

WALLOWA COUNTY PLANNING COMMISSION

7:00 pm January 30, 2024

Wallowa County Courthouse

Agenda

1. **Planning Commission Meeting Minutes** from November 28, 2023
2. **FINDINGS AMD#23-03 EW TRUST - NAKATO** – Submitted by Shin Nakato on behalf of EW Trust. The proposal would change the zoning on approximately 24.4 acres of property described as Township 1 North, Range 42 East, Section 3, Tax lot 1401 currently zoned a combination of Industrial (M-1) and Exclusive Farm Use (EFU). If approved, the approximately 24.4 acres of zone M-1 would be rezoned to Rural Service (RS) and the Wallowa County Comprehensive Land Use Plan and associated zoning maps would be revised.
3. **CUP#23-05 SUTO** – Submitted by John and Billie Suto. The proposed Conditional Use Permit is a request for a Home-based Occupation in the form of a Bed and Breakfast. The property in question is described as Township 02 South, Range 44E, Section 9, and Tax Lot 102 in the Existing Lot (EL-1) zone. It is more commonly known as 81814 Reavis Lane, Enterprise, Oregon 97828 and consists of approximately 5.93 acres.
4. **APP#23-01 OF ZP#23-13 DOLLAR GENERAL** – Submitted by Sweyn and Beckijo Wall; Eric Cederstam; Kelly and Connie Guentert; Kerry Johnson; Karin Nix; and Bill Smergut. Seeks the appeal of ZP#23-13 approving the establishment of a Dollar General Store. The property in question is described as Township 01 North, Range 42E, Section 11, and Tax Lot 1300 in the City of Wallowa Commercial/Industrial Urban Growth Area (WUGA CI) zone. It is more commonly known as 70970 Frontage Rd, Wallowa, Oregon 97885 and consists of approximately 2.34 acres.
5. **APP#23-02 OF LLA#23-01 BURNS-DUBY/DOLLAR GENERAL** – Submitted by Sweyn and Beckijo Wall; Eric Cederstam; Kelly and Connie Guentert; Kerry Johnson; Karin Nix; and Bill Smergut. Seeks the appeal of LLA#23-01 adjusting a parcel boundary within the City of Wallowa's Urban Growth Area. The properties in question are described as Township 01 North, Range 42E, Section 11, Tax Lots 1300 and 300. Tax Lot 1300 is in the City of Wallowa Commercial/Industrial Urban Growth Area (WUGA CI) zone and Tax Lot 300 is zoned both WUGA CI and WUGA Residential. They are more commonly known as 70970 and 70972 Frontage Rd, Wallowa, Oregon 97885.
6. **Other Business:**

The next Planning Commission meeting is scheduled for February 27, 2024.

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Planning Commission Minutes November 28, 2023

This meeting of the Wallowa County Planning Commission convened at 7:00 p.m. on November 28, 2023. This meeting was held via Zoom, a video conferencing application, and in the Thornton Conference Room of the Courthouse. The following people were present:

COMMISSIONERS (CM):

Georgene Thompson (Chair)
Kim Tippet
Rob DeSpain
Chris Bullat
Jim Nave
Gay Fregulia
Ramona Phillips

STAFF:

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

OTHERS PRESENT:

Paul Doherty
Ena May Dempsey
Steve Mackley
June Jones
Marietta Herinckx
Mary Ann Burrows
Janet Delatori
Karen Olson
Jim Kleinknecht
Frank Smith
Elwayne Henderson
Ken Battey
Josh Hughes
Peggy Haney
Lisa Collier
Jean Mallory
Max Mallory
Barbara Gobel
Sheila Sweeney
Ernie Josi
Karen Josi
Ron Fox
Pat Fox
Shelly Wilks
Wayne Werst
Devin Fletcher
Brad Farmer
Saue Cortez
Kim Werst

S. Nakato
Carl Smith
Tamara Smith
Audra Allen
Patti Prince
Cheyenne Summers
Krystal Brockamp
Stacey James
Jack James
Mike Harshfield
Pam Harshfield
Kelsey Juve
Brian Miller
Debbie Neal
Amanda McDaniel
Jim Dickenson
Anette Christoffersen
Jane Colony
Travis Boyd
Keith Garoutte
John Baker
Farrah Baker
Shay M. (no last
name provided)
Beckijo S-Wall
Sweyn Wall
T. O. Juve

PRESENT via ZOOM:

Hilary Miller
Jodie Weaver
Eric Weaver
Victoria Roose
Karen Tanzey
Mysha Oveson
Dodie Beck
Dean Evans
Eva Oveson
Dominic Fregulia
Cory Carman
Teresa Smergut
Melisse Lowe
Ava Skillings
Tyler Stucki
Jessica Stucki
Bill Henke
Teresa Henke
Christy
Stan Hope
Dan Larman
Cheri Miller
Jenna Smith
Christy Stanhope
Angelika Dietrich
Eddie Kilner
Carrie Kilner

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

Public Hearing Procedure

Ladies and Gentlemen, I call the regular November 28, 2023, hearing session of the Wallowa County Planning Commission to order. My name is Georgene Thompson, and I am the Chair of the Planning Commission for Wallowa County, Oregon. The members of the Planning Commission are appointed by the Wallowa County Board of Commissioners, and we all serve as volunteers.

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

We conduct two types of hearings, legislative and quasi-judicial. Legislative hearings involve the making of rules, either new ones or revisions to existing rules. In these cases, we recommend our conclusions to your elected lawmakers, the County Commissioners, who always take the final action on legislative issues.

Oregon law requires that persons who attend land-use hearings are advised of certain rights and duties before the quasi-judicial hearing begins. We must tell you about approvals criteria, the raise-it-or-waive rule, and the right to have the record left open.

First approval criteria: the law requires the County to list the applicable County and State zoning criteria. A County Planner will do so in a few minutes. The law requires us to identify those standards of which an applicant must satisfy in order for the County to approve an application. Each of the standards must be supported by substantial evidence in the record. Make sure to direct your testimony, claims, or evidence toward the criteria which you believe applies to the application.

