

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, July 27, 2022

9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Danielle Bethell, Commissioner Colm Willis, and Commissioner Kevin Cameron. Also present were Jane Vetto as county counsel and Brenda Koenig as recorder.

ABSENT: Jan Fritz, chief administrative officer

Commissioner Bethell called the meeting to order at 9:00 a.m.

(Video Time 00:01:01)

PUBLIC COMMENT

Walt Peters:

- Mr. Peters offered a public apology for a comment he made at the July 13, 2022, Board Session:
 - He made a mistake on the location of a building he identified as an anomaly on the voter roles for the November 2020 federal election:
 - He identified a building as being located on Commercial Street NE, when the building is actually located on Commercial Street SE.
 - The Commercial Street SE address is a legitimate address; and
 - It is not his intent to mislead the citizens of our community.

(Video Time 00:05:02)

CONSENT

HEALTH AND HUMAN SERVICES

1. Approve Amendment #5 to the Lease Agreement with the Oregon State Hospital to add \$43,200 for a new contract total of \$201,600 for Marion County Health and Human Services to continue to lease cottage #R03 located at 2435 Greenway Drive NE, retroactive to July 1, 2022, through June 30, 2025.

2. Approve Amendment #6 to the Lease Agreement with the Oregon State Hospital to add \$36,000 for a new contract total of \$168,000 for Marion County Health and Human Services to continue to lease cottage #R14 located at 555 24th Place NE, retroactive to July 1, 2022, through June 30, 2025.

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MOTION: Commissioner Willis moved for approval of the consent agenda. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:06:04)

ACTION

BOARD OF COMMISSIONERS

3. Consider approval of the American Rescue Plan Act (ARPA) Subrecipient Agreement with the City of Aurora in the amount of \$1,000,000 for the Downtown Core Water Transmission Line Improvements project through December 31, 2026. –Debbie Gregg and Camber Schlag

Summary of presentation:

- Marion County was allocated over \$67 million of coronavirus state and local fiscal recovery funds;
- Aurora’s water system serves the domestic water needs within the industrial and commercial areas of the city;
- The current water distribution system needs to be upsized;
- Many of the existing water lines in downtown Aurora are old, deteriorating, undersized, and constructed from inadequate materials;
- The project includes replacing water lines along Main Street NE, from 1st Street to Ottaway Road:
 - The existing water lines in the area range from 6 to 8 inches, and they are constructed from asbestos cement steel and Polyvinyl Chloride (PVC); and
 - The old water lines will be replaced with new 12-inch water line.
- The project also includes replacing water lines along Highway 99E, from 3rd Street to Bobs Avenue:
 - The old water lines will be replaced with new 10-inch water line.
- All pre-construction services should be completed by March 2025;
- Construction will be completed by December 2026; and
- The total project budget is \$5,284,203:
 - The \$1 million American Rescue Plan Act (ARPA) award will go towards construction costs.

Board discussion:

- The City of Aurora received additional ARPA funds that are being used on this project.

MOTION: Commissioner Cameron moved to approve the American Rescue Plan Act (ARPA) Subrecipient Agreement with the City of Aurora in the amount of \$1,000,000 for the Downtown Core Water Transmission Line Improvements project through December 31, 2026. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:09:59)

4. Consider an ordinance referring a measure to the electors to prohibit the establishment of psilocybin product manufacturers and psilocybin service center operators within unincorporated Marion County. –Tanisha Bush and Jane Vetto

Summary of presentation:

- In November 2020, Measure #109, the Psilocybin Services Act, was passed by Oregon voters:
 - Measure #109 is now codified as Oregon Revised Statutes (ORS) Chapter 475A.
- Psilocybin is a psychedelic drug found in certain mushrooms;
- ORS 475A allows the operation of psilocybin product manufacturing and service centers:
 - Local governments are allowed to adopt ordinances to prohibit these facilities in their communities; and
 - The ordinances must be referred to the voters in the next general election.
- Approval of the measure would prohibit the establishment of psilocybin manufacturing and service centers in the unincorporated areas of Marion County;
- The ordinance before the board today is an administrative ordinance:
 - The process for adopting an administrative ordinance is as follows:
 - The board considers the ordinance in two consecutive board sessions; and
 - If the board chooses, by unanimous consent, the chair reads the ordinance by title only twice at the two consecutive board sessions.
- Measure #109 passed statewide, but it did not pass in Marion County.

Board discussion:

- Other cities and counties are following the process to allow voters to decide on this issue.

MOTION: Commissioner Willis moved that the chair read the ordinance referring a measure to the electors to prohibit the establishment of psilocybin product manufacturers and psilocybin service center operators within unincorporated Marion County by title only twice. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Bethell read the ordinance by title only twice.

