

# Umatilla County

Department of Land Use Planning



## AGENDA

**Umatilla County Planning Commission Public Hearing**  
**Thursday, July 26, 2018, 6:30 p.m.**  
**Justice Center Media Room, Pendleton, OR**

### Planning Commission

Suni Danforth, Chair  
Gary Rhinhart, Vice-Chair  
Tammie Williams  
Don Wysocki

Tami Green  
Cecil Thorne  
Hoot Royer  
Molly Tucker Hasenbank

### Planning Staff

Bob Waldher, Planning Director  
Carol Johnson, Senior Planner  
Jacob Potterf, Planner/ GIS  
Gina Miller, Code Enforcement Coordinator  
Tierney Dutcher, Administrative Assistant

1. **Call to Order**
2. **Adopt Minutes (Thursday, May 24, 2018)**
3. **New Hearing:**

**UMATILLA COUNTY DEVELOPMENT CODE (UCDC) TEXT AMENDMENT, #T-18-076, applicant, City of Hermiston.**

The applicant requests a Post-Acknowledgment Plan Amendment to amend the text of the Future Urban (FU-10) Zoning Ordinance to permit **creation of a parcel or lot smaller than the minimum parcel/lot size; and allow for the purchase of a one-acre parcel or lot for installation of the City or public or private utility provider-owned water tower. Additionally, the amendment would allow a water tower to exceed the FU-10 height limitation.**

The Hermiston Joint Management Agreement (JMA) provides that amendments of the implementing ordinances applicable to the FU-10 Zone in the Hermiston Urban Growth Area (UGA) are the County's responsibility to maintain and implement. UCDC 152.751 requires an amendment to the text of the UCDC and shall comply with provisions of the Umatilla County Comprehensive Plan, the Oregon Transportation Planning Rule, OAR Chapter 660, division 12, and the Umatilla County Transportation Plan and Statewide Planning Goals 1, 2 and 14.

4. **Adjournment**

**CITY OF HERMISTON  
TEXT AMENDMENT, #T-18-076  
HERMISTON URBAN GROWTH AREA  
FUTURE URBAN ZONE (FU-10)  
JULY 26, 2018, PLANNING COMMISSION HEARING  
PACKET LIST**

1. Memo, page 1
2. Vicinity Map, page 2
3. Draft Findings, pages 3 - 8
4. FU-10 Zone New Text Language, pages 9 - 14

# Umatilla County

Department of Land Use Planning



July 18, 2018

**DIRECTOR  
ROBERT  
WALDHER**

**LAND USE  
PLANNING,  
ZONING AND  
PERMITTING**

**CODE  
ENFORCEMENT**

**SOLID WASTE  
COMMITTEE**

**SMOKE  
MANAGEMENT**

**GIS AND  
MAPPING**

**RURAL  
ADDRESSING**

**LIAISON,  
NATURAL  
RESOURCES &  
ENVIRONMENT**

## MEMO

**To:** Umatilla County Planning Commissioners  
**From:** Carol Johnson, Senior Planner *CJ*  
**Re:** July 26, 2018, Planning Commission Hearing  
City of Hermiston, Applicant  
Comprehensive Plan Text Amendment, #T-18-076,  
City of Hermiston Urban Growth Area, Zone FU-10  
**cc:** Doug Olsen, County Counsel  
Robert Waldher, Planning Director