Second, the raise-it-or-waive-it rule. The law says that any issue which might be raised in an appeal of the decision after this hearing must be raised before the record of this hearing is closed, you cannot raise the issue on appeal. You must identify the issue clearly enough so that the County and all parties have an opportunity to respond to the issue.

Third, the right to have the record remain open. The law grants the participant the right, upon proper request, to have the record of the hearing remain open for at least seven days. The request must be made before the conclusion of this hearing. The participant is the applicant or

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anyone who has submitted written or oral testimony regarding the application. The request may be made at any time during the initial hearing but must be made prior to the time the Planning Commission Chair announces that the hearing is closed. Once the hearing is closed, there is no longer a legal right to have the record remain open for additional evidence.

1. Does any commission member wish to disqualify, herself or himself for any personal or financial interest in these matters, or does any commission member wish to report any significant ex parte or pre-hearing contacts and explain/share what you have heard?
[nothing voiced]
2. Does any member of the audience wish to challenge the right of any commissioner to hear these matters? ***[nothing voiced]***
3. Is there any member of the audience who wishes to question the jurisdiction of this body to act on behalf of the County in these matters? ***[nothing voiced]***
4. Oregon Land Use Laws require that any issue to be appealed must be raised during this hearing; failure to raise issues at this hearing will invalidate their further appeal.

CM Thompson opens the meeting and proceeds to the first agenda item.

1. September 26, 2023 Minutes

CM Bullat moves to approve the minutes of the September 26, 2023 Planning Commission meeting.

CM Tippet seconds the motion.

[CM Thompson – Yes;

CM DeSpain – Yes;

CM Tippet – Yes;

CM Bullat – Yes;

CM Nave – Yes;

CM Phillips – Yes;

CM Fregulia – Yes;

Motion Passes 7-0-0]

The minutes are approved.

CM Thompson opens the legislative hearing.

2. EW TRUST – NAKATO AMD#23-03

PD Goebel presents the Staff Report.

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Applicant Nakato presents the application. Mr. Nakato represents E.W. Trust. He says that E.W. is half Choctaw Native American and half white American. Mr. Nakato manages cattle and a farm for him. Mr. Nakato lives on Lime Quarry but has property and farming ground in central Oregon. Mr. Nakato reports that E.W. wants to turn the land into a small farm community. He believes there is a lot of misunderstanding about the proposal as evidenced by comments mentioning vandalism, homelessness, and pollution. He believes that people have stirred up rumors that have no relevance to their application. At this point, their application is strictly to rezone the land and they have not made any detailed plans. They would do this if the rezone were approved. The basic idea is to create a small farm where around 10 new farmers could get their start since land is so expensive. They could also share equipment and knowledge while keeping the land in farming rather than converting it to an industrial area. The comments make it sound like E.W. is trying to stack up homes and bring in homeless people. Much of the land is in the floodplain and not suitable for intense development. The vision is to keep it in farming. Mr. Nakato welcomes questions and hopes he can help clarify E.W.'s vision. E.W. and Mr. Nakato aren't interested in going against the community. He wants to farm sustainably and regeneratively. He feels a small farming community is more appropriate for the land than an industrial operation.

PD Goebel clarifies that this process is not about a specific development proposal, it only addresses the uses allowed on the property as defined by the zone.

CM Thompson adds that the decision tonight is not whether E.W. can implement a development proposal, but to look at whether the proposal meets the criteria for a zone change. If the zone change is approved, the applicant would still need to get their development proposal approved.

PD Goebel notes that this is the first of two public hearings. At this meeting, the Planning Commission will decide whether to recommend approval or denial of the application to the Board of Commissioners. The second public hearing will be held by the Board of Commissioners where they will make the final determination on the zone change.

CM Bullat believes that people are probably getting confused because the project narrative submitted by the applicant is contradictory to the proposal's project narrative.

CM Thompson responds that only the portion of the project narrative that addresses specific criteria applies to their decision tonight.

CM Thompson requests comments and that the comments address specific criteria.

Paul Doherty states that he did sign the form letter in opposition to the proposal. He would like to add that the applicant's representative did not mention workforce housing in his presentation tonight and that it was mentioned in the project narrative. He is concerned that the two descriptions of the project are so different.

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CM Thompson clarifies that the portion of the property that is proposed for rezoning is not zoned Exclusive Farm Use, but Industrial.

CM Thompson asks if anyone would like to address the criteria.

PD Goebel reads the criteria for a zone change from Article 8 and the applicable policy from the Comprehensive Plan Goal XIV Urbanization.

"SECTION 8.025, REVIEW CRITERIA: Requests for amendments shall be reviewed for conformance to the applicable criteria:

01. Major amendments shall meet the following:

- A. The proposed amendment is in conformance with statewide planning goals and guidelines and other applicable state laws.*
- B. The proposed amendment is in conformance with all other elements of the land use plan and land use plan map.*
- C. The proposed amendment is in the public interest and serves the purpose and intent of the local planning process."*

Comprehensive Plan Goal XIV Urbanization Policy 3: "That urban uses be discouraged from sprawl which may increase service costs, transportation congestion, and the transition of land from agriculture, timber production or grazing to urban uses."

CM Nave says that it sounds like many people in opposition are arguing that the proposal does not meet Article 8, Section 8.025.01B or C.

CM Phillips requests that PD Goebel list the purpose and allowed uses in the Industrial (M-1) and Rural Service (RS) zones.

PD Goebel reads the following permitted uses, not conditional uses, for Article 22, Industrial (M-1) and Article 21, Rural Service (RS), respectively:

"SECTION 22.010, PURPOSE: The purpose of this zone is to provide areas for industrial activities which may require large land areas and to preserve those areas from being developed with such uses as residential that would inhibit or eliminate the future potential for industrial development.

SECTION 22.015, PERMITTED USES: The following uses, substantially similar uses, and their accessory uses are permitted in the Industrial Zone subject to Administrative Review.

