6:00 PM; and

WHEREAS, CCZO Section 1504.1 authorizes the granting of Major Variances from otherwise-applicable requirements under certain circumstances; and

WHEREAS, after County staff deemed the Application complete, a hearing was scheduled for September 9, 2024 before the Columbia County Planning Commission (the “Planning Commission”), in accordance with CCZO Sections 1504 and 1603; and

WHEREAS, notice of the Application and hearing was duly provided in accordance with CCZO Section 1603.2; and

WHEREAS, on September 9, 2024, the Planning Commission held a hearing on the Application, received evidence and testimony into the record, deliberated on the matter, and denied File No. V 25-01; and

WHEREAS, notices of the Planning Commission’s decision were mailed out to all parties entitled to receive such notice on September 18, 2024; and

WHEREAS, on September 25, 2024, an appeal of the Planning Commission's denial (the "Appeal") was filed with the Columbia County Board of Commissioners ("Board") by the Applicant pursuant to CCZO Section 1703; and

WHEREAS, on November 6, 2024, the Applicant granted a waiver of the 120-day deadline otherwise applicable under ORS 215.427, in order to accommodate the calendar of the Board's calendar in scheduling a hearing on the appeal; and

WHEREAS, a hearing on the Appeal was scheduled before the Board for November 27, 2024; and

WHEREAS, notice of the Appeal was duly provided in accordance with CCZO Section 1701.4; and

WHEREAS, on November 27, 2024, the Board held a hearing on the Appeal, received additional evidence and testimony into the record, and continued the hearing to December 11, 2024 for deliberations; and

WHEREAS, at its regularly scheduled meeting on December 11, 2024, the Board deliberated on the Appeal and voted to tentatively approve File No. V25-01 with modifications to staff's recommended approval conditions as requested by the Board, with direction to Staff to prepare an appropriate order;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the following as findings in support of its decision:
  1. The above recitals.
  2. The Board's own Supplemental Findings, attached hereto as Exhibit A.
  3. The findings and conclusions in the LDS Staff Report dated November 18, 2024, attached hereto as Exhibit B and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.
- B. Based on the foregoing and the whole record on this matter, the Board of County Commissioners reverses the decision of the Planning Commission and hereby APPROVES File No. V 25-01 for a Major Variance in the Surface Mining (SM) Zone, to authorize the operation of a temporary asphalt batch plant between the hours of 7:00 PM and 6:00 AM for a period not to exceed 60 days between April 1, 2025 and September 30, 2025 at the Goble Pit, identified as Tax Map No. 6212-00-01100, Acct. No. 19332, subject to the following conditions of approval:
  1. This variance shall become void if the applicant does not submit a copy of the final contract with ODOT and begin operations for the project within one year of the final decision for File No. V 25-01. The final contract or other documentation shall include the proposed start date and end date for the proposed project.

- 2. The Applicant shall operate the temporary asphalt batch plant for a period of no more than 60 days within the project timeframe of April 1, 2025 – September 30, 2025. The one-time initial staging and setup of equipment, including an operational check to ensure all systems are functioning properly, shall not be counted toward the 60-day operational period.
- 3. The Applicant shall obtain a road access permit for the existing access point that connects to Nicolai Road. Issuance of a road access permit is subject to the Columbia County Public Works Director’s approval.
- 4. The Applicant shall install a temporary streetlight at the active access point onto Nicolai Road to help improve safety at the intersection. Placement of the temporary streetlight is subject to the Columbia County Public Works Director’s approval.
- 5. The applicant shall place temporary signage warning drivers of the truck traffic/trucks entering the roadway during the extended hours of operation. Placement of a temporary traffic sign is subject to the Columbia County Public Works Director’s approval.
- 6. All future site development on the property shall be reviewed for consistency with the applicable provisions in Section 1040 of the Zoning Ordinance related to development of SM zoned properties.
- 7. Columbia County Public Works shall install and maintain signage prohibiting the use of engine brakes on Nicolai Rd. for the duration of the Highway Project. Placement of traffic signage along Nicolai Road is subject to the Columbia County Public Works Director’s approval.

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- 8. Other than the one-time initial staging and setup of equipment, including an operational check to ensure all systems are functioning properly, operation of the temporary asphalt batch plant, is permitted only between the hours of 7:00 PM and 6:00 AM.

DATED this 8 day of January, 2025.

BOARD OF COUNTY COMMISSIONERS FOR  
COLUMBIA COUNTY, OREGON

By: [Signature]  
Chair

By: [Signature]  
Commissioner

By: [Signature]  
Commissioner

Approved as to form

By: [Signature]  
Office of County Counsel

**Exhibit A****Columbia County Board of Commissioners  
Supplemental Findings, Final Order No. 69-2024**

1. The Board received testimony regarding Columbia County Zoning Ordinance (“CCZO”) Sections 1504.1 and 1504.1.A.4, specifically as to what constitutes an “unnecessary hardship” (CCZO Section 1504.1) and an “unnecessary hardship” (CCZO Section 1504.1.A.4). The Board was directed to *Moore v. Columbia County*, 57 Or LUBA 105, where LUBA defined “unnecessary hardship” which the Board accepts and adopts as its own interpretation. The testimony received extrapolated from the same LUBA decision that, in order to satisfy the “unnecessary hardship” standard, the Board must find that “strict compliance with the Zoning Ordinance would result in suffering or privation to the applicant.” The Board finds that the Applicant has made such a showing in this case.

First, the Applicant is seeking a contract with the Oregon Department of Transportation (“ODOT”) to repave a section of Highway 30, and to do so would need to operate a temporary asphalt batch plant (“batch plant”) to perform the repaving. The Board finds that the Goble Pit is an appropriate location to operate a batch plant, which under CCZO Section 1042.8 is an outright permitted use in the Surface Mining (SM) Zone. As a permitted use, the Applicant would typically be entitled to submit a bid for ODOT’s work without even having to come to the County for a Major Variance, so long as the batch plant operated only between the hours of 7:00 AM and 6:00 PM and for a period not to exceed 60 days. In other words, under the County’s applicable regulations the Goble Pit is exactly the kind of location where those regulations contemplate batch plants being operated; the issue, then, pertains only to the hours of operation of the batch plant.

The Applicant has indicated that ODOT will require its contractor to operate between the hours of 7:00 PM and 6:00 AM, in order to increase the safety for its contractor as well as the traveling public. As the Applicant explained, “. . . ODOT commonly requires work to be done at night to minimize traffic impact and disruption and also greater safety for the crew doing the work. Hwy 30 is a two lane highway with one lane in each direction so traffic control is an important consideration.” Thus, if the County were not to grant a variance to CCZO Section 1044.5, the Applicant would be faced with the conundrum, burden, as well as potential suffering and/or privation in either: 1) having to forego bidding on the ODOT contract; or 2) going through this similar variance request process at a different location, perhaps not even in the Surface Mining (SM) zone – where the proposed activity is most appropriate – with the result being the County and Applicant simply re-encountering the same or substantially similar issues being raised regarding overnight operations at the other site, and potentially more if the Applicant proposed an alternative site outside of the Surface Mining (SM) zone (triggering the need for conditional use approval).