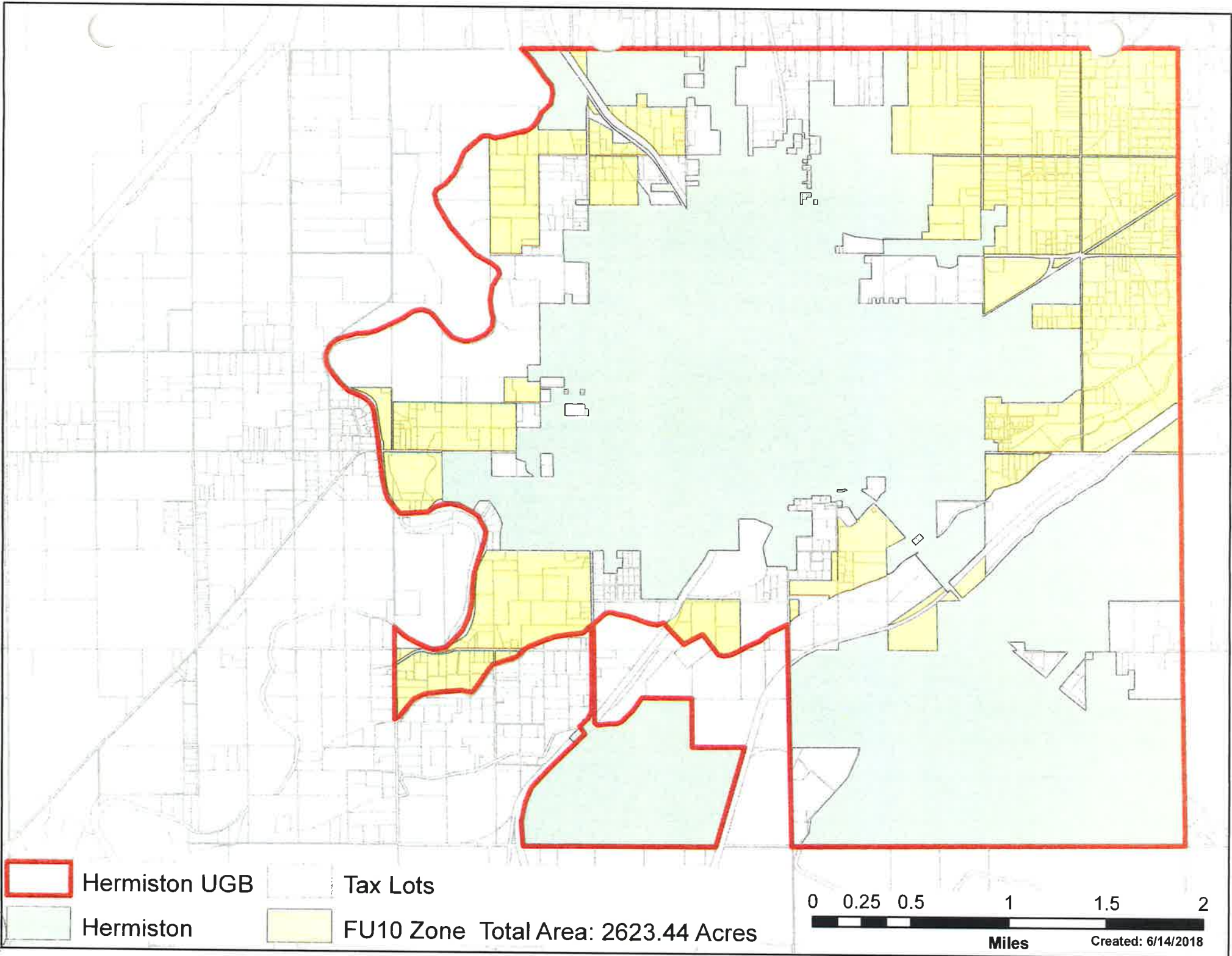
The City of Hermiston proposes a Text Amendment affecting land within the City's Urban Growth Area. The scope of the Text Amendment is narrow and the changes only apply to properties in the Hermiston Urban Growth Area zoned "Future Urban Zone, ("FU-10"). The attached map shows Hermiston's FU-10 Zoned properties.

The City's water services require a new water tower for water storage. The site of the water tower requires that the tower be located in the service area at a certain elevation. The area selected to best accommodate the new water tower is located outside of the City Limit's boundary and in the Future Urban Zone.

The FU-10 zone currently prohibits creation of parcels and lots smaller than 10 acres in size and also limits the height of all structures. The City wishes to purchase and maintain land for the City's water tower site and proposes new language to allow the creation of a parcel or lot of less than 10 acres for a water tower only and allow the facility to exceed the FU-10 Zone height limitation of 25-feet.

The proposed amendment would have minimal effect and only be used for a City or public or private utility provider-owned water tower in the FU-10 Zone.

Staff has provided draft findings for your consideration along with the proposed new language to FU-10 Zone Section 152.339 (E). The decision before the Planning Commission is a recommendation to the Board of Commissioners for either approval or denial. A Text Amendment approval by the Board of Commissioners would result in the adoption of a County Ordinance approving changes to the FU-10 text. The County Ordinance then would be forwarded to the City of Hermiston for City co-adoption.



**UMATILLA COUNTY BOARD OF COMMISSIONERS  
DRAFT FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FU-10 ZONE LEGISLATIVE TEXT AMENDMENT, #T-18-076  
HERMISTON URBAN GROWTH BOUNDARY**

**1. Introduction**

The Hermiston Joint Management Agreement (JMA) provides that “[a]mendments to the Comprehensive Plan and sections of the implementing ordinances applicable to the Hermiston Urban Growth Area (UGA) may be initiated by the City, the County or an affected person. The JMA further provides as follows: “County Planning Commission and Board of Commissioners will hold public hearings on all proposed amendments following receipt of City recommendations or co-adoption referrals.” (JMA Section E. Areas within the UGB, Overall Provisions, paragraph 10, pages 6 and 7.)

Based upon the County agreement with the City, the County has responsibility to maintain and implement the FU-10 Zoning Ordinance for the Hermiston Urban Growth Area. The County coordinates with the City on this proposed text amendment and the procedure is consistent with the purpose and intent of the JMA, including Section E. Therefore, the County has the authority to consider and approve the text amendment.

**2. Procedural Matters**

**A. Categorization of this Matter**

This matter is a legislative matter because it proposes to amend the text of the County Zoning Ordinance in a manner that will affect all County properties located in the FU-10 zoning within the Hermiston Urban Growth Area.

**B. Post-Acknowledgment Amendment**

This legislative amendment is an amendment to the County's acknowledged 1983 Zoning Ordinance. ORS 197.610(1) and OAR 660-018-0020(1) require that the County provide notice to the Director of the Oregon Department of Land Conservation and Development ("DLCD") at least 35 days prior to the initial evidentiary hearing. The County provided the 35-day notice to DLCD on DLCD's Form 1, June 21, 2018. The County has satisfied ORS 197.610(1) and OAR 660-018-0020(1) by mailing the post-acknowledgement amendment notice so that it arrived at the office of the Director of DLCD at least 35 days prior to the initial evidentiary hearing.

UCDC 152.771(B) requires the County provide a legal notice for the Planning Commission hearing July 26, 2018 and Board of Commissioners August 22, 2018 hearing by publication in a newspaper of general circulation in the County at least ten (10) days prior to the date of the first hearing. The notice was published in the *East Oregonian* newspaper on July 14, 2018.