- 01. Retail, wholesale, or service business establishment.*
- 02. Lumber yards and retail - including mill works.*
- 03. Machine shops.*
- 04. Bottling works.*
- 05. Equipment storage yards.*
- 06. Hauling, freighting, and trucking yards or terminals.*
- 07. Wholesale businesses, storage buildings, or warehouses.*

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08. *Manufacturing, compounding, assembling, or treating products.*
09. *Concrete or ready-mix plants.*
10. *Resource uses of the Exclusive Farm Use and Timber Grazing Zones.*
11. *Home-based occupation where a new dwelling is not proposed in conjunction therewith.*
12. *Hospitals, healthcare, and medical facilities.*
13. *Correctional, emergency services, and law enforcement facilities.*
14. *Other industrial uses as long as the impacts on surrounding properties and uses are no greater than that of the above permitted uses.*
15. *Subject to the provisions of Article 3, Ministerial Review, an existing single family dwelling may be altered, restored, or replaced providing:"*

"SECTION 21.010 PURPOSE: The purpose of the Rural Service Zone is to provide standards for establishment of commercial uses servicing the needs of rural residents and limited tourist commercial services consistent with the maintenance of the rural character of the area.

SECTION 21.015 PERMITTED USES: In the Rural Service Zone the following uses and their accessory uses are permitted.

01. *Permitted uses in an Exclusive Farm Use Zone.*
02. *Permitted uses in a Timber Grazing Zone.*
03. *Retail, office, or service establishment with structures limited to a total of 10,000 square feet or 30 percent coverage of parcel, whichever is less.*
04. *Automobile service station.*
05. *Park, playground, or community building.*
06. *School.*
07. *Restaurant.*
08. *Warehouse, wholesale businesses, machine shop, hangar.*
09. *Manufacturing, compounding, assembling, or treating products.*
10. *Other commercial or light industrial uses as long as the impacts of surrounding properties or uses are no greater than that of the other permitted uses.*
11. *Hospital, healthcare, and medical facilities.*
12. *Subject to the provisions of Article 3, Ministerial Review, an existing single-family dwelling may be altered, restored, or replaced providing:"*

CM Fregulia asks what the minimum lot sizes are for RS zone.

PD Goebel responds that it depends. With community water and sewer, the minimum is 6,000 square feet. Without services, the minimum size is one acre.

CM Thompson requests that PD Goebel read the form letter and the names of those who signed it.

PD Goebel reads the form letter and the names of those who signed it.

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Numerous people testified stating their opposition to the proposal. Concerns included:

- Groundwater is too high for residential development—within a foot of the ground surface—especially if dependent on septic systems.
- It would be difficult to manage the irrigation ditches if the land were subdivided into numerous small parcels
- The land is too rocky for organic farming, it is only good for hay production
- The land is too far from services for dense residential development
- There is enough open residential land inside city limits and the city has enough water and sewer capacity for another 800 people
- The county needs to keep its Industrially-zoned land and it has enough residential land
- There is not enough information in the proposal to make an informed decision
- The land should retain its Industrial zoning to be a resource for the surrounding farm land
- Worry that the residences would be rentals rather than giving people the opportunity to purchase their home
- Heard that the site and transfer station were historical camping areas for the Nez Perce people

One person testified in favor of the proposal. They are worried that keeping it industrial would allow more Dollar General Stores to come into the county. The current landowner is also willing to listen to the community to shape the development.

CM Thompson closes the testimony portion of the hearing.

CM Fregula reminds the Commissioners that one of the review criteria is *SECTION 8.025, C, "The proposed amendment is in the public interest and serves the purpose and intent of the local planning process."*

CM Phillips makes a motion to recommend denial of the application to the Board of Commissioners.

CM Bullat seconds the motion.

[CM Thompson – Yes;

CM DeSpain – Yes;

CM Tippet – Yes;

CM Bullat – Yes;

CM Nave – Yes;

CM Phillips – Yes;

CM Fregulia – Yes;

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Motion Passes 7-0-0]

The Planning Commission recommends to the Board of Commissioners that the application be denied.

CM Thompson closes the legislative hearing to move on to other business.

3. OTHER BUSINESS

The Planning Commissioners unanimously elects CM Nave as the 2024 Chairperson, CM Tippet as Vice Chairperson and CM DeSpain as 2nd Vice Chairperson.

CM Tippet moves to adjourn the meeting.

CM Bullat seconds the motion.

[CM Thompson – Yes;

CM DeSpain – Yes;

CM Tippet – Yes;

CM Bullat – Yes;

CM Nave – Yes;

CM Phillips – Yes;

CM Fregulia – Yes;

Motion Passes 7-0-0]

Meeting adjourns at 8:33 PM

Jean Jancitis

Date



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

FINDINGS & RECOMMENDATION

PLANNING COMMISSION &
 BOARD OF COMMISSIONERS
 AMD#23-03

**IN THE MATTER OF A MAJOR AMENDMENT
 TO THE WALLOWA COUNTY
 COMPREHENSIVE LAND USE PLAN MAP TO
 CHANGE THE ZONE OF 24.4 ACRES FROM
 INDUSTRIAL (M-1) TO RURAL SERVICE (RS)**

**FINDINGS OF FACT, CONCLUSIONS, AND
 RECOMMENDATION OF THE WALLOWA
 COUNTY PLANNING COMMISSION TO THE
 BOARD OF COMMISSIONERS**

RE: ZC#23-03 EW Trust - Zone Change from M-1 Industrial to RS Rural Service

This is the first of two public meetings as required for a Major Amendment. The second meeting will be held by the Wallowa County Board of Commissioners. The request was initiated on October 2, 2023. It was properly advertised in the Chieftain on November 15, 2023 and noticed to landowners, within 500 ft, and other interested parties on October 2, 2023. The Department of Land Conservation and Development (DLCD) was noticed on October 5, 2023 via the DLCD Post-acknowledgement plan amendment online database. The request came before the Wallowa County Planning Commission on November 28, 2023, with a recommendation on January 30, 2024. The Planning Commission having reviewed the record, the materials introduced in the above-referenced hearing, and having heard and considered oral testimony in the above-referenced hearing, and being fully advised, makes the following findings of fact and recommendation.