The Board received testimony regarding *Kelley v. Clackamas County*, 158 Or. App. 159 (1999) which, like *Moore*, involved a request for variances to encroach into setbacks. The current proposal is clearly distinguishable from both cases on its facts, which involves a

*permitted use, being conducted where it is supposed to be conducted, but simply at a different time of day than what is authorized under CCZO Section 1044.5. The Board finds that the present circumstances go beyond a matter of the Applicant's convenience. Not granting the variance (with, as stated above, the potential result of the County going through this process all over again – either elsewhere in the Surface Mining (SM) zone and having to potentially evaluate all of the same objections, or in a different zone where batch plants are not outright permitted uses) would create an unnecessary hardship, as well as suffering and privation on the part of the Applicant. This is not an applicant-created set of circumstances. Because ODOT's work on Highway 30 must be completed where specified, because as the applicant has stated asphalt must be batched close to the jobsite, and because ODOT requires work to be done at night, the Board finds that operating the batch plant somewhere close to the jobsite overnight is "something that cannot be done without", "is a thing that must be had", and so it is therefore necessary.*

2. The Board also received testimony that the Application did not establish compliance with CCZO Section 1504.1.A.1, which requires that "[t]he granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property." The objection was that, while recognizing that ODOT's improvements to Highway 30 would increase public safety, the Application did not adequately establish how operating at night and driving the asphalt to the jobsite near residences would increase public safety. The Board respectfully disagrees. First, the Board notes that the Goble Pit is located in the Surface Mining (SM) zone, where temporary asphalt batch plants are an outright permitted use. As explained above, this is a location where batching asphalt has been determined to be most appropriate under the applicable land use regulations. Second, the Board humbly disagrees that the record does not establish how operating the batch plant at night, per ODOT's requirements, increases public safety. The Applicant stated in its Application that the contemplated improvements would increase traffic safety on Highway 30, and the Board agrees. In addition, staff found that truck deliveries at night would be during a time where conflicts with residential traffic will be minimized, and that because of the site's close proximity to where the work will be done the number of trucks on the road (and the related time spent on the road) would be significantly reduced. The Board agrees with staff and the Applicant. Finally, the Board notes that several of the approval conditions directly address public safety, including Condition 4 requiring a temporary streetlight at the site's access point to Nicolai Road, and Condition 5 requiring signage warning drivers of trucks entering the right-of-way at the Goble Pit as well as the hours of the batch plant's operation. The Board find that, taken together, these add up to greatly increase public safety and accordingly that the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property.<sup>1</sup>

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<sup>1</sup> The Board received other testimony regarding the potential of groundwater contamination. However, the County received email communications from staff at the Oregon Health Authority (OHA) and Oregon Department of Environmental Quality (DEQ) stating that neither agency had an issue with the proposed variance, that the aquifer serving drinking water would not be affected and that the applicable 50' and 100' setbacks from well would be sufficient to protect the water. Based on those agency responses, and in addition to the fact that the underlying activity is an outright permitted use if undertaken during the daytime, the Board concludes that the variance will not be detrimental to water quality.

3. The Board received a memorandum into the record addressing alleged violations of regulations and permit requirements of the Department of Geology and Mining Industries (“DOGAMI”). The Board finds that each of those alleged DOGAMI violations relate not to a temporary asphalt batch plant, but to the extraction of aggregate materials at the Goble Pit and/or the neighboring Goble Quarry. The Board finds that those alleged violations are irrelevant to the criteria applicable in the present case, and are beyond the regulatory scope of the County. It is DOGAMI’s role to enforce its own permit and regulatory requirements, up to and including revocation of authorization(s) that go beyond the scope of the present proposed temporary asphalt batch plant. As pertains to the activity within that scope, the Board finds that the alleged violations do not apply to the criteria applicable to the present proposal or, to the extent they do apply, the Board finds that the record lacks an adequate explanation as to how.
4. The Board received testimony that the Application failed to establish under CCZO Section 1504.1.A.2 that “[t]he conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.” The Board humbly disagrees. As the Applicant and staff have explained, and as has been detailed above, in the staff report, and in the Application submission materials, the Goble Pit is zoned Surface Mining (SM), where temporary asphalt batch plants are permitted uses. The Goble Pit is also located close to where the work on Highway 30 is to be done, which the Applicant states is a requirement for batching asphalt (as staff notes, the Applicant indicated that asphalt must be produced and installed within a very limited window of time). The Board finds that those are characteristics that are unique to the property and not applicable to other property that could appropriately host a temporary asphalt batch plant, if any others in fact exist. There is no evidence in the record suggesting a more appropriate feasible location. The Board finds that requiring batching of asphalt at property farther away and/or located in a different zone would undermine the intent of the County’s land use regulations more than the granting of a variance to allow for operations to occur overnight would.

**COLUMBIA COUNTY BOARD OF COMMISSIONERS  
STAFF REPORT**

November 18, 2024

Appeal of Planning Commission’s Denial of a Major Variance to the Operating Hours in SM  
Zone

**BOC HEARING DATE:** November 27, 2024

**FILE NUMBER:** V 25-01

**APPLICANT/OWNER:** Willow Creek Land LLC (represented by Kerr Contractors c/o John Arambul and Bryan Kerr)  
P.O. Box 1060  
Woodburn, OR 97071

**PROPERTY LOCATION:** The subject property is located at the northeast intersection of Nicolai Road and Goble School Road in Rainier

**TAX ID:** 6212-00-01100 (#19332)

**ZONING:** Surface Mining (SM)

**PROPERTY SIZE:** Approximately 32.47-acres

**REQUEST:** The applicant is seeking a variance from the extended operating hours provision for Surface Mining Sites, which typically permits operations beyond the standard operating hours of 7:00 a.m. to 6:00 p.m. once every six months for up to two weeks in the Surface Mining (SM) Zone. Specifically, the applicant proposes to operate a temporary asphalt batch plant for a period of 60-days or less between the hours of 7:00 p.m. and 6:00a.m. from April 1, 2025, to September 30, 2025, for the purpose of completing an ODOT highway paving project.

**APPLICATION COMPLETE:** 08/02/2024

**120 DAY DEADLINE:** 11/30/2024\*

\*The applicant has signed a waiver of the 120-day deadline set forth in ORS 215.427.