The County has satisfied the post-acknowledgement amendment notice required by ORS 197.610(1) and OAR Chapter 660-018-0020(1) and the legal notice of hearing publication in UCDC 152.771(B).

**C. Procedure**

UCDC 152.752 is entitled "Public Hearings on Amendments." This section provides, in relevant part:

"The Planning Commission shall conduct a public hearing on the proposed amendment according to the procedures in section 152.771 of this Chapter at its earliest practicable meeting after it is proposed. The decision of the Planning Commission shall be final unless appealed, except in the case where the amendment is to the text of this Chapter, then the Planning Commission shall forward its recommendation to the Board of Commissioners for final action."

Notwithstanding, the JMA requires a public hearing before the Planning Commission and the Board of Commissioners. Therefore, the County will hold two (2) hearings for this legislative amendment, one (1) before the Planning Commission and another before the Board of Commissioners.

Additionally, UCDC 152.771(A)(1) provides that a public hearing is required for legislative amendments. The procedures and requirements for a quasi-judicial hearing are not applicable to this hearing. Therefore, UCDC 152.772, which applies to quasi-judicial hearings, is not applicable to this legislative proceeding.

**3. Description of Amendment**

The City of Hermiston, Oregon ("City") is an Oregon municipality. The City's municipal services include the provision of domestic water service to city residents and businesses. The City's water services require a new water tower for water storage. The location of the water tower requires that it be located outside of the City's boundary and in an area zoned FU-10, "Future Urban Zone" ("FU-10"). However, the FU-10 zone prohibits parcels or lots smaller than 10 acres in size and the City does not require a 10-acre parcel/lot for the new water tower.

The City intends to enter into a Purchase and Sale Agreement with a property owner in the FU-10 zone to sell a one-acre lot to the City for the construction of a water tower. Pursuant to UCDC 152.750 (A), the City, as a property owner, is authorized to initiate this amendment to the FU-10 zone to allow the creation of a one-acre parcel or lot for the installation of the City or other public or private utility provider-owned water tower on a one-acre parcel or lot. Pursuant to the FU-10 Zone Section 152.339 (E), attached.

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#### 4. Approval Criteria

UCDC 152.751 requires that an amendment to the text of the UCDC shall comply with provisions of the Umatilla County Comprehensive Plan (the "Plan"), the Oregon Transportation Planning Rule (the "TPR"), OAR Chapter 660, division 12, and the Umatilla County Transportation Plan ("Transportation Plan"). The County also finds that because this text amendment is a post-acknowledgment amendment, ORS 197.175(1) requires that the Plan and Map amendment satisfy applicable Statewide Planning Goals (the "Goals") and other applicable administrative rules. The County finds that the UCDC does not contain substantive standards for an amendment to the UCDC text. The remainder of this section addresses the applicable approval criteria.

This UCDC provision sets forth the approval requirements for amendment to the text of the UCDC. This section requires that an amendment satisfy the Plan and the Oregon Transportation Planning Rule (the "TPR"), OAR 660, Division 12, as well as the Umatilla County Transportation Plan.

The County finds the TPR, OAR 660-012-0060 (1)-(3), is not implicated by this text amendment. The text amendment will not create any more vehicle trips than would a development of a 10-acre parcel or lot for residential purposes in the FU-10 zone and a water tower does not require daily vehicle trips. Because the TPR is not implicated, the County finds the Umatilla County Transportation Plan is not implicated by the amendment.

The County finds that UCDC 152.751 is satisfied.

##### A. Applicable Statewide Planning Goals

There are 19 Goals. The Board of Commissioners finds that Goal 1, "Citizen Involvement," Goal 2, "Land Use Planning," and Goal 14 "Urbanization" are relevant to this application.

(a) ***Goal 1. "Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process."***

**Finding:** The County has an acknowledged citizen involvement program. The citizen involvement program is implemented through UCDC Chapter 152. The public has two (2) *de novo* opportunities to testify on this text amendment. By following the post-acknowledgement amendment process, the County will satisfy Goal 1.

The County finds that Goal 1 is satisfied.

(b) ***Goal 2. "Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to ensure an adequate factual basis for such decisions and actions."***

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**Finding:** Goal 2 requires that County land use actions be consistent with the County's comprehensive plan. Goal 2 also requires that the County's action on this text amendment be coordinated with affected governmental entities, as coordination is defined in ORS 197.015(5). Further, Goal 2, Guideline C.1 requires that the County have an adequate factual base for its decision adopting the text amendment.

The County finds as follows on each requirement of Goal 2. The County has given notice of the application to affected governmental entities including, but not limited to, the City and County Public Works Department. Coordination requires that the affected governmental entities be provided with the proposed text amendment, given a reasonable opportunity to comment, and that the County incorporate comments as much as is reasonable. The County has followed coordination requirements.

The County finds that Goal 2 is satisfied.

(c) **Goal 14. Urbanization.** *“To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”*

The County finds that the City and County have mutually agreed to plan for growth inside the Urban Growth Area by the terms set forth in the JMA, updated and signed on April, 2017. This proposed adoption of the text amendment is consistent with the terms of the JMA.

The County finds that this Goal is satisfied.

(d) **Conclusion.**

The other sixteen Goals are not applicable to this application request. The County finds the three applicable Goals are satisfied.