(Video Time 00:14:36)

5. Consider approval of an ordinance amending Chapter 9.20 of the Marion County Code and declaring an emergency. –Tanisha Bush and Jay Bergmann

Summary of presentation:

- The amendments are in response to gaps in the county’s ability to handle certain complaints relating to property, including concerns about illicit marijuana grows;
- Each year the county’s code enforcement team receives over a thousand complaints of code violations:

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- A few of these complaints are regarding isolated properties where activity on the property is significantly reducing the livability, or quality of life, of residents on surrounding properties:
 - Numerous calls have been received for criminal activity, including illegal marijuana grows and drug houses.
- The current crime nuisance code is based on ORS, and it does not give the Marion County Sheriff's Office (MCSO) the tools required to adequately deal with prolific cases;
- The current code requires three incidents, from a very narrow list of crimes, within a 30-day period, for a property to be designated crime property:
 - The incidents must occur directly on the property, and do not include incidents that move into the streets or onto neighboring properties.
- The proposed changes incorporates the code currently used by other counties and cities including:
 - A 400-foot buffer around the property for incidents that have a direct nexus to the property;
 - Three incidences within 30-days, or four incidences within 90-days; and
 - A more expansive list of qualifying incidents.
- The amendments require the MCSO to work with the property owner to form an abatement plan prior to pursuing a court order to take control of the property:
 - This is the current practice, and the amendment will make it a part of the code.
- The amendments require the MCSO to take into account whether the property owner reported the incidents, and whether acting would discourage the property owner from future reporting or cooperation;
- The amendments clarify the notification process for owners, and sets up the appeal process for owners; and
- The amendments require the MCSO to receive approval from the board prior to pursuing any action against a property owner.

Board discussion:

- A lot of departments, organizations, and individuals were involved in developing the amendments; and
- The ordinance only impacts the unincorporated areas of Marion County.

MOTION: Commissioner Cameron moved that the chair read the ordinance amending Chapter 9.20 of the Marion County Code and declaring an emergency by title only twice. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

Commissioner Bethell read the ordinance by title only twice.

MOTION: Commissioner Cameron moved to approve an ordinance amending Chapter 9.20 of the Marion County Code and declaring an emergency. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:24:21)

HEALTH AND HUMAN SERVICES

6. Consider approval of the Contract for Services with Salem Health in the amount of \$475,000 for the delivery of mental health services retroactive to January 1, 2022, through December 31, 2022. –Ryan Matthews

Summary of presentation:

- The funds come from service element 24 in the intergovernmental agreement with Oregon Health Authority for mental health services;
- The funding is for acute inpatient services for those individuals who are indigent or uninsured;
- Salem Health can bill the county \$1,200 per day based on utilization;
- The county receives over \$800,000 in this service element for the year;
- Salem Health works to get the individuals insurance, so Medicaid or other insurance sometimes takes over the payments;
- There are other hospitals the county sometimes uses for these individuals; and
- Historically, Salem Health has not billed the county for the full contract amount.

Board discussion:

None.

MOTION: Commissioner Willis moved to approve the Contract for Services with Salem Health in the amount of \$475,000 for the delivery of mental health services retroactive to January 1, 2022, through December 31, 2022. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:27:18)

PUBLIC WORKS

7. Consider approval of the Purchase Order with Tait North America, Inc. in the amount of \$226,942.53 for the purchase of radio components for the Ultra High Frequency (UHF) Radio Replacement Project through June 30, 2023. –Brian Nicholas

Summary of presentation:

- Public Works operates a small three antenna Ultra High Frequency (UHF) radio system that is more than 30 years old:
 - The equipment is old and cannot be repaired.
- The radio system is the primary communications tool for Public Works operations including road works, park staff, and ferry staff;

- For the new system Public Works is proposing to build a six-antenna site which will provide better coverage than the current system;
- Public Works has selected Tait's TB9800 system as the platform;
- The system has enough capacity to also accommodate juvenile department services, dog services, and to be a backup system for the MCSO:
 - Public Works equips MCSO vehicles with UHF radios.
- The design stage of the new system is being priced;
- The price of the equipment covered by this purchase order is increasing August 1, 2022:
 - The county will save approximately \$80,000 by purchasing the equipment before August 1, 2022.
- The purchase order is for eight controllers and other core equipment for the new system.

Board discussion:

None.

MOTION: Commissioner Cameron moved to approve the Purchase Order with Tait North America, Inc. in the amount of \$226,942.53 for the purchase of radio components for the Ultra High Frequency (UHF) Radio Replacement Project through June 30, 2023. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:31:07)

PUBLIC HEARINGS

9:30 A.M.