**APPLICABLE CRITERIA:**

Columbia County Zoning Ordinance  
Section 1040                      Surface Mining (SM)

Page Number  
5



Section 1045	Modification of Standards	11
Section 1504	Variances	10
Section 1700	Appeals	15

## SUMMARY:

The applicant Kerr Contractors c/o John Arambul and Bryan Kerr, authorized representatives of the property owner, Willow Creek Land LLC, have submitted a request for a Major Variance to the extended operation provisions for Surface Mining Sites in Section 1044.5. Section 1042.8 allows for temporary asphalt batch plants to be operated for a maximum duration of 60-days, and Section 1044.5 allows for operations to extend beyond the standard operating hours of 7:00 a.m. to 6:00 p.m. once every six months for up to two weeks in the Surface Mining (SM) Zone. The submitted request would allow the applicant to operate a temporary asphalt batch plant for a period of 60-days or less, from 7:00 p.m. to 6:00 a.m. between April 1, 2025, and September 30, 2025, for the purpose of completing an Oregon Department of Transportation (ODOT) Highway 30 paving project in Rainier. Per the applicant, the project will begin at the Lewis and Clark Bridge and will extend roughly 3-miles north.

The subject property, identified as the Goble Pit, is located on the northern side of Nicolai Road in Rainier and is Zoned Surface-Mining (SM). Per the applicant, there is not active mining taking place at the Goble Pit. The neighboring western properties, referred to as the Goble Quarry, (zoned PF-80) were approved for surface mining operations through Conditional Use Permits CU 35-91 and CU 26-92 and have been used for the extraction and processing of raw aggregate for over 30 years. Per the submitted application; *“the ODOT State highway paving project is scheduled for the allowable working season between April 1, 2025, and September 30, 2025. The actual work schedule and operation for the asphalt plant is estimated to be 60-days once weather permits”*. The Goble Pit is located in an area characterized by surface mining operations, small-scale agriculture, and low-density residential uses. Kerr Contractors Inc. and Willow Creek Land LLC own the properties to the northwest and east of the Goble Pit. As such, it is not anticipated that the extended operating hours will have a significant impact on surrounding properties in the area.

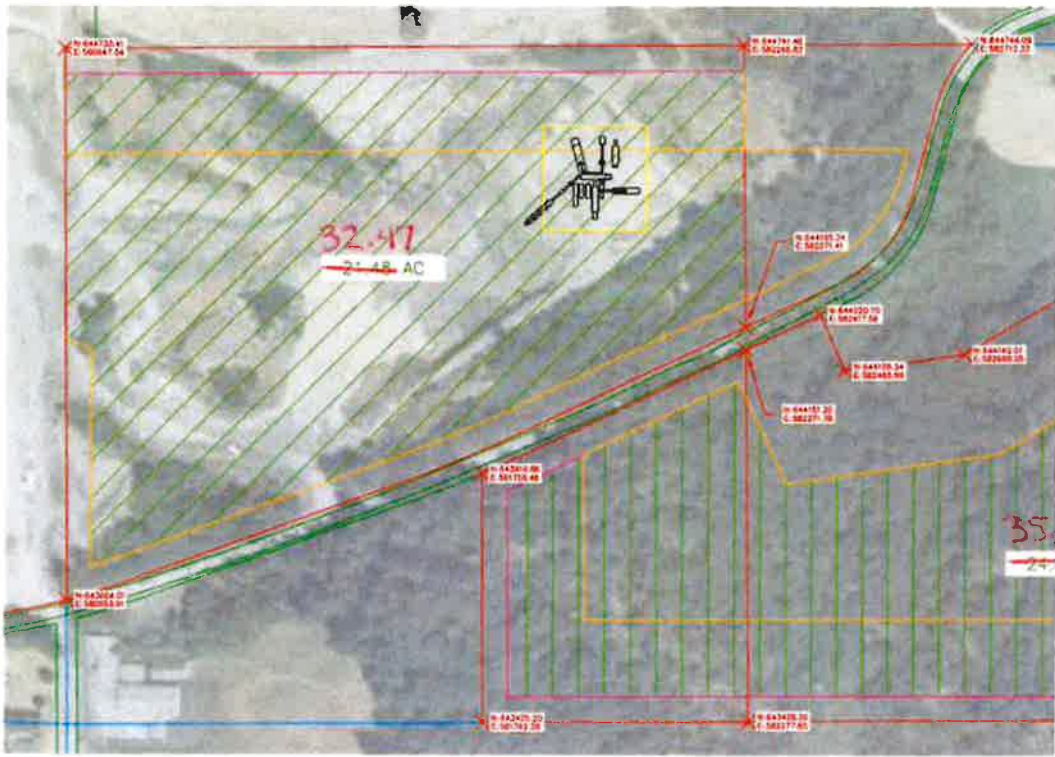
Natural characteristics of the site are as follows: According to the Oregon Department of State Wetlands Inventory Map and the Oregon Department of Forestry Stream Classification Maps, there are no water ways or other natural features that would limit development in the proposed area. The Tide Creek CPAC Beak Maps indicate that the subject property is located within a Peripheral Big Game Habitat Area. However, the site does not contain any threatened, endangered, or sensitive wildlife, plant and/or animal species, or other significant natural areas. Staff conducted a site visit on August 22, 2024, and confirmed the information on the County maps were accurate with the documentation submitted for V 25-01. FEMA Flood Insurance Rate Map (FIRM) Panel 41009C0195D identifies no special flood hazard associated with the subject property. Emergency services are provided by Columbia River Fire and Rescue (CRF&R) and the Columbia County Sheriff.

September 9, 2024, Planning Commission meeting summary as reflected in the draft minutes:

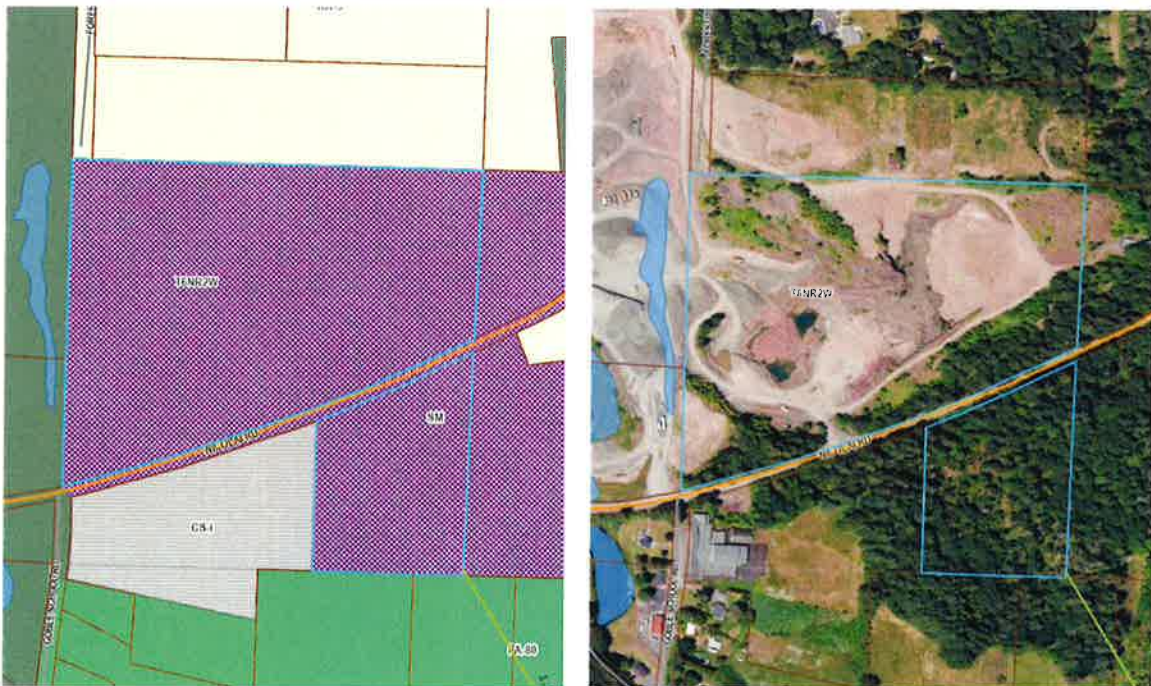
- Staff presented the report, recommending approval of the applicant's proposal based on the Findings. After the presentation of the Staff Report, the Commission heard testimony from the applicant, and testimony in opposition from members of the public.
- During the public comment period, opponents of the application voiced concerns including, but not limited to, perceived individual health impacts, air and water pollutants, noise levels, traffic safety, and ongoing noncompliance.
- During applicant rebuttal, the applicant's representatives, Bryan Kerr and John Arambul, asserted that operations on the subject property maintain compliance with state requirements, and that suspected health concerns are unsubstantiated.
- The Commissioners discussed adding additional approval conditions to address the concerns of neighboring property owners.
- Following discussion, commissioner Brust motioned to approve the application V 25-01 with the six proposed conditions presented in the Staff Report, and an additional condition prohibiting the use of engine brakes on Nicolai Road between the hours of 7:00 p.m. and 6:00 a.m.
- The vote ended in a 3-3 tie, therefore the motion failed and the application for V 25-01 was **DENIED**.
- No additional motions were proposed.
- The Final Decision was issued on September 18, 2024.

On September 25, 2024, the applicant submitted paperwork to the Columbia County Clerk's office to appeal the Planning Commission's decision made at the September 9, 2024, hearing. The remainder of this report will evaluate the extent to which the applicant's proposal conforms to the applicable criteria listed in the Columbia County Zoning Ordinance (CCZO).

### **Submitted Site Plan**



**Subject Property's Aerial and PF-80 Zoning Maps**



**Site Visit Pictures (8/22/2024)**





**REVIEW CRITERIA:**

**The following sections of the Columbia County Zoning Ordinance apply to this application:**

**Section 1040 SURFACE MINING SM**

1041 Purpose:

- .1 To provide for development and utilization of deposits of aggregate and resource materials.
- .2 To provide for the protection and utilization of these resources in a manner which does not conflict with other land uses.
- .3 To assure economy in handling and transportation costs by locating removal, processing, and storage activities in as close proximity to the point of end use as feasible.

1042 Permitted Uses:

The following uses shall be permitted subject to compliance with Section 1044 and all other applicable rules, standards, or statutes governing such uses, including the Columbia County Comprehensive Plan, the Surface Mining and Land Reclamation Ordinance, the Zoning Ordinance of

Columbia County, and Oregon Department of Environmental Quality rules governing sewage disposal, air, and water quality:

- .1 Removal, excavation, and processing of aggregate materials.
- .2 Equipment and structures, except residences, which are necessary or accessory to the operation of an aggregate site.
- .3 Storage of heavy equipment necessary for operation.
- .4 Agricultural practices except marijuana growing and producing.
- .5 Aggregate stockpiling.
- .6 Sedimentation ponds when used in conjunction with aggregate removal operations.
- .7 The managing, growing, processing and harvesting of timber and forest products, including the operation of accessory equipment used in the manufacturing, growing, and harvesting of forest products, as permitted in ORS 215.283(2)(i).
- .8 Concrete and asphalt batch plant on a temporary basis not to exceed 60 days.

**Finding 1:** The applicant is proposing to operate a temporary asphalt batch plant in the northeastern portion of the subject property. The applicant states that the requested variance to the standard operating hours required by Section 1044.5 is necessary for the ODOT State Highway paving project to occur at night. Conducting operations at night will ensure that the paving project will have minimal impact on local traffic patterns. Per the applicant, the subject property is in close proximity to the location of the Highway Project, and siting/operating the temporary asphalt plant on this property will mitigate the number of trucks and truck traffic generated by the project.

As stated previously, this property is already authorized for uses permitted under Section 1042. The proposal submitted for V 25-01 to operate a temporary asphalt batch plant for a period of 60-days or less is a permitted use of the SM Zone. Staff finds the proposal requested for V 25-01 satisfies the purpose and permitted uses of the SM Zone.

**The following sections of the Columbia County Zoning Ordinance apply to this application:**

1044 Operating Standards:

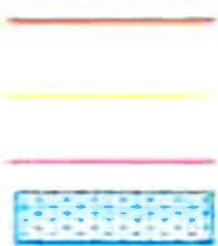
All mineral resource operations, either permitted or allowed by conditional use, shall conform to the following standards:

- .1 The landowner and operator shall be jointly responsible for signing the application.

- .2 The operator and landowner must remain in compliance with, and be responsible for, all the requirements of affected agencies.
- .3 Lot or parcel size: The minimum parcel size for a permitted or conditional use shall be 2 acres.
- .4 Operating Setbacks: Each aggregate site within the district shall observe the following minimum setbacks:
  - A. No extraction or removal of aggregate is permitted within 50 feet of the right-of-way of public roads or easements of private roads.
  - B. No extraction or removal of aggregate is permitted within 50 feet of another property, nor within 200 feet of a residence or zoning district which allows a residence as a permitted use, without written consent of the property owner(s).
  - C. Processing equipment and batch plants shall not be operated within 50 feet of another property without written consent of the property owner(s). Processing equipment and batch plants shall not operate within 50 feet of a public road right-of-way

**Finding 2:** The applicant, Kerr Contractors c/o John Arambul and Bryan Kerr, are authorized representatives of the property owner, Willow Creek Land LLC. Notice of the proposal submitted with V 25-01 was sent to local government agencies and surrounding property owners within 1,000 ft. on August 12, 2024. LDS received no written objections to the request submitted for V 25-01 prior to the September 9, 2024, Planning Commission hearing. As of the date of this report, no written objections to the request submitted for V 25-01 have been received. The approximate 32.47-acre subject property is bordered by PF-80 Zoned property to the west, RR-5 zoned property to the north, SM Zoned property to the east, and CS-I/FA-80 Zoned property to the south.