## **B. Applicable Oregon Administrative Rules**

The County finds that there are no administrative rules implementing Goals applicable to the application.

## **C. Applicable Plan Policies**

The County finds there are three (3) relevant plan chapters, Chapter 4, "The Planning Process", Chapter 5, "Citizen Involvement," and Chapter 17 "Urbanization."

(a) **Chapter 4, "The Planning Process"**

**Finding 2:** *“Under present laws County jurisdiction over unincorporated urbanizing lands cannot be transferred to cities.”*

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***Policy 2: "Cities' plans for unincorporated urbanizable areas are by reference part of this plan."***

**Finding:** The County finds this policy is satisfied where the County and City have mutually agreed to the JMA and this legislative amendment is consistent with the JMA for plan and map amendments within the Urban Growth Area.

The County finds that this policy is satisfied.

**(b) Chapter 5, "Citizen Involvement"**

**(1) Policy 1: "Provide information to the public on planning issues and programs, and encourage citizen input to planning efforts."**

**Finding:** The County finds Chapter 5, Policy 1, is satisfied because notice of the Planning Commission and Board of Commissioners' hearings are in a newspaper of County-wide circulation and there are two (2) *de novo* hearings where the public may testify on the proposed text amendment.

The County finds that this policy is satisfied.

**(2) Policy 5: "Through appropriate media, encourage those County residents' participation during both city and County deliberation proceedings."**

**Finding:** The County finds, as explained above, the publication of notice of the Planning Commission hearing and the Board of Commissioners' hearing in a newspaper of County-wide circulation fulfills this requirement.

The County finds that this policy is satisfied.

**(c) Chapter 17, "Urbanization"**

**Policy 1. "Adopt and enforce city plans and substantive standards for unincorporated areas within urban growth boundaries."**

**Finding:** The County finds the proposed text amendment has the effect of upholding the substantive standards for zoning and development of FU-10 Zoned parcels in the Hermiston Urban Growth Area.

The County finds that this policy is satisfied.

**Policy 3. Specify by agreement with the cities the processes for amendments to unincorporated urban growth plans.**

**Finding:** The County finds the legislative action is consistent with the JMA.

The County finds that this policy is satisfied.

**5. CONCLUSION**

For the reasons contained herein, the County finds the applicable approval criteria for the text amendment have been satisfied and the proposed text amendment to the FU-10 zone to allow creation of a one-acre parcel/lot in order to establish a City or public or private utility provider on the water tower can be approved.

**UMATILLA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
**W. Lawrence Givens, Commissioner**

\_\_\_\_\_  
**William J. Elfering, Commissioner**

\_\_\_\_\_  
**George L. Murdock, Commissioner**

**Date:** \_\_\_\_\_

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## FU-10, FUTURE URBAN ZONE

### *Sub-Sections*

<u>152.335</u>	<u>Purpose</u>
<u>152.336</u>	<u>Uses permitted</u>
<u>152.337</u>	<u>Conditional uses permitted</u>
<u>152.338</u>	<u>Limitations on use</u>
<u>152.339</u>	<u>Dimensional standards</u>

### **§ 152.335 PURPOSE.**

The FU-10 Future Urban Zone is designed to implement the growth management policies around the Hermiston Urban Growth Boundary; to provide for interim uses consistent with the plan policies until conversion to urban uses; to retain the land suitable for future urban development in large parcels which will enable more cost effective urban redevelopment of the land. Lots are kept large as urban services are not yet available to these areas and development is limited to the land capability of accepting septic tanks and drainfields while still providing safe drinking water.

(Ord. 83-4, passed 5-9-83)

### **§ 152.336 USES PERMITTED.**

(A) *Uses permitted outright.* In a FU-10 Zone, the following uses and their accessory uses are permitted without a zoning permit:

(1) Farm use, as defined in ORS 215.203 and set out in § 152.003, except livestock feed yards and sales yards, hog or poultry farms and the raising of fur-bearing animals; the growing, harvesting and processing of marijuana in accordance with Oregon Revised Statutes; and except the dwellings and other buildings customarily

provided in conjunction with farm uses referred to in ORS 215.203(2)(a).

(2) Normal operation, maintenance, repair, and preservation activities of existing transportation facilities.

(3) Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.

(4) Projects specifically identified in the Transportation System Plan as not requiring further land use regulation.

(5) Landscaping as part of a transportation facility.

(6) Emergency measures necessary for the safety and protection of property

(7) Acquisition of right-of-way for public roads, highways, and other transportation improvements designated in the Transportation System Plan.

(8) Construction of a street or road as part of an approved subdivision or land partition approved consistent with the applicable land division ordinance.