Public Works

A. Public hearing to consider an appeal of the hearings officer's decision approving Conditional Use (CU) Case #21-062/Allied Rock, LLC. –Austin Barnes

Summary of presentation:

- The application is for a Conditional Use (CU) permit to expand an existing aggregate extraction operation from 50 acres to 187 acres on land zoned Timber Conservation (TC), located in the 18800 block of Old Mehama Road in the City of Stayton;
- The applicant, Allied Rock, is the current operator of the quarry;
- The property is located on the north side of Old Mehama Road, approximately 495 feet east of the intersection of Old Mehama Road and Dusty Place SE;
- The property has one general purpose building and is currently operated as a quarry;
- The property was approved for a comprehensive plan text amendment in 1993 to add the aggregate site on the property to the county's "other sites" inventory, and a CU permit was approved to establish a quarry and a rock crusher;
- In 1997 the Board modified the conditions of approval relating to accessing the property for quarry use;

- In 2020 the applicant requested, and was approved, to change the zone of the property from Exclusive Farm Use (EFU) to Timber Conservation (TC);
- Surrounding properties are zoned EFU:
 - Properties to the north and east are large tract forest and farmland; and
 - Properties to the south and west are small to medium sized farm parcels developed with residences.
- On March 9, 2022, the planning director issued a staff report to the hearings officer indicating that the applicant met all applicable criteria;
- On March 14, 2022, the hearings officer held a public hearing and closed the record;
- The hearings officer determined that the expansion of the aggregate site met all applicable criteria;
- On June 3, 2022, the hearings officer issued a decision approving the permit with conditions;
- On June 21, 2022, the Oregon Department of Fish and Wildlife (ODFW) submitted an appeal to the Board of Commissioners office with a statement and the filing fee;
- The applicant has addressed all the criteria for a Conditional Use at this time;
- If the request is approved, staff recommends the conditions found at the end of the staff report be applied:
 - These include conditions of the previous cases which need to be continuously met.
- The board has the following options:
 - Continue the public hearing;
 - Close the public hearing and leave the record open;
 - Close the public hearing and approve;
 - Modify or deny the request; or
 - Remand the issue back to the hearings officer.

Testimony:

Support:

Alan Sorem:

- Mr. Sorem is the attorney for the applicant;
- The commissioners were emailed several documents earlier in the week, including an affidavit from the applicant:
 - The commissioners were given a signed and notarized copy of the affidavit.
- Following is a summary of the issues that were in the appeal from state agencies, the Department of Land Conservation and Development (DLCD) and ODFW:
 - The subject property is 187 acres and includes an area that was part of a natural resource survey in the early 1980s:
 - In one of the comprehensive plan inventory sheets the area was identified as a natural resource area for Stout Mountain for the protection of western rattlesnakes:

- Four rattlesnakes were observed in the area in 1984.
 - The small population of rattlesnakes declined, and there is no more evidence of rattlesnakes on the subject property or surrounding areas;
 - The criteria require the applicant in part to determine if there is any significant impact on fish or wildlife habitat;
 - ODFW is arguing that there is not enough evidence in the record, and that it should be taken into consideration the fact that habitat is different than wildlife; and
 - ODFW asserted the hearings officer misinterpreted the development criteria:
 - The applicant submits that the hearings officer was right, and that when you take into consideration whether or not there is a significant impact on the wildlife habitat, whether or not there is any wildlife there, whether or not they will return to that property, is absolutely relevant.
- The evidence in the record uncontroverted demonstrates that it has been 14 years since any rattlesnakes have been observed on the subject property or anywhere near it;
- The evidence submitted by the state indicates that biologists questioned whether or not rattlesnakes were active in the Willamette Valley anymore;
- One of the arguments from ODFW and DLCDD was related to legal questions including the following:
 - What are the criteria;
 - Should state law apply;
 - Should Marion County comprehensive plan policies apply; and
 - Determine if the statewide land use planning goals apply.
- Statewide land use planning goals do not apply:
 - Administrative rule 660, division 23, rule 250, subsection 1 states that Goal 5 does not apply when reviewing these types of permits related to the application of an acknowledged comprehensive plan acknowledged land use regulations.
- The Conditional Use permit criteria in the acknowledged development code does apply;
- The following evidence was provided:
 - In 1984 four rattlesnakes were sighted;
 - In 1992 two rattlesnakes were sighted;
 - The last sighting was of one rattlesnake in 2008:
 - This sighting was not logged in the public domain until 2019.
 - A biologist has stated that it is possible the population no longer exists in the Willamette Valley;
 - A survey was done in 2019 and no rattlesnakes were found;
 - The applicant team did five surveys in the spring of 2021, and three surveys in the fall of 2021:
 - Trail cameras were used and there were no sightings of any rattlesnakes.
 - There are letters in the record from many neighbors of the property all providing corresponding evidence that they have never seen a rattlesnake.
- The hearings officer's conclusion was supported by substantial evidence in the record; and

- The applicant believes that the hearings officer's decision should be affirmed.