**LEGEND:**

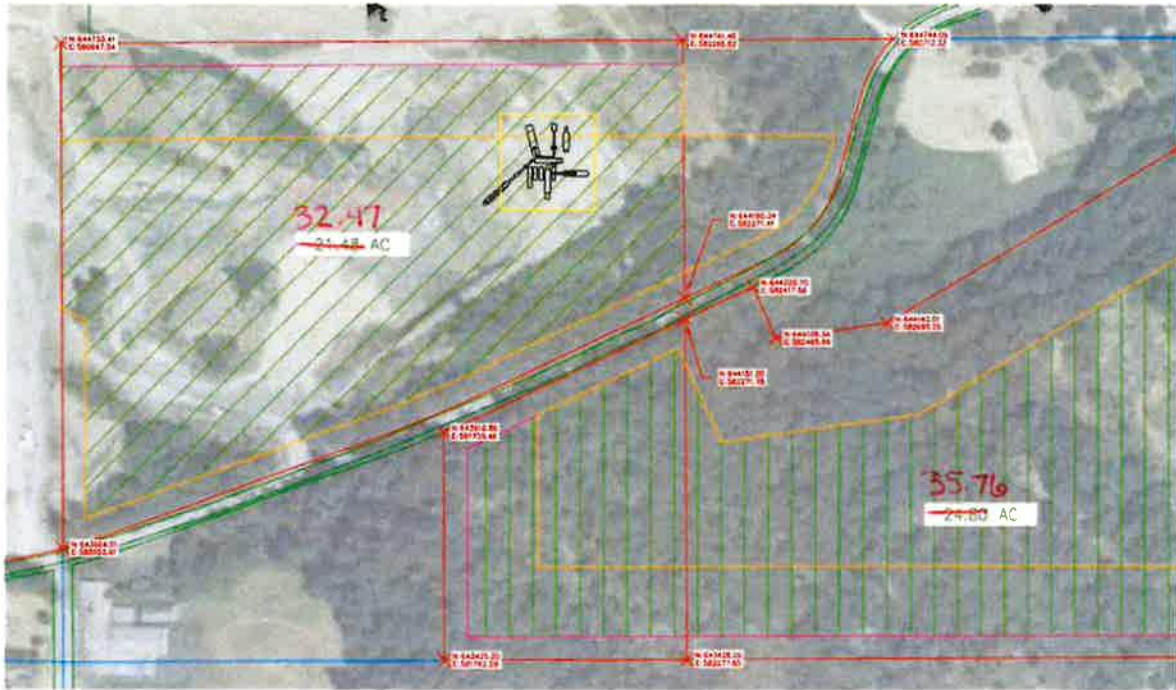


PROPERTY LINE

CURRENT MINING/EXCAVATION SETBACK

COLUMBIA COUNTY AUTHORIZED SETBACK

WETLAND

*Submitted Site Plan*

Per documents submitted with the variance application and subsequent appeal, there is no active mining taking place at the Goble Pit, nor is the extraction or removal of aggregate proposed as part of this application. Additionally, the applicant has indicated that *“no extraction will be taking place (in the Goble Pit). The aggregate will come from the active quarry next door”*. The temporary asphalt batch plant is proposed to be located on the northeastern portion of the subject property, in a location that satisfies the minimum setback requirement for batch plants of 50’. Staff finds that the proposal submitted for V 25-01 complies with the operating standards in CCZO Section 1044.1-1044.4.

1044 Operating Standards:

- .5 Operating Hours: Operation shall not start before 7:00 a.m., nor continue after 6:00 p.m. daily, except as authorized by Subsection 1046. The Department may exempt isolated aggregate sites from the established operating hours. Notice of the proposed change in operating hours must be provided to all property owners within a 1,000 foot radius of the aggregate site and to owners of property adjacent to private aggregate site access road. If no request for a public hearing is made within ten calendar days of mailing said notice, the operating hours shall be changed as requested by the aggregate operator. The Commission may, at any time, require resumption of standard operating hours. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the County. The Department may approve one period of extended operation beyond the

7:00 a.m. to 6:00 p.m. operating hours once every six months, not to exceed a two-week period.

**Finding 3:** The applicant proposes to operate a temporary asphalt batch plant for a period of 60-days or less from April 1, 2025, to September 30, 2025, between the hours of 7:00 p.m. and 6:00 a.m. CCZO Section 1044.5 allows for surface mining operations to extend beyond the standard operating hours of 7:00 a.m. to 6:00 p.m. once every six months for a maximum time period of two weeks, as granted by the Department. With that being said, the proposed use of the property to conduct overnight operations for a period of 60 days or less, requires variance approval.

As stated previously in this report, the request submitted for V 25-01 was denied by the Planning Commission on September 9, 2024. On September 25, 2024, the applicant submitted an appeal of the Planning Commission's decision to the Board of Commissioners. Compliance with the required appeal procedures will be analyzed in Finding 16. Additionally, Staff finds the extent to which the proposal submitted for V 25-01 satisfies the variance criteria in Section 1504.1(A) will be evaluated in Findings 9-13.

1044 Operating Standards:

- .6 Visual Impacts: Existing trees and other natural vegetation adjacent to any public park, residential development, public road, or residential zoning district shall be preserved for a minimum width of 25 feet. Screening shall be provided at the boundary of the property on which the surface mining operation is located. If such trees and other vegetation are insufficient to provide a screen, such screening may be accomplished by one or more of the following:
  - A. A sight-obscuring fence or wall;
  - B. A landscaped berm or preservation of a natural slope;
  - C. Use of native vegetation, or plants and trees with demonstrated ability to thrive under the anticipated conditions.
- .7 Access: The operation shall have access to a public road with two-way capacity. The County may impose weight/load restrictions and/or require the operator to post an adequate surety bond for road repairs. An on-site access or service road used for mining shall be dust-free at all points within 300 feet of a public road or residence off the property being mined.

**Finding 4:** The site plan submitted with V 25-01 and the site visit conducted by Staff on August 22, 2024, indicate that the temporary asphalt batch plant will be located in an area that is screened from adjacent properties and roadways. Additionally, the temporary asphalt plant will not require the applicant to remove additional trees or other vegetation as the area has already been disturbed



by routine operations associated with the Goble Pit and Quarry. The application indicates that access to the property will be achieved via Nicolai Road. The following conditions of approval have been added to reflect the comments submitted by Columbia County Public Works on August 23, 2024:

- The Applicant must obtain a road access permit for the existing access point that connects to Nicolai Road.
- The Applicant shall install a temporary streetlight at the active access point onto Nicolai Road to help improve safety at the intersection.
- The applicant shall place temporary signage warning drivers of the truck traffic/trucks entering the roadway during the extended hours of operation.