(B) *Uses permitted with a zoning permit.* In a FU-10 Zone, the following uses and their accessory uses are permitted upon the issuance of a zoning permit, pursuant to §152.025;

(1) Dwelling, single-family;

(2) Mobile home as provided in § 152.013;

(3) Non-commercial greenhouse or nursery;

- (4) Public or semi-public use;
- (5) Signs: Type 2, 4, 5, 6 as defined in § [152.546](#);
- (6) Residential Home (Adult Foster Care);
- (7) Day Care or Nursery.  
(Ord. [83-4](#), passed 5-9-83; Ord. [2002-08](#), passed 8-14-02; Ord. [2009-09](#), passed 12-8-09; Ord. [2012-02](#) passed 1-26-12; Ord. [2015-07](#), passed 9-22-15)

**§ 152.337 CONDITIONAL USES PERMITTED.**

In a FU-10 Zone, the following uses and their accessory uses are permitted conditionally subject to the requirements of §§ [152.610](#) through [152.616](#) of this chapter:

- (A) Church as provided in § [152.616 \(K\)](#);
- (B) Commercial greenhouse or nursery as provided in § [152.616 \(R\)](#);
- (C) Roadside stand for the sale of agricultural products grown by the owner or owner as provided in § [152.616 \(WW\)](#);
- (D) Grange hall or community center, park, playground or recreational facility owned and operated by a government agency or non-profit community agency as provided in § [152.616 \(EE\)](#);
- (E) Rest home, home for the aged, nursing home, or convalescent home as provided in § [152.616 \(UU\)](#);
- (F) Utility facility as provided in

§ [152.616 \(CCC\)](#);

- (G) Special exemption as provided in §§ [152.575](#) and [152.576](#);
- (H) Cemetery as provided in § [152.616 \(J\)](#);
- (I) Home occupations /cottage industry as provided in § [152.616 \(II\)](#);

(J) Construction, reconstruction, or widening of highways, roads, bridges or other transportation projects that are: (1) not improvements designated in the Transportation System Plan or (2) not designed and constructed as part of a subdivision or planned development subject to site plan and/or conditional use review, shall comply with the Transportation System Plan and applicable standards, and shall address the following criteria. For State projects that require an Environmental Impact Statement (EIS) or EA (Environmental Assessment), the draft EIS or EA shall be reviewed and used as the basis for findings to comply with the following criteria:

- (1) The project is designed to be compatible with existing land use and social patterns, including noise generation, safety, and zoning.
- (2) The project is designed to minimize avoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities.
- (3) The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.

(4) Project includes provision for bicycle and pedestrian circulation as consistent with the comprehensive plan and other requirements of this ordinance.

(K) Construction of rest areas, weigh stations, temporary storage, and processing sites.

(L) If review under this Section indicates that the use or activity is inconsistent with the Transportation System Plan, the procedure for a comprehensive plan amendment shall be undertaken prior to or in conjunction with the conditional permit review.

(Ord. 83-4, passed 5-9-83; Ord. 2002-08, passed 8-14-02; Ord. 2009-09, passed 12-8-09)

#### § 152.338 LIMITATIONS ON USE.

Notwithstanding any other section of this chapter, the following limitations and conditions shall apply in the FU-10 Zone:

(A) Cows, horses, goats or sheep or similar sized animals shall not be kept on lots having an area less than 20,000 square feet. The total number of all such animals over the age of six months allowed on a lot shall be limited to the acreage of the lot divided by the minimum area required for each animal. The minimum area required for horses, cows, goats and sheep is two per acre. For the purposes of this section, the two per acre requirement shall be cumulative. In other words, on two acres only four animals listed above could be kept.

(B) The number of chickens, fowl, rabbits, or similar sized fowl or fur-bearing animal shall be confined on not more than 25% of the total lot area;

(C) Adequate fences and corrals shall be required of the animal owner to keep animals off adjacent lands;

(D) Barns, sheds, and other structures sheltering animals shall be located a minimum of 35 feet from a side or rear property line and 75 feet from the front property line;

(E) All structures and enclosures designed for animals shall be kept reasonably free and clean of flies, and accumulated animal waste materials, and shall be subject to health regulations (county, state or federal) as may be now hereafter established.

(F) Market Hog Exemption: A student resident who is a member of FFA (Future Farmers of America) or 4-H may raise hogs under the conditions listed below and may be subject to yearly reviews;

(1) The owner of the market/feeder hog must be an active member currently enrolled in a local FFA or 4-H program. A letter from the FFA or 4-H leader may be required to verify enrollment.

(2) The boarding and raising of hogs shall be for educational purposes only.

(3) Only market/feeder hogs raised as an FFA or 4-H market animal project shall be allowed. Breeding stock such as sows and boars are excluded from this exemption status.

(4) The market/feeder hogs shall be raised for FFA or 4-H sale only.

(5) The boarding and raising of market/feeder hogs shall not be allowed for

the purposes of profit only, except when sold as a project.

(6) Market/feeder hogs must be kept in a well maintained environment, with no rodents or pests allowed. Odor and other nuisance factors must be reasonably controlled.

(7) Market/feeder hogs shall not be allowed on a year round basis. Market/feeder hogs shall only be allowed on the premises for the duration of time required to complete the project and prepare the hogs for the designated youth livestock show.

(8) The total number of hogs allowed per FFA or 4-H member shall be one (1) for each show attended by the FFA or 4-H member, per student resident. (Ord. 83-4, passed 5-9-83; Ord. 2013-02, passed 1-29-13)

**§ 152.339 DIMENSIONAL STANDARDS.**

In a FU-10 Zone the following standards shall apply:

(A) *Minimum lot size.*

(1) For all “uses permitted with a zoning permit” and “conditional uses permitted” except as modified in subdivisions (2) and (3) of this division, 10 acres;

(2) Pre-existing, non-conforming lots of record. Lots which were lawfully in existence prior to September 20, 1983 and which do not meet the 10 acre minimum parcel size stated in subdivision (1) above may be occupied only by a single-family

dwelling, mobile home or modular home upon approval by the DEQ, or other authorized agent which may succeed them, to place a septic tank and drainfield on the preexisting non-conforming lot.