Andrew Siegmund:

- Mr. Siegmund is the applicant;
- The appeal of Allied Rock's Conditional Use (CU) permit by ODFW and DLCD has the potential to devastate Mr. Siegmund's livelihood, and the livelihood of his employees;
- Rock is required to build schools, churches, community centers, apartment complexes, medical facilities, and new homes;
- Rock is required to build, improve, and maintain the power grid, repair existing streets, and build new streets;
- Allied Rock did a lot of thoughtful pre-planning work for years prior to submitting the CU permit expansion application in December 2021;
- The commissioners will hear from several specialists who will talk about the significant efforts undertaken to ensure that Allied Rock is able to operate the rock quarry far into the future, in a sustainable manner with care and concern for the land, the wildlife, and the neighbors including:
 - Noise and dust surveys;
 - Public safety analysis;
 - Public infrastructure impact analysis;
 - Traffic studies;
 - Wildlife surveys;
 - Hydrological surveys;
 - Native American cultural surveys;
 - Historical artifact surveys; and
 - Mine planning and reclamation.
- If the previous approval is denied, the nearest active and permitted quarry that could provide similar rock is approximately 25 miles away in the City of Silverton:
 - This would result in approximately 580,000 additional truck miles each year on county roads:
 - To travel this distance would require approximately 124,000 additional gallons of diesel fuel every year, resulting in almost 1.5 million kilograms of excess and unnecessary Carbon Dioxide (CO2) emissions.
- The rock formation used by Allied Rock to produce aggregate is unique, and one of only a few quarries in the northwest that can provide it;
- Allied Rock also produces a material called switchyard rock which is used for surfacing at high voltage power substations:
 - This material cannot be sourced from sand and gravel pits.
- There will be a negative impact on the community if the approval is denied;
- If the daily operations of Allied Rock are restricted or shut down, the impacts include the following:
 - The immediate loss of 17 good paying jobs;
 - Loss of weight-mile taxes, employment taxes, income taxes, corporate activity taxes, and property taxes;

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- Loss of permit fees associated with the quarry;
- Loss of downstream jobs;
- Loss of income that Allied Rock supports through their numerous vendors and suppliers; and
- Allied Rock would no longer be a viable business capable of supporting community events and local non-profits.
- Mr. Siegmund has lived his entire life, except for college years, one and a half miles from Stout Mountain, and he has never observed a western rattlesnake;
- Mr. Siegmund has traversed the quarry property hundreds of times in the last six years, and has never observed a western rattlesnake;
- Neighbors and friends have not seen a rattlesnake in the last 40 to 60 years;
- The normal and orderly use of nearby land for increased agricultural production, Mr. Siegmund's personal lifelong knowledge of the area, and the thorough independent research done on the quarry property, leads Mr. Siegmund to the conclusion that western rattlesnakes no longer exist on Stout Mountain or adjacent properties;
- Stout Mountain and the quarry property no longer provide habitat for a species that does not exist there; and
- Mr. Siegmund respectfully requests that the board affirm the CU permit approval by the hearings officer and deny the unwarranted appeal by ODFW and DLCD.

Board discussion:

- Quarrying has been performed on the property since 1970:
 - This is not a new use of the property.
- Allied Rock has been significantly involved in the rebuilding occurring in the canyon since the 2020 wildfires:
 - They have supplied approximately 11,000 truckloads of rock for the rebuild effort in the Santiam Canyon since the 2020 wildfires; and
 - Allied Rock's parent company, Siegmund Excavation, has provided a variety of services including opening roads and putting out fires at neighbors' homes.