APPLICANT:

Shin Nakato
 6801 SW McVey Ave
 Redmond, OR 97756

OWNER:

EW Trust, et. al.
 6801 SW McVey Ave
 Redmond, OR 97756

REQUEST:

A zone change of 24.4 acres of a 25.1-acre parcel from M-1 to RS. The 24.4 acres is the northwestern area of the parcel, with the SE corner remaining EFU.

INTENDED LAND USE:

Mix of workforce housing, tiny homes, and RV hookups.

FINDINGS & RECOMMENDATION

ZP#23-03 EW TRUST

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LOCATION:	The property description is Township 01N Range 42 Section 03 TL 1401, Ref# 5209, no SITUS address assigned, about 1 mile northwest of the City of Wallowa
PARCEL CHARACTERISTICS:	The parcel contains about 25.1 acres, 24.4 acres are zoned M-1, and approximately 0.7 acres are zoned EFU. The parcel is bounded by Exclusive Farm Use (EFU) to the north, east and west, and by M-1 and EFU to the south. Access is via Highway 82, a State Highway. Spring Creek flows through the property from the northwest to the southeast and the Wallowa River flows northwest through the southwestern edge.
ATTACHMENTS:	EXHIBIT A: MAP OF PROPOSED REZONE AREA

REVIEW CRITERIA:

- Article 2, Application Processing and Review Procedures
- Article 5, Public Hearing Review
- Article 8, Amendments
- Article 36, Salmon Habitat Recovery
- ORS 197.716, Industrial and employment uses in listed counties (ORS amendment per SB2(2019)); Statewide Planning Goal 3: Agricultural Lands (OAR 660, Division 15)
- Wallowa County Economic Opportunity Analysis: 2021
- Any other applicable zoning ordinances or goals of Wallowa County Land Development Ordinance and/or laws of the State of Oregon

ARTICLE 2, APPLICATION PROCESSING AND REVIEW PROCEDURES
ARTICLE 5, PUBLIC HEARING REVIEW

Finding: The application was properly initiated, and county staff properly provided notice for the hearing, through mailing, and through publication in the Wallowa County Chieftain. DLCD was notified of the proposed Comprehensive Plan amendment through Access PAPA Online. The County Planning Commission properly conducted the hearing. Therefore, this application complies with relevant sections of Wallowa County Zoning Code of Articles 2 and 5.

ARTICLE 8, AMENDMENTS

SECTION 8.010, PURPOSE: The purpose of this article is to provide for change in needs, desires, and rate of development in Wallowa County. Revisions to the land use plan, to the text of this ordinance, to the land use plan map, and to the zoning map affecting areas more than ten acres in size will be regarded as major amendments to be processed as a legislative action. Small tract zone changes on areas less than ten acres in size adjacent to the proposed zone will be regarded as minor amendments to be processed as Quasi-Judicial actions.

FINDINGS & RECOMMENDATION

ZP#23-03 EW TRUST

January 30, 2023

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PLANNING COMMISSION PACKET PAGE 13 of 136
SECTION 8.015, AUTHORIZATION TO INITIATE AMENDMENTS: Amendments may be initiated in one of the following ways:

01. By resolution of the County Court referring a proposed amendment to the commission.
02. By action of the Planning Commission.
03. By request of the Planning Director, said request relating to actions deemed necessary to bring the zoning map or land use plan map into compliance with state law.
04. By petition from a resident or residents of Wallowa County and/or owners of land within Wallowa County - said petition must be accompanied by the appropriate fee.

Finding: The Planning Commission finds that this application was appropriately initiated.

SECTION 8.020, AMENDMENT REQUEST CONTENT: Requests for major and minor amendments shall be filed with the Planning Department. Requests shall include the following information:

01. Party initiating the amendment.
02. In the case of an amendment to the land use plan or text of this ordinance, the portions that are to be deleted, if any, and the proposed replacement or addition.
03. In the case of an amendment to the land use plan map or zoning map, the request should identify the areas to be directly affected by the current map classification or zone.
04. Statements demonstrating compliance with the applicable review criteria of section 8.025.

SECTION 8.025, REVIEW CRITERIA: Requests for amendments shall be reviewed for conformance to the applicable criteria:

01. Major amendments shall meet the following:
 - A. The proposed amendment is in conformance with statewide planning goals and guidelines and other applicable state laws.
 - B. The proposed amendment is in conformance with all other elements of the land use plan and land use plan map.
 - C. The proposed amendment is in the public interest and serves the purpose and intent of the local planning process.

[...]

Finding: The Planning Commission finds that this application is not in the public interest and does not serve the purpose and intent of the local planning process siting significant public opposition including:

- the potential for dangerous pedestrian movement between the site and town-based services

- increased traffic entering the highway
- a disconnect between the project narrative and the oral description at the hearing
- an existing lack of M-1 Industrial parcels available for industrial purposes.

The commission further finds that the current Industrial zoning and the associated permitted development uses are better suited to supporting the agricultural and timber resource industries critical to the economy of the surrounding area.

SECTION 8.030, NOTICE OF HEARING:

01. *Notice of public hearing before the Planning Commission for the purpose of considering an amendment brought forth under this article shall be published in a newspaper of general circulation for three consecutive weeks prior to the hearing date.*
02. *The notice of public hearing shall be designed to reasonably inform the public of the nature and intent of the proposal and shall, at a minimum, contain the following information:*
 - A. *Date, time, and place of the hearing.*
 - B. *Party initiating the amendment.*
 - C. *General description of the proposed amendment and notification to the public of the hours and place where the amendment can be reviewed in its entirety.*
03. *If the proposed amendment is determined by the Planning Director to affect a limited area of the County, mailed notice of the hearing shall be provided to all owners of property directly affected by the amendment and to all owners of property lying within:*
 - A. *[...]*
 - C. *Five hundred (500) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone.*

In addition, mailed notice of the hearing shall be given to all parties the Director may have reason to believe are substantially affected by the proposed amendment. Mailed notice of hearing shall be provided no less than 15 days prior to the hearing date.