(3) Pre-existing, habitable dwellings, including several single-family dwellings on a single tax lot, may be partitioned out on individual parcels as a Type II, III or IV Land Division, subject to the following standards:

(a) The proposed parcel(s) has frontage on or legal access to a county road, state highway, or public road, or can be provided with legal access as a condition of approval; and

(b) The proposed parcel(s) is already physically developed as a home site, including, but not limited to, the following improvements:

(1) An existing, habitable dwelling;

(2) Existing accessory building(s) provided for the dwelling;

(3) Existing and replacement sites for on-site septic systems;

(4) Domestic well; and

(c) The size of the proposed parcel(s) shall be the minimum necessary to accommodate the development features listed in subdivision (3)(b) of this division, with an absolute minimum of one-half acre and a maximum of two acres, excepting that the domestic well may be located beyond the parcel boundaries and connected to it by a utility easement; and

(d) The total number of parcels allowed to be partitioned from the original parcel shall be the total number of existing, developed homesites on the parcel, except as qualified in subdivision (3)(e) of this division; and

(e) The undeveloped (“vacant”) portion of an original parcel shall not be less than five acres following partitioning off of existing home sites. One of the existing home sites must remain with the original parcel if such would be the case (i.e. if there are two home sites on a six acre tract, one home site could be partitioned off, but the other would have to remain with the original tax lot).

(f) Once the existing developed home sites have been partitioned off from the original parcel, no new home sites are allowable on the remainder of the property as long as the property remains in FU-10 zoning. A covenant to this effect, complete with legal description, would be required to be signed and recorded in the Umatilla County Deed Records as a condition of partitioning approval.

(B) *Setback requirements.* No buildings shall be located closer than 20 feet from a lot line, except on the street side of a corner lot used for a side yard, the setback shall be 25 feet from the lot line.

(C) *Lot coverage and building heights.*

(1) *Lot coverage.* The main building and accessory buildings located on any building site or lot shall not cover more than 30% of the total lot area;

(2) *Building height.* No building or structure shall be erected or enlarged to exceed two stories or more than 25 feet in

height, except split level buildings, which may be increased in height to 30 feet.

(D) *Stream setback.* To permit better light, air, vision, stream or pollution control, protect fish and wildlife areas, and to preserve the natural scenic amenities and vistas along the streams and lakes, the following setback shall apply:

(1) All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the mean high-water line or mark along all streams or lakes a minimum of 100 feet, measured at right angles to the high-water line or mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the Department of Environmental Quality finds that a closer location will not endanger health, the Planning Director may permit the location of these facilities closer to the stream or lake, but in no case closer than 50 feet.

(2) All structures, buildings or similar permanent fixtures shall be set back from the high-water line or mark along all streams or lakes a minimum of 100 feet measured at right angles to the high-water line or mark.  
(Ord. 83-4, passed 5-9-83; Ord. 89-02, passed 5-18-89)

(E) *Water Tower on Less Than a 10 Acre Lot.*

(1) *Notwithstanding Section 152.339(A), a new lot less than 10 acres in size may be created from a pre-existing lot, subject to the following conditions:*

(a) *The new lot shall be no less than 1 acre in size;*



*(b) The pre-existing lot may be less than 10 acres after the creation of the new lot;*

*(c) The new lot shall be owned by an incorporated City, or any public or private utility provider;*

*(d) The new lot shall be used for a City or public or private utility provider-owned water tower and its accessory facilities including but not limited to necessary utility lines and structures; and*

*(e) The water tower shall be subject to other applicable requirements of the FU-10 zone, including Section 152.337(F), except Section 152.339(C)(2).*

**DRAFT MINUTES**

**CONDITIONAL USE PERMIT  
#C-1301-18**

**CENTRAL WASHINGTON ASPHALT, INC.,  
APPLICANT,**

**JAMES SPENCE PROPERTIES, INC.,  
OWNERS**

**PLANNING COMMISSION HEARING**

**May 24, 2018**

**Umatilla County Planning Commission Public Hearing**  
**Thursday, May 24, 2018, 6:30 p.m.**  
**Umatilla County Justice Center, Media Room, Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Suni Danforth, Chair, Tammie Williams, Tami Green, Cecil Thorne, Hoot Royer  
**ABSENT:** Gary Rhinhart, Vice Chair, Don Wysocki, Molly Tucker Hasenbank  
**STAFF:** Bob Waldher, Planning Director, Carol Johnson, Senior Planner, Jacob Potterf,  
Planner/GIS, Tierney Dutcher, Administrative Assistant, Gina Miller, Code  
Enforcement Coordinator

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NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE

**CALL TO ORDER**

Chair Danforth called the meeting to order at 6:30 p.m. and read the Opening Statement.

**MINUTES**

Chair Danforth asked the Planning Commission to review the meeting minutes from March 22, 2018. Commissioner Green stated that she did not make the comment during deliberation noted on page 12, "Commissioner Green stated that she wishes she could add a condition for the road, but that is ODOT's jurisdiction and the Planning Commission has no power over the road". Commissioner Williams acknowledged that she made the statement. That change will be made in the final draft of the minutes. Commissioner Green moved to adopt the minutes with the noted change. The motion was seconded by Commissioner Thorne. Motion carried by consensus.