The applicant states that the proximity between the asphalt plant and the paving project will significantly reduce the number of trucks required. Additionally, conducting operations at night will minimize conflict with residential traffic patterns.

The appeal narrative addresses several comments made at the Planning Commission meeting regarding dust generated by operations at the Goble Pit: *“Goble pit is not currently actively mining or processing aggregate. Operation of a mobile asphalt plant does not contribute to any appreciable amount of dust. And operating outside of the already approved standard operating hours does not itself result in more dust or pollutants”*. Staff concurs with the comments made by the applicant and finds that the criteria in Section 1044.6 and 1044.7 has been satisfied.

1044 Operating Standards:

- .8 Noise: Each aggregate site shall operate with the applicable noise standards required by the Department of Environmental Quality or other state or federal agencies.

**Finding 5:** During the September 9, 2024, Planning Commission hearing, multiple community members and planning commissioners raised concerns regarding potential noise impacts. Following the public comment period, the Commission discussed adding additional approval conditions to address the concern of the neighboring property owners. Following discussion, Commissioner Brust motioned to approve the application V 25-01 with the six proposed conditions presented in the Staff Report, and an additional condition prohibiting the use of engine brakes on Nicolai Road.

While the application was denied as a result of a tie vote, the documentation submitted as part of the applicant’s appeal states: *“One concern regarding the use of Jake Brakes or Engine Brakes was raised. To mitigate this concern, a request has been made of Mike Russell, Director of Columbia County Public Works Department, who has indicated his team will install sign(s) along Nicolai Road informing trucker not to use these forms of braking”*.

On October 25, 2024, Planning Staff received confirmation from Mike Russell that Columbia County Public works will install signage prohibiting the use of engine brakes on Nicolai Road. Staff has included the engine brake requirement as Condition of Approval 7. Staff finds the criteria in Section 1044.8 is satisfied.

1044 Operating Standards:

- .9 Water Quality: All aggregate sites in the district shall be operated in a manner which will not create turbidity, cause siltation, deposit undesirable materials, or adversely affect water temperatures in any stream, drainage, or river. In addition, the operator shall not cause contamination of groundwater or change a stream channel unless the channel change has previously been approved by all applicable state and federal agencies. Provisions for settling ponds, diversion dikes, channels, and other structures may be required to protect these water resources.

**Finding 6:** In the previous report, Staff found that the proposal would not create any adverse water quality impacts as there are no natural water ways, ponds, or wetlands located on the site. During the September 9, 2024, Planning Commission meeting, multiple members of the public voiced concerns regarding potential impacts to water quality. The appeal documents submitted by the applicant state that the *“Goble pit is compliant with all storm water regulations. The hours of operations do not pose a greater risk of groundwater contamination. Furthermore, since the asphalt plant does not produce any water discharge there is a very little probability that it will impact groundwater resources”*. With no evidence submitted into the record indicating adverse impact to water quality, Staff finds the request submitted with V 25-01 satisfies the criterion in CCZO Section 1044.9.

- 1045 Modification of Standards: The above standards may be modified by the Planning Commission after public hearing and notification to property owners within 1,000 feet of the subject property and to owners adjacent to private aggregate site access roads. A Site Design Review for a Conditional Use in this zone may be processed concurrently with the Conditional Use Permit with a single hearing and a single fee which will be the higher of the 2 permit fees.

**Finding 7:** Notice of the proposal submitted with V 25-01 was sent to local government agencies and surrounding property owners within 1,000 ft. on August 12, 2024. The Planning Commission reviewed and denied the application on September 18, 2024. On September 25, 2024, the applicant appealed the decision to the Board of Commissioners. On November 7, 2024, property owners within 1,000 ft. were notified of the appeal hearing scheduled for November 27, 2024. Staff finds the criteria in Section 1045 is satisfied.

**Continuing with Section 1504 of the Columbia County Zoning Ordinance:****1504 VARIANCES:**

Except as provided in Section 1504.4 below, there are 2 classes of variances to the standards established in this ordinance. A Minor Variance is defined as a request for a variance of less than 25% from a dimensional requirement such as setbacks, height, lot or parcel coverage, lot or parcel width, or lot or parcel depth, or a request for a variance of less than 10% from a minimum lot or parcel size requirement. All other variances are defined as Major Variances. Use variances are not permitted under this ordinance except as permitted under Section 1505.1 "Temporary Permits: Use Not Allowed in District".

Major Variances from the lot or parcel size requirements of the Primary Agriculture (PA-38), Forest Agriculture (FA-19), Primary Forest (PF-76) and Rural Residential (RR-5) zones are not permitted under this ordinance.

1. **Major Variances:** The Planning Commission may permit and authorize a variance from the requirements of this ordinance when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest.

**Finding 8:** The proposal submitted for V 25-01 does not require deviations from the minimum dimensional requirements or lot and parcel size requirements of the SM zone. Therefore, the proposal submitted for V 25-01 shall be reviewed and approved by the Planning Commission as a Major Variance. More specifically, the applicant requests a variance from CCZO Section 1044.5, which allows for surface mining operations to extend beyond the standard operating hours of 7:00 a.m. to 6:00 p.m. once every six months for a maximum time-period of two weeks. If approved, the applicant will be authorized to operate the temporary asphalt batch plant between the hours of 7:00 p.m. and 6:00 a.m., for a period of up to 60-days, from April 1, 2025, to September 30, 2025.

On July 26, 2024, the applicant submitted a Major Variance Permit Application to Land Development Services (LDS) in compliance with the requirements in Section 1504.3(A and B) of the Zoning Ordinance. On August 12, 2024, LDS notified surrounding property owners within 1,000 ft. with a Notice of Public Hearing, and the affected government agencies and the Tide Creek CPAC with a Referral and Acknowledgement of the proposal requested for V 25-01.

On September 9, 2024, the request submitted for V 25-01 was denied by the Planning Commission. On September 25, 2024, the applicant submitted an appeal of the Planning Commission's decision to the Board of Commissioners, who will either affirm or reverse the decision made by the Planning Commission. No written opposition has been received as of the date the Planning Commission staff report was made available to the public.