SECTION 8.035, AMENDMENT REVIEW PROCESS:

01. *Amendment proposals brought forth under this article shall be conducted in the manner prescribed in the conduct of hearings ordinance unless supplemented by rules adopted prior to the commencement of the evidentiary portion of the hearing.*
02. *At least two public hearings shall be held on a major amendment unless it is deemed by the Planning Director that a joint meeting by the Planning Commission and the County Court is sufficient.*

03. *The Planning Commission shall hear and review the proposal for compliance with the applicable review criteria. The Planning Commission shall adopt findings of fact demonstrating the proposals compliance or non-compliance with each review criterion. The Planning Commission shall place the findings, conclusions, and recommendations in writing and forward the same to the County Court.*
04. *Following receipt of the Planning Commission's recommendation, the County Court shall, within 90 days, hold a second public hearing. Based upon testimony taken at the second hearing together with the Planning Commission's recommendation and testimony from the first hearing, the Court shall adopt findings demonstrating the proposal's compliance or non-compliance with the applicable review criteria. The decision shall be set forth in writing and shall specify findings and conclusions of the Court.*
05. *The County Court may, at its own discretion, hold both of the required hearings.*

Finding: The Planning Commission finds that this application, because it involves more than 10 acres, was for a Major Amendment to the Wallowa County Comprehensive Plan Zone Map. It was properly initiated, noticed and reviewed, and that this was the first of two required public meetings.

ARTICLE 36, SALMON HABITAT RECOVERY

Finding: As the subject property does contain fish bearing waterways and habitat, the Commission finds that Article 36 applies. However, the proposed rezone does not include a specific development plan, which would trigger evaluation and the requirement of a management plan.

PUBLIC COMMENTS:

There were a significant number of public comments in opposition of approval, including both written and oral testimony during the hearing.

Concerns included:

- Inappropriate location for residential or workforce housing development outside of city limits or urban growth area.
- Lack of pedestrian access from development to city stores, and support services.
- Potential for visual blight.
- Increasing land values.
- Urban sprawl threatens rural character.
- Decreases lands available for industrial development to support resource uses.
- Decreasing quality of life for Wallowa and Wallowa County citizens.
- Historical camping area location for native tribes.
- RV park could lead to homeless camps.
- Septic systems would be problematic with high water table and river proximity.

FINDINGS & RECOMMENDATION

ZP#23-03 EW TRUST

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- Oral description during hearing by applicant did not match narrative submitted with application.
- Concern that more stores like “Dollar General” could be developed.

RECOMMENDATION TO THE BOARD OF COMMISSIONERS:

Based upon the information submitted, the comments of interested parties and the findings, the review authority finds this application does not satisfy all review criteria and is hereby recommended for denial by the Board of Commissioners as presented.

The November 30, 2023 vote to recommend the application for denial is 7 in favor and 0 opposed with 0 abstaining.

The January 30, 2023 vote to approve the Findings Report is ___ in favor and ___ opposed with ___ abstaining.

January 30, 2023

DATE OF ACTION

JIM NAVE, CHAIR

WALLOWA COUNTY PLANNING COMMISSION

Final action of the Board of Commissioners, regarding a major amendment, may be appealed to the State Land Use Board of Appeals (LUBA), as provided by ORS Chapter 197. Notice of intent to appeal shall be filed within 21 days of the date of final action by the Board of Commissioners or as specified in ORS Chapter 197.805 through 197.860.



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

STAFF REPORT
CUP#23-05
SUTO HBO B&B

APPLICANT: John and Billie Suto
81814 Reavis Lane
Enterprise, OR 97828

OWNER: Same

REQUEST: To permit a Home-Based Occupation in the form of a Bed and Breakfast for a maximum of (6) people and (7) vehicles. The residence is not on High Value Farmland.

LOCATION: The property description is Township 02S, Range 44E, Section 09, Tax Lot 102, Ref#7769, Address: 81814 Reavis Lane, Enterprise, OR 97828.

PARCEL CHARACTERISTICS: The parcel contains about six acres. The Zoning is Existing Lot 1 (EL-1) and access is from Reavis Lane, a county road. The parcel borders Exclusive Farm Use to the north and east and EL-1 to the west and south. There is one dwelling on the parcel, and multiple accessory structures.

OTHER INFORMATION:

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

PREVIOUS PLANNING DEPARTMENT AND OTHER AGENCY ACTIONS:

ZP#98-91; Approval for barn
ZP#99-03, Approval for a single-family dwelling

STAFF COMMENT:

This application is for a Home Based Occupation (HBO) in the form of a Bed and Breakfast (B&B). The applicants propose renting 2 out of 3 bedrooms, providing space for up to 6 guests and 7 vehicles. The applicants have described that they will stay in whichever room is not being rented. Staff recommends that the commission fully vet the issue of how and where the resident applicant will be in the home while guests are present.

REVIEW CRITERIA:

Article 1, General Provisions
Article 5, Public Hearing Review

STAFF REPORT

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Article 9, Conditional Use
 Article 35, Home Based Occupation
 Article 36, Salmon Habitat Recovery
 Article 42. Existing Lot (EL-1)
 Other applicable zoning ordinances or goals of Wallowa County Land Development Ordinance
 and/or laws of the State of Oregon

ARTICLE 1, GENERAL PROVISIONS

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

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

[...]

021. **BED AND BREAKFAST – (B&B)** *An accessory use within a single-family dwelling. Up to three bedrooms may be available for rent. Rooms are rented for less than 30 days. The B&B resident applicant must reside in the house and be in the house overnight while guests are present. Breakfast is required; however, breakfast is defined by the resident applicant. Other meals are optional. B&Bs must meet the criteria of Articles 33, Signs, 34, Parking, and 25, Flood, Wildfire and Natural Hazards.*

B&Bs are Home Based Occupations (HBO) and are allowed in all zones which allow HBOs.