Testimony:

Support:

Erick Staley:

- Mr. Staley is an engineering geologist working for the engineering firm NV5;
- He has been doing mining work and mine planning for approximately 22 years;
- NV5 has been working on this project with Allied Rock since 2016, including evaluating the property and looking at prior mining conditions;
- The intent of the project is to make the mine more functional than it has been in the past;
- NV5 has been developing a mine plan that will help avoid issues with the environment and other concerns, and steer the site toward a better reclaimed condition for subsequent uses;

- It is important for any kind of mining activity to think decades ahead to what is going to be done with the site in the future:
 - Allied Rock's site is designed to head towards commercial forestry when the mining is complete.
- The resource provided by the quarry has uses that a regular sand and gravel pit would not be able to provide;
- Plans for the development of the site are for a benched excavation into the hillside;
- The current mine site has the following features:
 - A mining disturbance;
 - An operations area where the rock is processed;
 - An equipment yard that includes offices and a scale;
 - Stormwater management features that collect stormwater from the site; and
 - Soil berms for noise attenuation and visual screening.
- Planned improvements for the site include:
 - Improve the stormwater management;
 - Design an expanded site that observes the appropriate setbacks from the site boundaries:
 - There is a 100-foot setback observed around all areas of excavation.
 - Enhance the berms and improve the general facility appearance.
- When the benched excavation is complete reclamation of the site will include placing stored topsoil on the benches:
 - This will allow commercial trees to be grown on the site when the mine is complete.
- There is a plan to move the processing area uphill closer to the resource, which will move the noise and activity further away for the surrounding community.

Craig Tumer:

- Mr. Tumer is a senior environmental scientist at NV5;
- In the Spring of 2021 NV5 was asked by Allied Rock to search for western rattlesnakes on their property, because western rattlesnakes had been identified and documented on the site in the Spring of 1984, and the area had been designated as the Stout Mountain Rattlesnake Dens Natural Area;
- Between April and mid-June of 2021 NV5 conducted five site visits performing the following tasks:
 - The site visits were timed to coincide with the time of year that the 1984 sightings had been made;
 - During the initial site visits five potential den sites were identified:
 - The 1984 report did not give specific locations of den sites, just general locations.
 - During subsequent site visits trail cameras were placed aimed at two of the potential den sites;
 - Coverboards were established at the top of the mountain at the edge of potential foraging habitat, providing a place for snakes in the area to crawl under; and

- During the five site visits potential basking and foraging habitats in the vicinity of the den sites were searched.
- No western rattlesnakes were found during the five surveys;
- Three additional surveys were conducted in early October 2021 at the time of year when western rattlesnakes could be expected to be returning to the den sites for the winter:
 - Mr. Tumer, Beau Marshall, and several biologists with experience in surveying for reptiles and amphibians participated;
 - The potential den sites, and available foraging and basking habitats were intensively searched;
 - The team looked under the coverboards and at the trail camera data; and
 - The team used spotlights to search rock crevices and under rocks.
- During the three intensive surveys the team saw several other species of snakes, two species of lizards, and two species of amphibian;
- No western rattlesnakes were found during the three surveys; and
- Based on the team's lack of observations during the eight site visits, combined with the other documented sightings, and the absence of sightings in 2019, the team concluded that western rattlesnakes are likely to no longer occur at Stout Mountain.

Board discussion:

- It was stated to the hearings officer that western rattlesnakes have a high degree of site fidelity, and they use the same area for dens year after year:
 - Western rattlesnakes, like many rattlesnake species, overwinter in dens that provide the appropriate temperature, humidity, and conditions;
 - Western rattlesnakes have a high degree of site fidelity, and typically return to the same den sites year after year; and
 - The survey team tried to locate the den sites where previous sightings had occurred in 1984:
 - If western rattlesnakes are still present on Stout Mountain, the most likely places to find them would be the den sites that they use year after year.
- It has been documented that western rattlesnakes have a high degree of site fidelity:
 - When they leave the dens in the spring, they disperse to foraging habitats which can be as far as two miles away; and
 - Late in the summer they start returning to the same den sites.
- Predators to rattlesnakes include hawks, owls, and other snakes:
 - Other predators could potentially take young rattlesnakes.
- During the site surveys a few potential rattlesnake predators were seen;
- It was previously stated that it is unlikely that rattlesnakes would recolonize the area if they did not occur on Stout Mountain, unless the species were deliberately relocated to the area:
 - Even though rattlesnakes can travel up to two miles from their den sites to forage during the summer, they are not a highly mobile species; and

- The next closest population of western rattlesnakes to Stout Mountain is approximately 19 miles away.
- Mr. Tumer is a biologist and environmental scientist who has performed wetlands and wildlife studies since 1989;
- Mr. St. John is a biologist who conducted a survey of reptiles and amphibians in the northern Willamette Valley in 1984:
 - He published a document for ODFW that inventories reptiles and amphibians in the northern Willamette Valley.
- In 2008 Mr. St. John documented observing two rattlesnakes on Stout Mountain:
 - In 2020 he entered the two sightings into an online database that is used to document sightings of plants and animals:
 - He uploaded his 2008 records, adding a comment stating that the observation posted is a record of a population that possibly no longer exists in the Willamette Valley.
- Mr. St. John returned to Stout Mountain on October 6, 2019, and he did not find any rattlesnakes:
 - He also noted that local residents reported not seeing any rattlesnakes in recent years.