For these reasons, Staff finds the requirements in Section 1504.1 have been satisfied.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

- A. A variance shall be made only when all the following conditions and facts exist:
1. The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property;

**Finding 9:** Staff finds the granting of this Major Variance should not be detrimental to the public safety, health, or welfare, or injurious to other properties as this request is limited to extending the operating hours of a temporary asphalt batch plant, a permitted use in the SM Zone. Documents submitted with V 25-01 indicate that truck deliveries between the asphalt plant and the Highway 30 project in Rainier, will be between the hours of 7:00 p.m. and 6:00 a.m., a time where conflicts with residential traffic will be minimized. Additionally, the applicant states that the subject property is in close proximity to the Highway 30 project, which will significantly reduce the number of trucks required. Lastly, and per the applicant, *“granting this variance allows for improving (the) paving of Highway 30 in Columbia County, which contributes to improving public safety and welfare on this highway”*.

With the conditions of approval added to reflect comments submitted by Columbia County Public Works, and with no comments submitted by Columbia River Fire & Rescue (CRF&R), there is no evidence indicating that public roads or emergency/fire services and facilities will be significantly impacted by the proposed use of the property.

During the public comment period at the September 9, 2024, Planning Commission meeting, multiple neighboring residential property owners voiced concerns regarding perceived health impacts and public safety concerns caused by existing operations at the neighboring Goble Quarry, and the potential for these impacts to be amplified by the proposal submitted for V 25-01.

The appeal documents submitted by the applicant provide a general response to claims made at the public hearing; *“Goble Pit is in compliance with all state and federal regulation including DEQ. The mobile asphalt plant has the required air quality permits required by DEQ. Extensive air emission controls are part of this modern equipment”*. Within the appeal narrative, the applicant continues by stating *“Currently there is not active mining taking place at Goble Pit. Many other concerns were unfounded and raised without any legally sufficient evidence or support”*.

As previously mentioned, on August 12, 2024, LDS notified the affected government agencies of the proposal requested for V 25-01 with a Referral and Acknowledgement. However, staff neglected to include DEQ as part of the initial notice and did not receive feedback from DOGAMI prior to the Planning Commission meeting. In consideration of comments made at the public hearing, staff requested feedback from DEQ and DOGAMI regarding the proposal submitted for

V 25-01 on October 29, 2024. On November 15, 2024, a representative from DOGAMI informed LDS staff that DOGAMI has no regulatory provisions pertaining to the location or operation of asphalt batch plants and therefore has no comments for the request submitted for V 25-01. No comments have been received from DEQ as of the date of this report”.

As of the date of this report, LDS has not received documentation substantiating the perceived public safety and health impacts mentioned during the previous public hearing. Without any evidence to the contrary, and with the conditions of approval recommended by staff and requested by the Planning Commission, Staff finds the proposal submitted for V 25-01 satisfies the criterion in Section 1504.1(A)(1).

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;

**Finding 10:** Per the applicant, “*asphalt paving material must be produced and installed within a very limited window of time*”. The subject property’s unique conditions are attributed to the fact that it is located in close proximity to the Highway 30 project in Rainier. Furthermore, the narrative submitted with the applicant’s appeal states “*ODOT paving projects typically specify work to be done at night for safety and minimum traffic disruption*”. If approved, the proposal submitted for V 25-01 would enable the production and efficient transportation of asphalt from the Goble Pit to the Highway 30 project, at a time of day where impact on residential traffic would be minimized. Additionally, and as mentioned throughout this report, the subject property is already approved for surface mining uses, and temporary asphalt batch plants for a period of 60-days or less are a permitted use in the SM Zone. The request submitted for V 25-01 would only authorize operations of a permitted use to occur between the hours of 7:00 p.m. and 6:00 a.m. for a period up to 60 days. Staff finds that the subject property’s approved uses, proximity to the Highway 30 project, and the operating hours required by ODOT are unique and generally do not apply to other property in the SM Zone. Staff finds the criterion in Section 1504.1(A)(2) has been met.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

3. Approval of the application will allow the property to be used only for purposes authorized by the Zoning Ordinance;

**Finding 11:** As covered throughout this report, concrete and asphalt batch plants on a temporary basis not to exceed 60-days is a permitted use within the SM Zone. The proposal submitted for V 25-01 only requires a variance from the standard operating hours established in CCZO Section 1044.5, to conduct the Highway 30 paving project during the night. Staff finds that the proposed

temporary asphalt batch plant is a permitted use on the subject Surface Mine zoned property. With this finding, the criterion in Section 1504.1(A)(3) has been met.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

**Finding 12:** As stated previously, strict compliance with the Zoning Ordinance and specifically the required operating hours of 7:00 a.m. to 6:00 p.m. would create an unnecessary hardship for the applicant and residents of Columbia County. Highway 30 is a two-lane roadway, which requires partial or full lane closures for road maintenance projects. Adhering to the standard operating hours would require the applicant to conduct deliveries between the Goble Pit and the highway project (beginning at Lewis and Clark bridge and extending 3-miles north) during peak transit hours for a duration that could potentially exceed 60-days. Additionally, conducting operation during the standard operating hours could significantly increase traffic congestion for residents of Columbia County, resulting in heightened safety risks for road workers and motorists. Authorization of this variance would help to ensure that the Highway project is done in an efficient manor, at a time of day that has reduced impact on traffic patterns and residents of Columbia County. Staff finds the Criteria in Section 1504.1(A)(4) has been satisfied.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1(A):**

5. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance.

**Finding 13:** The request for a variance from the standard operating hours for surface mining sites does not appear to adversely affect the realization of the Comprehensive Plan nor be inconsistent with the intent of the SM Zone as consistently demonstrated throughout this report.

The research and analysis supporting these previous Findings identify various reasons why Planning Staff supports the submitted variance, all of which are uniquely characterized and apply only to the subject 32.47-acre SM zoned site. This report has evaluated evidence and consistently found that the proposal requested for V 25-01 will only authorize the subject SM Zoned parcel to be used for operations that comply with Section 1040 of the Columbia County Zoning Ordinance. All future site development will be reviewed by the County Planner for consistency for with the applicable Goals and Policies of the Comprehensive Plan that are implemented through the County's Zoning Ordinance. For these reasons, Staff finds this criterion is satisfied.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1:**

- B. A variance so authorized shall become void after the expiration of 1 year if the next step in the development process has not been applied for.

**Finding 14:** If this variance is approved, the applicant shall submit a copy of the final contract for the ODOT Highway Project to LDS and begin operations for the project within 1 year of the final decision, or this approval will expire. The final contract shall provide the proposed start and end dates for the project and demonstrate consistency with the request associated with the variance application V 25-01.

**Continuing with the Columbia County Zoning Ordinance Section 1504.1:**

- C. The Planning Commission may impose whatever reasonable requirements it feels will fulfill the intent of this ordinance.

**Finding 15:** Staff had initially proposed conditions 1-6 at the end of this staff report. In consideration of the comments made at the Planning Commission meeting, and comments received from County Public Works, staff has added condition of approval 7, which prohibits the use of engine brakes on Nicolai Road. The Board of Commissioners may modify, add, or remove conditions onto their decision as they deem appropriate.