**NEW HEARING**

**CONDITIONAL USE PERMIT #C-1301-18, CENTRAL WASHINGTON ASPHALT, INC.,  
APPLICANT, JAMES SPENCE PROPERTIES, INC., OWNERS.**

The applicant requests an amendment of one of the conditions of approval in Conditional Use Permit #C-333 (1984) and implied limitation in Conditional Use Permit #C-479 (1987) to change the hours of operation. Current hours of operation are limited to daylight hours. The modification would change the condition to the following:

*"[H]ours of operation will be day-light hours only, except for those projects for which road work is required by contracting governmental entities to occur during dark periods between sunset (nautical dusk) to dawn. Those governmental projects may occur during night-time (nautical dusk to dawn) hours. In no case shall blasting or crushing occur except during day-light hours."*

The asphalt batch plant related to this request is located on a portion of property described as Township 5N, Range 36E, Section 07; Tax Lot #200. The subject property is zoned Exclusive Farm Use (EFU) with Aggregate Resource (AR) overlay, and is located off Walla Walla River Road, east of City of

Milton-Freewater. The uses on the subject property, including the asphalt plant, are existing and not new uses. The applicable criteria of approval for modifying Conditional Uses and Land Use Decisions are found in Umatilla County Development Code (UCDC) Sections 152.611. Criteria of approval for asphalt plants are found in UCDC Section 152.617(I)(A).

Chair Danforth called for any abstentions, bias, conflict of interest, declaration of ex-parte contact or objections to jurisdiction. There were none.

## **STAFF REPORT**

Mr. Waldher stated that the purpose of Central Washington Asphalt's request to amend Conditional Use Permits (CUP) #C-333 approved in 1984, and the implied limitation in Conditional Use Permit #C-479 approved in 1987, is to change the hours of operation required by the Conditions of Approval. The aggregate site where the operation currently occurs is known as the Spence Pit, and is located in Township 5N, Range 36E, Section 07; Tax Lot #200. The subject property is zoned Exclusive Farm Use (EFU) with an Aggregate Resource (AR) overlay, and is located off Walla Walla River Road, east of the City of Milton-Freewater. The uses on the subject property, including the asphalt plant, are existing and not new uses. Mr. Waldher presented a map on the overhead screen to demonstrate the layout of the parcel. He stated that the area where mining first occurred on the property was permitted in 1984 through #C-333. The existing batch plant was permitted in 1987 through #C-479 and the remainder of the site falls within the Goal 5 Expansion Area approved in 2014.

The proposed change to the hours of operation would not add employees or change operations other than allowing Central Washington Asphalt to respond to certain governmental contracts. Work hours at the subject property would be shifted to accommodate requirements of these specific types of contracts. The remainder of the site is subject to a Goal 5 decision that limits the hours of operation to 6am through 7pm. Truck traffic and aggregate operations not associated with the asphalt plant, but included on the County's Goal 5 inventory, would not operate outside the hours of operation required by the County's 2014 decision. Mr. Waldher stated that the Planning Commission should keep in mind that this request is only to modify the condition of hours of operation for #C-333 and #C-479. No other elements of the existing CUP's or the Goal 5 Expansion are relevant or subject to change as part of this amendment process.

The applicable criteria of approval for modifying Conditional Uses and Land Use Decisions are found in Umatilla County Development Code (UCDC) Sections 152.611. Criteria of approval for Asphalt plants are found in UCDC Section 152.617(I)(A).

Mr. Waldher stated that the Planning Commissioners Packets contain letters of support that were received after the public notice was sent, in addition to one comment in opposition to the amendment. The applicant provided a letter from Mr. Troy Humbert, Vice President, Humbert Asphalt. Mr. Humbert does not oppose the request to amend the CUP and stated that they understand that sometimes overnight paving is required to do government work. Mr. Waldher stated that these documents will become part of the hearing record.

Chair Danforth asked if the operation will be 24 hours a day, 7 days a week. Mr. Waldher stated that he understands it will be limited to state and federal contracts that would require nighttime operations in order to be awarded the contract.

## TESTIMONY

**Applicant Testimony:** Ron Jones, Manager, Central Washington Asphalt, 53358 Bade Lane, Milton Freewater, Oregon, Kerrie Standlee, Noise Mitigation Expert, 15399 SW Burgandy Street, Tigard, Oregon and Wendie Kellington, Attorney, Kellington Law Group, PO Box 159, Lake Oswego, Oregon.

Mr. Jones stated that Tyson Morris, Regional Manager, Central Washington Asphalt is in attendance and available to answer questions as well.

Mr. Jones stated that the Milton Freewater plant has 28 employees and 20 of them live in Milton Freewater. Central Washington Asphalt is requesting an amendment to the condition of approval limiting hours of operation to daylight hours because they would like to do the work paving Highway 11 and it is scheduled to be an overnight job. He stated that they are only asking for an exception to be made for projects by government entities which require road work be done during dark periods and they would never blast or crush at night.

Mr. Jones distributed a packet of paperwork including Google Earth images of homes near the Spence Pit and letters of support from surrounding neighbors. He also included photos of noise mitigation measures they have taken on site.

Mr. Jones stated that his process is pretty simple. They produce the asphalt at the asphalt plant, load it into dump trucks, and send to the job site. The trucks then return to the plant to get reloaded and the cycle continues all night. He stated that they do not do many overnight jobs and in his 35 years of experience he has only worked on 3.