Testimony:

Support:

- The following individuals signed up to comment in support of the application, but chose not to provide public testimony:
 - Andy Heuberger;
 - Tiffany Siegmund;
 - Karry Blake;
 - Lou Siegmund;
 - Alan Siegel;
 - Erik Hedberg;
 - Steven Pfeiffer;
 - Gibson Kuenzi;
 - Jamie Dobrowolski; and
 - Steasia Findley.

Testimony:

Opposition:

Greg Reed:

- Mr. Reed is the District Wildlife Biologist for ODFW;
- It is the policy of the state to protect and enhance Oregon's fish and wildlife, and their habitats, for use and enjoyment by present and future generations;
- The Marion County Comprehensive Plan identifies the Stout Mountain Rattlesnake Dens Natural Area as containing specialized habitat for western rattlesnakes;

- Western rattlesnakes are classified as protected wildlife, a state sensitive species, and a species of greatest conservation need;
- Dens for overwintering are the most specialized habitat that rattlesnakes require, and are critical for their survival;
- Historically, rattlesnakes were widespread throughout the Willamette Valley, but due to habitat loss and persecution there are only three known occupied sites remaining:
 - The Allied Rock site would be the northern most remaining site, and the last known site in Marion County.
- The Natural Area protects habitat regardless of occupancy;
- ODFW does not think that substantial evidence has been presented to say that the site is unoccupied;
- Rattlesnakes have a lifespan of up to 20 years;
- If rattlesnakes are present at the site, they are likely in low numbers making them difficult to detect;
- An adult and juvenile rattlesnake were documented on the Natural Area 14 years ago, within the lifespan of the species;
- The exposed bedrock and fissures that make up the den sites are considered habitat category 1 per ODFW's Fish and Wildlife Habitat Mitigation Policy:
 - This habitat feature is essential for the species survival, irreplaceable for this population, and limited on the landscape.
- ODFW's mitigation goal for habitat category 1 is no net loss of either habitat quantity or quality;
- If mining is allowed as a conditional use the impacts will irreparably damage the den sites by removing the rock that makes up the dens, and altering the unique suite of features that allow it to function as hibernacula;
- Mining in the vicinity of the dens may also pose a significant risk of disturbance from the noise and vibration inherent to mining activity;
- Through the creation of natural areas and wildlife habitat designations Marion County recognized the need to protect unique habitat;
- The natural areas policy seeks to identify ecologically and scientifically significant natural areas that contain components that are unique to that area and location:
 - It is the objective of the state and county to preserve sections of these ecologically diverse components before they are forever lost or altered; and
 - The proposed development is inconsistent with these policies.
- ODFW is respectfully appealing this decision, and requests that the Natural Area remains protected and impacts to the habitat be avoided;
- If any changes to the county's protection strategy for the Stout Mountain rattlesnake dens is proposed, the change should be processed as a post acknowledgement plan amendment; and
- ODFW's recommendation is consistent with the state's land use planning program and ODFW's mitigation goal for habitat category one.

Board discussion:

- ODFW thinks that the habitat should be protected whether or not it is occupied;
- ODFW recommends multiple years of survey:
 - One year of surveying is not sufficient.
- ODFW's survey protocol would include:
 - Multiple visits during the spring and fall;
 - Surveying the entire natural area;
 - Placement of additional cameras;
 - Utilizing a camera to look into dens; and
 - Leaving coverboards in place for a longer period of time.
- Mr. Reed's position is funded primarily through the sale of hunting and fishing licenses;
- ODFW's position is that the analysis that was done is incorrect from a legal perspective, and that the land use process was not followed;
- Mr. Reed thinks that a conditional use is not the proper way to consider the impacts to this natural area;
- There are a variety of rattlesnake predators in the area that could have overtaken the small population, even though predators usually do not drive a population to extinction;
- Normally surveys are done by the property owner:
 - ODFW will make recommendations for what surveys should take place, but they do not perform the surveys.

Testimony:

Opposition:

Gordon Howard:

- Mr. Howard is with the Oregon Department of Land Conservation and Development; and
- DLCD's recommendation is that the application should have been processed as a comprehensive plan amendment:
 - The rattlesnake habitat is identified in the Marion County Comprehensive Plan, and as a significant resource under statewide planning goal 5:
 - If there is a recommendation or a proposal to remove that designation for the substantive reasons that have been discussed, an amendment should be made to the county's comprehensive plan to modify the goal 5 protection program.