**Continuing with County Zoning Ordinance- Section 1700 Appeals**

**Section 1700 APPEALS**

1701 Appeal Procedures:

- .1 General Procedure: A land use decision, as it is defined in ORS 197.015(10), made by the Director, Hearings Officer (in lieu of the Planning Commission), Planning Commission, or the Design Review Board shall be final at the end of 7 calendar days following the date notice of the decision is mailed to the applicant, and other persons entitled to notice of the decision as provided by ORS 197.763, unless a notice of appeal of decisions to the Planning Commission or the Board of Commissioners is filed with the County Clerk's office. A notice of appeal can be obtained from the Planning Department or from the Clerk's office and shall contain: [effective 7-15-97]
- A. The name, address, and telephone number of the person filing the notice;
  - B. An identification of the decision sought to be reviewed, including the date the decision was made; and
  - C. In the case of decisions by the Planning Commission or Hearings Officer, the specific reasons why the decision should be modified or reversed.

[...]

- 4 When a notice of appeal is properly and timely filed in compliance with this section, and timely payment of the filing fee is made, a de novo appeal hearing shall be scheduled at the earliest opportunity. Notice of the hearing shall be mailed to the appellant, the applicant, the property owner, if different from the applicant, and any other persons who requested notice of the appeal hearing in writing. Notice of the appeal hearing shall be published in a newspaper which covers the property subject to the appeal. Notice of the appeal hearing shall be mailed to the parties and distributed to the newspapers no later than 7 days prior to the scheduled hearing date. [effective 7-15-97]

[...]

- 1703 Appeal of a Planning Commission Action: Any land use decision by the Planning Commission or Hearings Officer (in lieu of the Planning Commission), over which either body had original review authority, may be appealed to the Board of Commissioners by the Board of Commissioners, or by persons who appeared before the lower decision making body, either in person or in writing. The appeal may concern the approval or denial of an application or any conditions attached to the approval of an application. The de novo appeal hearing shall be scheduled before the Board of County Commissioners at the earliest opportunity, and notice of the appeal shall be sent in accordance with procedures outlined in CCZO 1701.4. [effective 7- 15-97]

**Finding 16:** The applicant is appealing the Planning Commission’s decision per the provisions of Sections 1701 and 1703 above. As stated in the summary, the applicant submitted documentation and payment on September 25, 2024, appealing the Planning Commission’s denial of the proposal on September 18, 2024. Notice of the appeal was mailed to the applicant, participants of the Planning Commission meeting, and neighboring property owners on November 7, 2024. On November 15, 2024, notice of the appeal hearing was distributed to the local paper. Staff finds the criterion in Section 1701 has been met.

Under CCZO 1701.1(C), an appeal must include specific reasons why the land use decision should be modified or reversed. As stated in the appeal narrative, the applicant asserts that *“Willow Creek’s request meets the applicable standards for approval. The requested activity does not violate any existing county Ordinance, State or Federal Law”*. Additionally, the narrative states; *“Willow Creek’s request seeks only a Major variance to allow production of asphalt material during night hours for this project. All other aspects of operating the asphalt plant at this site are approved under the applicable provisions of the CCZO.”*

As of the date of this report, staff has not received any feedback from DOGAMI or DEQ, nor documentation substantiating the public comments made at the Planning Commission meeting opposing the application.

#### COMMENTS:

**County Building Official:** Has reviewed the application and has no objection to its approval as submitted.



**Columbia River PUD:** Has reviewed the application and has no objection to its approval as submitted.

**Columbia County Public Works Department:** The Applicant must obtain a road access permit for the existing access point that connects to Nicolai Road. The Applicant shall install a temporary streetlight at the active access point onto Nicolai Road to help improve safety at the intersection. The applicant shall place temporary signage warning drivers of the truck traffic/trucks entering the roadway during the extended hours of operation. *\*Comments submitted by Director Mike Russell – See attached\**.

**County Sanitarian:** No comments have been received as of the date of this report.

**Columbia River Fire and Rescue:** No comments have been received as of the date of this report.

**Tide Creek CPAC:** No comments have been received as of the date of this report.

**Oregon Department of Geology and Mineral Industries (DOGAMI):** No comments have been received as of the date of this report.

**Oregon Department of Transportation (ODOT):** No comments have been received as of the date of this report.

#### **STAFF COMMENTS, CONCLUSION AND RECOMMENDATION:**

Based on the facts, findings, and comments herein, Planning Staff recommends that the Board of Commissioners **REVERSE** the Planning Commission's denial and **APPROVE** this application for a Major Variance to the extended operating hours provision for Surface Mining Sites in Section 1044.5, for the SM zoned property, to allow the applicant to operate a temporary asphalt batch plant for a period not to exceed 60-days, between the hours of 7:00 p.m. and 6:00 a.m. from April 1, 2025, to September 30, 2025, for the purpose of completing an ODOT highway paving project subject to the following conditions:

#### **Conditions of Approval:**

1. This variance shall become void if the applicant does not submit a copy of the final contract with ODOT and begin operations for the project within **one year** of the final decision for V 25-01. The final contract or other documentation shall include the proposed start date and end date for the proposed project.
2. The applicant shall operate the temporary asphalt batch plant for a period of no more than 60 days within the project timeframe of April 1, 2025 – September 30, 2025.

3. The Applicant shall obtain a road access permit for the existing access point that connects to Nicolai Road.
4. The Applicant shall install a temporary streetlight at the active access point onto Nicolai Road to help improve safety at the intersection.
5. The applicant shall place temporary signage warning drivers of the truck traffic/trucks entering the roadway during the extended hours of operation.
6. All future site development on the property shall be reviewed for consistency with the applicable provisions in Section 1040 of the Zoning Ordinance related to development of SM zoned properties.
7. Columbia County Public Works shall install and maintain signage prohibiting the use of engine brakes on Nicolai Rd. for the duration of the Highway Project.

**Board of Commissioners Motion:**

I move to **REVERSE** the Planning Commission's denial and **APPROVE** this application for a Major Variance to the extended operating hours provision for Surface Mining Sites in Section 1044.5, for the SM zoned property, to allow the applicant to operate a temporary asphalt batch plant for a period not to exceed 60-days, between the hours of 7:00 p.m. and 6:00 a.m. from April 1, 2025, to September 30, 2025, for the purpose of completing an ODOT highway paving project subject to Conditions of Approval 1-7, as written in the Staff Report.

**Attachments:**

Appeal and Narrative

Draft Planning Commission Meeting Minutes 9/9/2024

Planning Commission Decision dated 9/18/2024.

Planning Commission Staff Report dated 8/27/2024 and original attachments.

Agency Comments following PC Meeting on 9/9/2024