Mr. Standlee stated that this project is separate from the mining and crushing operation. The amendment would be specific to the asphalt plant. He explained that he focused on the residence at 53836 Walla Walla River Road for his study because it is least protected from noise. Therefore, if they meet the requirements at this location the more protected residences would also meet the noise standard. When the asphalt plant was running Mr. Standlee measured levels that met the daytime standards but were approximately 5 decibels (dB) above the nighttime noise limit. The DEQ limit is a statistical limit which states that the noise caused by the industrial operation cannot exceed 50 dB for more than 30 minutes per hour. He was able to determine the main components contributing to the noise were the bag-house exhaust stack and the burner, which blows hot gas through a rotating drum to dry the gravel. Mr. Standlee made suggestions to Central Washington Asphalt to mitigate the noise issues. He stated that they made the changes within days resulting in a reduction of noise levels right away. Subsequent testing indicated that they will be in compliance with the 50 dB limit.

Mr. Standlee addressed the letter of concern regarding truck noise. He distributed paperwork containing Google Earth images to the Planning Commissioners. He stated that the trucks go up Walla Walla River Road to the asphalt plant to be loaded, then return down Walla Walla River Road to exit the area. The residence that submitted the letter of concern is located at 53862 Walla Walla River Road. While observing the trucks entering and exiting the site, Mr. Standlee stated that he could not hear them coming until they reached the entrance of the site. The level of noise produced by the trucks was just above the ambient level, around 55-59 dB. Truck noise is not regulated by the Department of Environmental Quality (DEQ) because this is a previously used site. They currently meet the required truck pass-by noise level standards set by DEQ. The plan is for approximately 85 loads of asphalt to be transported nightly over a 10 hour period, leaving and returning to the site in a staggered pattern.

Commissioner Green asked if it is true that sound travels further distances at night. Mr. Standlee confirmed that sound does travel further at night because of favorable atmospheric conditions. Sound does not travel well in high temperatures or dry air. He pointed out that the lowest temperatures and highest humidity take place in the morning hours between 2am and 5am. He added that, once the temperatures reach freezing the distance traveled decreases. The best conditions for sound travel lie between 45-70 degrees Fahrenheit with 70% or higher humidity. Mr. Standlee stated that he used the numbers for prime conditions in the study for his modeling.

Commissioner Royer asked why they plan to cut the stack down from its original height. Mr. Standlee stated that they have built a noise barrier onsite and after the exhaust stack height is reduced the barrier will become effective in reducing the noise level for surrounding residences.

Ms. Kellington stated that the condition of approval is specific to the small percentage of governmental contracts that require overnight operations. It is also specific to the asphalt plant portion of the property and will not change hours of operations for the mining or crushing areas.

Ms. Kellington asked more about the complaints that have been made on the property. She stated that she is not sure what the issue is because each time there has been a complaint the Code Enforcement Officer has made a site visit. Central Washington Asphalt has never been found to be operating out of compliance with the terms of the permit. Furthermore, she pointed out that they have received several letters from residents in support of the amendment.

**Agency Testimony:** Gina Miller, Code Enforcement Officer & Program Coordinator, Umatilla County, 216 SE 4<sup>th</sup> Street, Pendleton, Oregon. Officer Miller stated that she has been working with the Spence Pit since it became active again in 2009. She stated that prior management caused more concerns among neighbors. However, since the new company has taken over the level of enforcement has significantly decreased as they have taken great steps to comply with all required conditions and rules. Officer Miller stated that Mr. Jones calls frequently to check in and notifies the office prior to blasting. Code Enforcement has received approximately 6 calls over the last 2 years. After early morning observation and investigation it was determined that the claims could not be confirmed. She confirmed that the Spence Pit is in compliance with the conditions of their permit at this time.

Commissioner Green asked if the complaint calls were because of noise. Officer Miller stated that the caller reported that they were operating before daylight hours. During her investigation she observed workers arriving and trucks being started onsite before daylight hours, but no activity taking place inside the asphalt plant.

Chair Danforth closed the hearing for deliberation.

### **DELIBERATION**

Chair Danforth stated that she was present at the original hearing in 2014 and remembers many neighbors complaining about the operation. The fact that there were no objections at this hearing speaks volumes to the changes that have been made. She added that she has heard good things about Central Washington Asphalt and their operations.

Commissioner Williams stated that she likes that out of the 28 employees, 20 live in Milton Freewater. They will be using the road and it will help provide work to Milton Freewater residents.

Commissioner Williams made a motion to approve the Conditional Use Permit #C-1301-18 amending the condition of approval in Conditional Use Permit #C-333 (1984) and implied limitation in Conditional Use Permit #C-479 (1987) to change the hours of operation. The motion was seconded by Commissioner Green. Motion passed with a vote of 5:0.

Chair Danforth added 4 additional documents to the record including; May 24, 2018 support letter from Troy Humbert, packet of exhibits presented by Ron Jones, May 23, 2018 support letter from Nita Stokes and packet of exhibits presented by Kerrie Standlee.

### **ADJOURNMENT**

Chair Danforth adjourned the meeting at 7:37 P.M.

Respectfully submitted,

Tierney Dutcher  
Administrative Assistant

Minutes Adopted by the Planning Commission on \_\_\_\_\_