Board discussion:

- This property went through a comprehensive plan amendment in 2020, and DLCD made no comment at that time:
 - The property's zoning was changed to TC, and mining and processing of aggregate is allowed as a conditional use under the TC zone.
- DLCD thinks that the protection measures for rattlesnake habitat dens requires looking at the issue in terms of its impact on the goal 5 resource:

- If changes are made to the protection program for goal 5 through a conditional use, a comprehensive plan amendment should be processed concurrently.
- The code that governs conditional use under the TC zone is the same now as it was when the comprehensive plan amendment was done:
 - The code says that the applicant must provide evidence that the use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, and air and water quality.
- DLCD's position is that the comprehensive plan needs to be amended if the county is taking an action that ends the provision of the area being a significant wildlife habitat:
 - In addition to a conditional use, the county needs to amend its comprehensive plan to modify or remove the rattlesnake den habitat designation:
 - The proposed change is not consistent with a portion of the county's comprehensive plan.

Testimony:

Opposition:

- The following individuals signed up to comment in opposition of the application, but chose not to provide testimony:
 - Jennifer Ringo, ODFW; and
 - Carol Buttazzoni.

Pete Lundberg:

- Mr. Lundberg lives within hearing distance of the operations of the quarry;
- Neighbors of the quarry were not notified of this hearing;
- Allied Rock has proven by the following actions to be a poor neighbor:
 - Mr. Lundberg requested that they plant evergreen trees on the berm to reduce exposure to sound and as a visual screen, and they refused:
 - This was one of the conditions of the conditional use permit.
 - Since they have taken over operations at the quarry, they have dramatically increased the blasting and mining;
 - Property values in the surrounding area have not kept up with the market because of the activity at the quarry; and
 - Operations of the quarry use the Siegmund Road as a bypass between Old Mehama Road and Fern Ridge Road:
 - Almost all the traffic on Siegmund Road is from Siegmund operations, and they cause a lot of damage to the road:
 - The road is a county road.
 - The dust created by the trucks creates a health hazard and causes other damage;
 - The trucks cause dangerous traffic; and
 - Excessive noise is created by empty trucks traveling on the road.

- Mr. Siegmund’s company operates under a Conditional Use permit that states that “the applicant shall endeavor to ensure that heavy truck traffic, including third party haulers, continue to be directed with sufficient advanced notices necessary to the east-west connection of SR 22”:
 - By using Siegmund Road as a bypass, operations at the quarry give evidence of a lack of concern about being in direct violation of the conditional use permit.
- The county needs to revoke the current conditional use permit for gross, deliberate noncompliance, and deny the request to expand blasting and mining; and
- Mr. Lundberg also suggested that the county place a commercial weight limit on Siegmund Road.

Carol Lundberg:

- Ms. Lundberg has lived on Siegmund Road off and on for approximately 30 years;
- One of the unique features of her home, and of Stout Mountain, are the artesian springs from an aquifer fed by the runoff from Mount Jefferson;
- One of the artesian wells supplies water to Ms. Lundberg’s farm;
- In the past three years, since Allied Rock’s purchase of the quarry, there has been a declining trend in her drinking water quality:
 - She previously did not require a home water filter, but now goes through one filter a month.
- Ms. Lundberg is very concerned about the consequences of blasting and mining on the expanded area of 187 acres;
- Ms. Lundberg’s neighbor had to completely replace her well system due to poor water quality;
- The impact to the natural aquifer with the expansion of quarry operations is the potential ruin of this water source;
- The original 50-acre conditional use permit application stated that the applicant had engaged an expert to evaluate stormwater management on the property, and it has been established that existing stormwater drainage facilities on the property can accommodate the expansion;
- No assessment has been done on the impact to the aquifer supplying local drinking water;
- The entire area is zoned as part of a Sensitive Groundwater Overlay Zone:
 - The Marion County sensitive groundwater program regulations require hydrology reviews, studies containing surface geology, maps showing water use, well locations, cross sections, subsurface structure, and water bearing zones.
- Marion County code requires the identification of all aquifers and springs before approving a conditional use permit;
- Before approval of the expanded Conditional Use permit the following items need to be addressed:

- The studies required by the Marion County Planning Division, regarding sensitive groundwater, need to be submitted for review by the board;
- The county needs to consider that they may be liable if increased operations of Allied Rock is allowed, and further contamination occurs to the aquifer; and
- Monitoring systems need to be put into place to halt operations if the drinking water becomes further contaminated.
- It is evident that Marion County codes related to this permit request, and the current conditional use permit, are not satisfied:
 - As such, an expansion should not be considered;
 - The county should immediately revoke the current conditional use permit until the conditions are fully investigated and met; and
 - Failure to meet the codes designed to protect the drinking water will open the county to excessive litigation, and potentially cost taxpayers millions of dollars.
- Ms. Lundberg is not willing to risk losing her drinking water, or shoulder the resulting financial damages, due to the assessment survey not being completed satisfactorily;
- There needs to be a fair balance between citizens and big businesses; and
- Ms. Lundberg hopes that the residents' wellbeing will not be sacrificed to big business.