Requires a Conditional Use Permit (CUP) and Public Hearing Review. Also, must meet the criteria of applicable Oregon Administrative Rules (OARs). HBO rules apply (Article 35), however, Unincorporated Communities may have their own rules regarding the level of review which will take precedent. B&Bs must pay Transient Lodging Tax. A CUP approving a B&B does not transfer with the conveyance of the property.

[...]

073. **HOME BASED OCCUPATION** *- A limited business activity that is accessory to a residential use. Home occupations are conducted primarily within a residence or a building normally associated with uses permitted in the zone in which the property is located and are operated by a resident or employee of a resident of the property on which the business is located.*

ARTICLE 5, PUBLIC HEARING REVIEW

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CUP#23-05 SUTO B&B Staff Report

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SECTION 5.025, NOTICE OF PUBLIC HEARING:

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

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

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

SECTION 5.040, CONDITIONS OF APPROVAL AND PERFORMANCE GUARANTEES:

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

ARTICLE 9, CONDITIONAL USE PERMIT

SECTION 9.020, REVIEW CRITERIA: *After taking into account location, size, design, and the general nature of the proposed use; the hearing body must determine that the development will comply with all of the following criteria to approve a Conditional Use Permit.*

01. *The proposed use will be consistent with the purpose of [and is allowed conditionally in] the zone in which the use proposed.*
02. *The use will not create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.*
03. *The proposed use will not overburden the public services of water, sewer, storm drainage, electrical service, fire protection, and school.*
04. *The site is suitable to accommodate the proposed use, such as: topography, soils, and parcel size.*
05. *The proposed use will not interfere with uses permitted on adjacent parcels.*
06. *The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.*

ARTICLE 35, HOME BASED OCCUPATION

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SECTION 35.020, DEFINITION: Home-Based Occupation shall mean an activity carried on within a residence, within an accessory structure, or on the premise of a residence, which is intended to produce an income. The occupation must be accessory to the primary residential use and in compliance with the applicable requirements of this ordinance.

01. *A Home-Based Occupation permit will not be required for:*
 - A. *Storage of tools used to generate off-premise income.*
 - B. *Farm and forest uses.*
 - C. *Activities which have no material negative impacts including:*
 1. *The making of objects in the residence which are sold elsewhere, including but not limited to: arts and crafts, quilting, sewing, or toys, or*
 2. *A mail order business, including but not limited to: selling Avon (or other cosmetics), Fuller Brush, toys, or other items, or*
 3. *A service which is conducted within the residence, including but not limited to: computer programming, data entry, consulting, accounting, and bookkeeping, if*
 - a. *The business does not have any employees.*
 - b. *The business does not have a sign.*
 - c. *Customers do not come to the residence to conduct business.*
 - d. *The business does not produce noise, dust, odor, or other nuisance that is in excess of that which is usual and customary in the zone where the property is located.*

SECTION 35.025, REVIEW CRITERIA: Applications for Home-Based Occupations shall be found to comply with the following criteria:

01. *AREA: A Home-Based Occupation shall be restricted to no more than 25 percent of the gross square feet of the principal residence and 2,000 square feet of accessory buildings normally associated with uses permitted in the zone in which the property is located EXCEPT:*
 - A. *Bed and Breakfasts are excluded from the square footage criteria.*
 - B. *Other uses that provide overnight accommodations in conjunction with a home-based occupation.*
02. *PARTICIPATION/EMPLOYEES: A Home-Based Occupation shall employ, on site, no more than three full-time or part-time persons.*
03. *COMPATIBILITY OF ACTIVITY: The residence, accessory buildings, or any new structures or reconstruction approved for use by the Home-Based Occupation shall conform to the area and shall not be non-conforming in terms of color, materials, design, construction, lighting, landscaping or the lack of landscaping. Also, the proposed use shall not unreasonably interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located.*
04. *TRAFFIC GENERATION: The permitted activity should not generate a greater volume of vehicular traffic than is usual and customary in the zone where the property is located.*
05. *NOISE: The permitted activity shall not generate any noise that is in excess of that which is usual and customary in the zone where this property is located.*

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06. *EQUIPMENT/RESTRICTIONS: Any equipment used in the activity and processes shall not create vibrations, glare, fumes, odors, or electrical interference that is detectable to normal sensory perception at the property lines.*
07. *HAZARDS: Within a residence; no equipment, process, or materials shall be used which will change the fire-rating or structure separation, fire wall, or ventilation requirements of the building shall be permitted. Attached garages shall not be considered part of the residence for the purpose of this ordinance. Accessory buildings, attached garages, or new structures permitted with the use shall meet all structural and life safety requirements for the use and activity. No hazardous materials shall be stored or used on the premise in quantities greater than customary for residential use unless specified and approved at the time of application. No Home-Based Occupation shall be permitted which presents a potential health or safety hazard to the area from discharges into the air, water, or ground; from surface run-off; or from increased need for vector control.*
08. *STORAGE AND USE OF YARD: All storage of materials and equipment associated with the Home-Based Occupation shall be enclosed unless specified and approved at the time of the application.*
09. *SIGNS: Signs shall conform to the provisions of Article 34, Signs.*
10. *PARKING: Parking shall be off-street and conform to the provisions of Article 33, Parking, Section 33.015(03).*

NOTE: The existence of Home-Based Occupations shall not be used as justification for a zone change [ORS 215.448(4)].

ARTICLE 36, SALMON HABITAT RECOVERY

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

ARTICLE 42, EXISTING LOT (EL-1)

SECTION 42.010, PURPOSE: The purpose of the Existing Lot Zone is to allow the establishment of non-farm, non-forest residential use in areas predominantly comprised of lots or parcels of insufficient size required for farm or forest use and/or where further creation of additional lots or parcels could potentially increase the need for public services, such as; road maintenance, school bus service, or law enforcement.

SECTION 42.015, PERMITTED USES: In the Existing Lot Zone, the following uses and activities and their accessory buildings are permitted subject to Ministerial Review of compliance with general provisions set forth by this ordinance:

01. *Single-family residences.*
02. *Accessory structures customarily provided in conjunction with a residence.*
03. *Utility and communication facilities necessary for local service and excluding any facilities for generating power for public use.*
04. *Farm and forest uses.*
05. *Temporary uses subject to Article 13, Temporary Use Permit.*

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SECTION 42.020, CONDITIONAL USES PERMITTED: The following uses may be established in the Existing Lot Zone subject to Public Hearing Review for compliance with requirements of Article 9, Conditional Use Permit, and other provisions of this ordinance:

01. Home-based occupations.

[...]

If the Planning Commission approves the application:

STAFF SUGGESTED CONDITIONS OF APPROVAL:

- CUP terminates with the transfer or conveyance of the property.
- A Bed and Breakfast must provide a morning meal. The type of meal will be determined by the applicant.
- Because the parcel is bordered by the EFU zone, the applicant shall file a Conflict Acknowledgment Statement with the Wallowa County Clerk's office.
- Guest's dogs must be leashed and supervised at all times when outdoors.

CONCLUSIONS: To be developed at the hearing.

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

PERMIT#:	CWP#23-05
E-PERMIT#:	
DATE FILED:	11-9-2023
TOTAL FEE:	\$600
CHECK #:	5610

CONDITIONAL USE PERMIT APPLICATION: HOME-BASED OCCUPATION

LEGAL OWNER:

John - Billie Suto

APPLICANT:

REF#: 7769

PROJECT ADDRESS:

81814 REAVIS LN

TWP: 02S

MAILING ADDRESS:

SAME

RANGE: 44E

APPLICANT PHONE NUMBER:

541-398-0061 / 541-398-1967

SECTION: 09

APPLICANT E-MAIL:

Alderslope BnB@yahoo.com

TAX LOT: 102

CONTACT/ PHONE NUMBER

SAME #

ACRES: 5.93

(if different):

CONTACT/ EMAIL

ZONE: EL-1

(if different):

PROPOSAL SUMMARY:

B-N-B

YOUR APPLICATION MUST INCLUDE THE FOLLOWING DOCUMENTATION (details and examples are provided):

- ☒ 1. HOME-BASED OCCUPATION APPLICATION CHECKLIST
- ☐ 2. VICINITY MAP
- ☐ 3. PLOT PLAN MAP
- ☐ 4. FLOOR PLAN OF THE BUILDING USED FOR BUSINESS OPERATIONS
- 5. ADDITIONAL INFORMATION REQUIRED FOR BED AND BREAKFAST HOME OCCUPATIONS
 - ☐ Copy of the House Rules.
 - ☐ Floor plan with the number of guests per room and the maximum occupancy.
 - ☐ Site plan with parking configuration and number of vehicles (trailers are considered vehicles).

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

John - Billie Suto

7/24/23

APPLICANT

DATE

COUNTY USE ONLY

ACTION TAKEN BY PLANNING COMMISSION

Approved _____

Denied _____

FOR PERMIT AUTHORIZATION AND CONDITIONS: See Findings Report

PERMIT EXPIRES AFTER ONE YEAR OF NON-USE

☐ **I HAVE REVIEWED REVIEW ARTICLE 35, HOME-BASED OCCUPATIONS:**
<https://co.wallowa.or.us/community-development/land-use-planning/ordinance-articles/>

☒ **I AM APPLYING FOR A BED AND BREAKFAST**

DESCRIPTION OF THE PROPOSED HOME-BASED OCCUPATION:

I will Be operating a Home BNB From time to time

Please check all the following statements that apply to your proposed Home-Based Occupation.

The Home-Based Occupation will:	YES	NO
1. Have employees that do not live on the subject property.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Store business-related items (equipment, vehicles, construction materials, etc.) outside of a fully enclosed structure.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Require buildings to be altered from normal residential uses.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Require oversized accessory buildings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Use more than two vehicles.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Use heavy equipment or tools that create noise and vibration.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Use paint, solvents, oils, or other noxious/toxic chemicals.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Operate outside of normal business hours (Mon. through Fri., 9 am-5 pm).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Have significant impacts on the neighbors and/or neighborhood traffic.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Have deliveries by vehicles. Exceptions-include deliveries by UPS or other parcel services.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Have retail sales on-site.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Occupy more than 25% of the gross square feet of the principal residence or more than 2,000 square feet of accessory buildings normally associated with uses permitted in the zone.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Be conducted with more than one other business on your property.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Alter the appearance of the residential or farm/forest neighborhood.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Post a sign for the business on the property.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

For all statement where you responded 'YES', please attached a narrative describing the activity and how you plan to mitigate the possible effects on your neighbors and neighborhood.