Testimony:

Support:

Alan Sorem:

- There is a memorandum in the record from DKS Associates traffic engineers, dated September 8, 2021, stating that there would be no significant traffic impacts from the expansion of the facility;
- There will be a general migration of the extraction area from its current site on the property moving towards the east:
 - All of the property will not be actively mined at one time; and
 - The western neighbors of the property are as close to the mining activity as they will ever be.
- Under Oregon law written notice is provided to property owners within 750 feet:
 - Neighbors of the quarry live farther away, so they are outside of the notification area.
- The property is not within the Marion County Sensitive Groundwater Overlay Zone, so a lot of the evidence and criteria discussed in the testimony does not apply.

Board discussion:

- There is enough water available for the needs of the community; and
- There could be other reasons for the reduction of water quality in the area.

Erick Staley:

- The site has a well located within the sand and gravel deposits that underlie the lower portion of the site:

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- The water is used for dust control, and it is not a significant amount.
- The site has a Department of Geology and Mineral Industries (DOGAMI) permit which the applicant will work towards expanding if the county approves the expansion; and
- The original DOGAMI permit had conditions regarding groundwater impacts at the site:
 - The conditions were later removed because DOGAMI did not observe any impact to groundwater at the site.

Board discussion:

- The applicant must submit an annual report to the Department of Environmental Quality.

Testimony:

Support:

Alan Sorem:

- DLCD staff has been very careful with their words, they “suggest” that the board consider Goal 5;
- The board must apply the codified criteria:
 - They are not allowed to approve or deny an application based upon suggested additional criteria.
- There is no legal authority to deny the application;
- Substantial evidence has been provided for all criteria; and
- The applicant would like the board to affirm the hearings officer’s decision which addressed all the issues and legal arguments raised by DLCD.


Board discussion:

- This is not a plan amendment;
- The applicant is asking for a conditional use permit to expand the existing use of the quarry;
- A Goal 5 analysis is not required in the county’s conditional use process for this type of use in a timber conservation zone;
- The county’s comprehensive plan does not require a Goal 5 analysis because the use is staying the same, the proposal is for an expansion of the same land use;
- The comprehensive plan changed in 2020 for the land use change, which changed the allowable uses on the site;
- The board needs to determine whether or not to give a CU permit to an allowed use in a timber conservation zone:
 - The applicant has the burden to prove the use will not have a significant adverse impact on the following:
 - Watersheds;
 - Groundwater;
 - Fish and wildlife habitat;
 - Soil and slope stability; and


- Air quality; and
 - Water quality.
- The community, in particular the Santiam Canyon community, will be negatively impacted if Allied Rock were to go out of business:
 - The company has been very generous in helping with the rebuilding of the Santiam Canyon following the 2020 wildfires.
- The board needs to consider the environmental impacts as part of the process:
 - It has not been proven that there are western rattlesnakes habituating in the area; and
 - It is improbable that there will ever be western rattlesnakes in this location.
- It was expressed that the approval of the CU may not be harmful to the western rattlesnake;
- The board needs to follow the CU process that is set before them;
- One of the conditions of approval requires the applicant to retain existing landscaping and install additional landscaping along the southern boundary of the property to serve as a visual and noise abatement berm;
- The Marion County Planning Department works to make sure the conditions of a CU permit are being met;
- The commissioners make decisions based on the rules that are before them, and what is best for the entire population of the county;
- The quarry is delivering a high-quality product;
- They are not impacting fish and wildlife;
- While several members of the community in support of the application did not testify, there are neighbors that state that the use of the property as a mining facility is not troublesome to them, and they support the application;
- Substantial evidence has been provided into the record, and no scientific evidence has been provided that is relevant to the issue of the western rattlesnake habitation; and
- There may be water resource options available for individuals residing in the area; and
- Dust is a problem for individuals in the country, regardless of whether or not they live next to a rock quarry.

MOTION: After hearing all the evidence presented here, Commissioner Willis moved to close the public hearing, deny the appeal, and uphold the Hearings Officer's decision. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.


Commissioner Bethell adjourned the meeting at 11:23 a.m.



CHAIR



COMMISSIONER



COMMISSIONER

Board Sessions can be viewed on-line at
<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>