#8 OPERATE outside normal business hours.
M-F 9-5

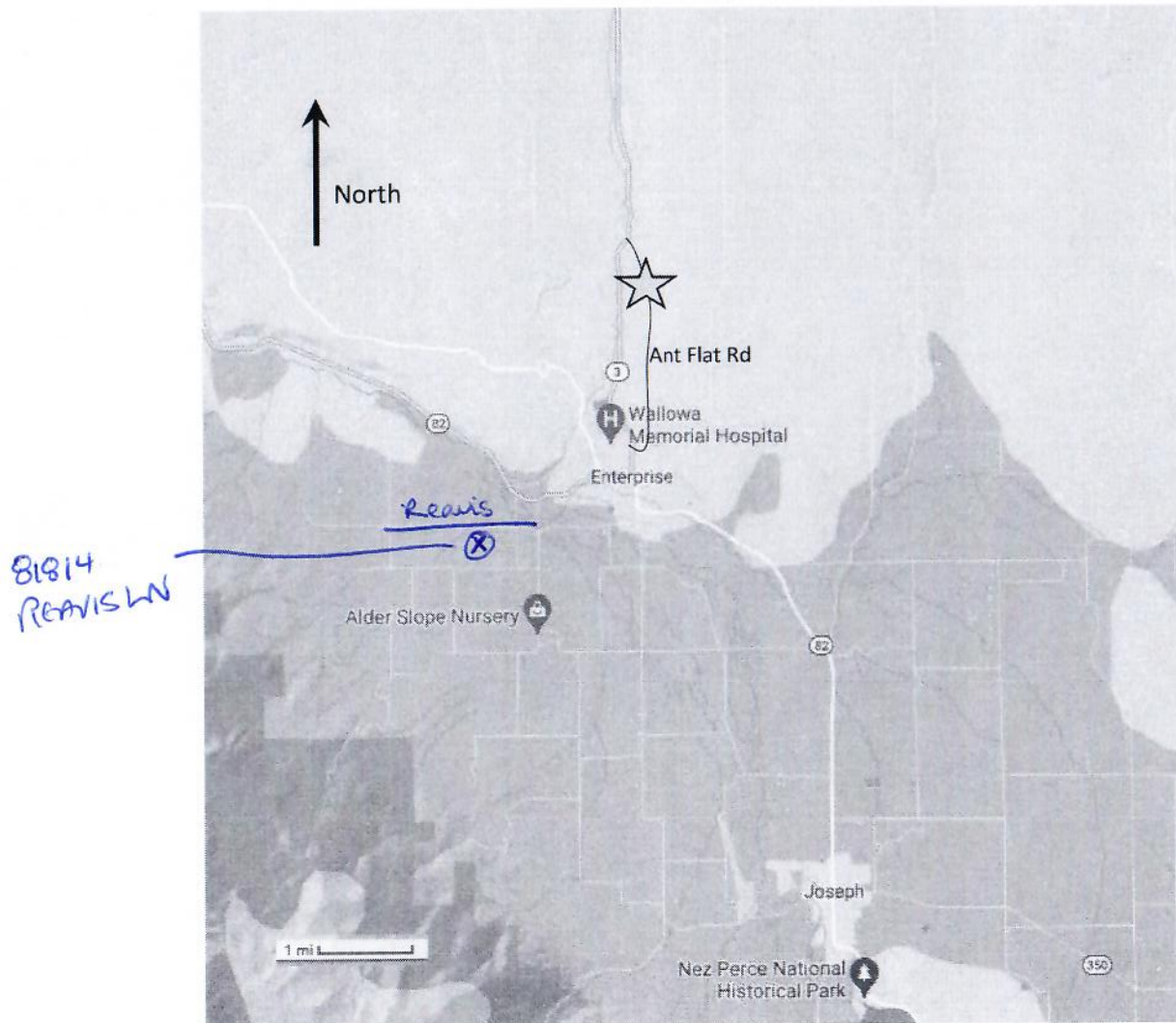
WILL BE operating possibly 8-8 M-Sun
But not usually. Clinic only -

#15 Post SIGN - small sign By Driveway
MB added - But Not obstructive to
Any view - Only for verification purposes.



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

Example Vicinity Map



★ Approximate property location

STANGLES
Property

House
81814 Reavis
SALES

DeVos
Property

Reavis Ln

Alder Slope Rd

Powers Rd

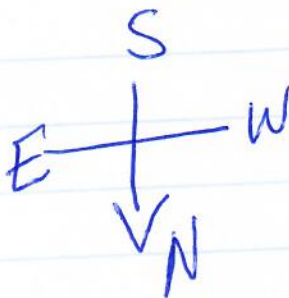
Barking
mad B&B

Itoman Ave

Fish Hatchery

Hwy 82

Enterprise



Flood Map

Borrower	Billie Kaska-Suto & John Suto				
Property Address	81814 Reavis Ln				
City	Enterprise	County	Wallowa	State	OR
Lender/Client	Umpqua Bank			Zip Code	97828

InterFlood by a la mode

Prepared for: Aaron Still Appraisal
81814 Reavis Ln
Enterprise, OR 97828



MAP DATA

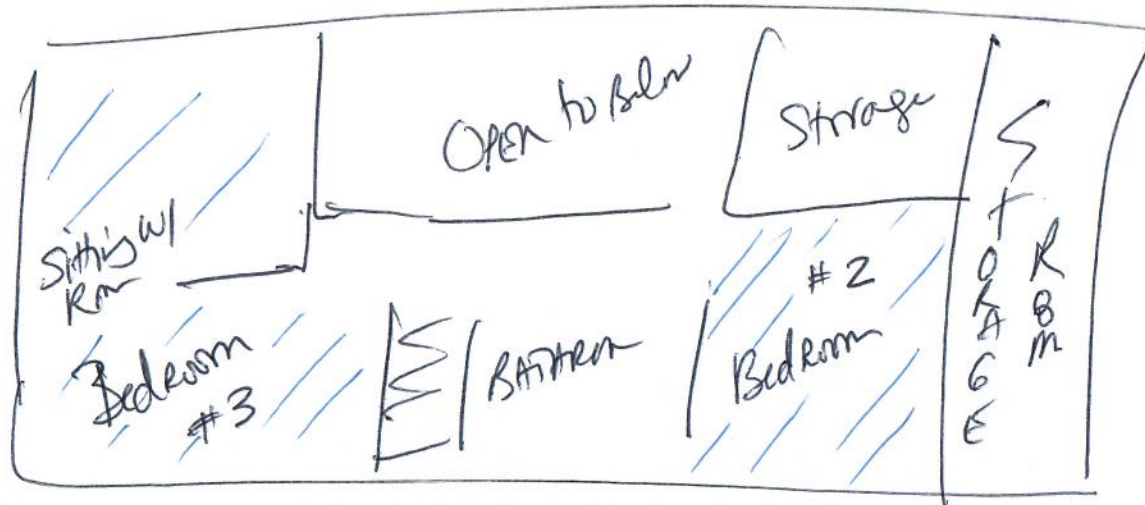
FEMA Special Flood Hazard Area: No
Map Number: 41063C0625B
Zone: X
Map Date: February 17, 1988
FIPS: 41063

MAP LEGEND

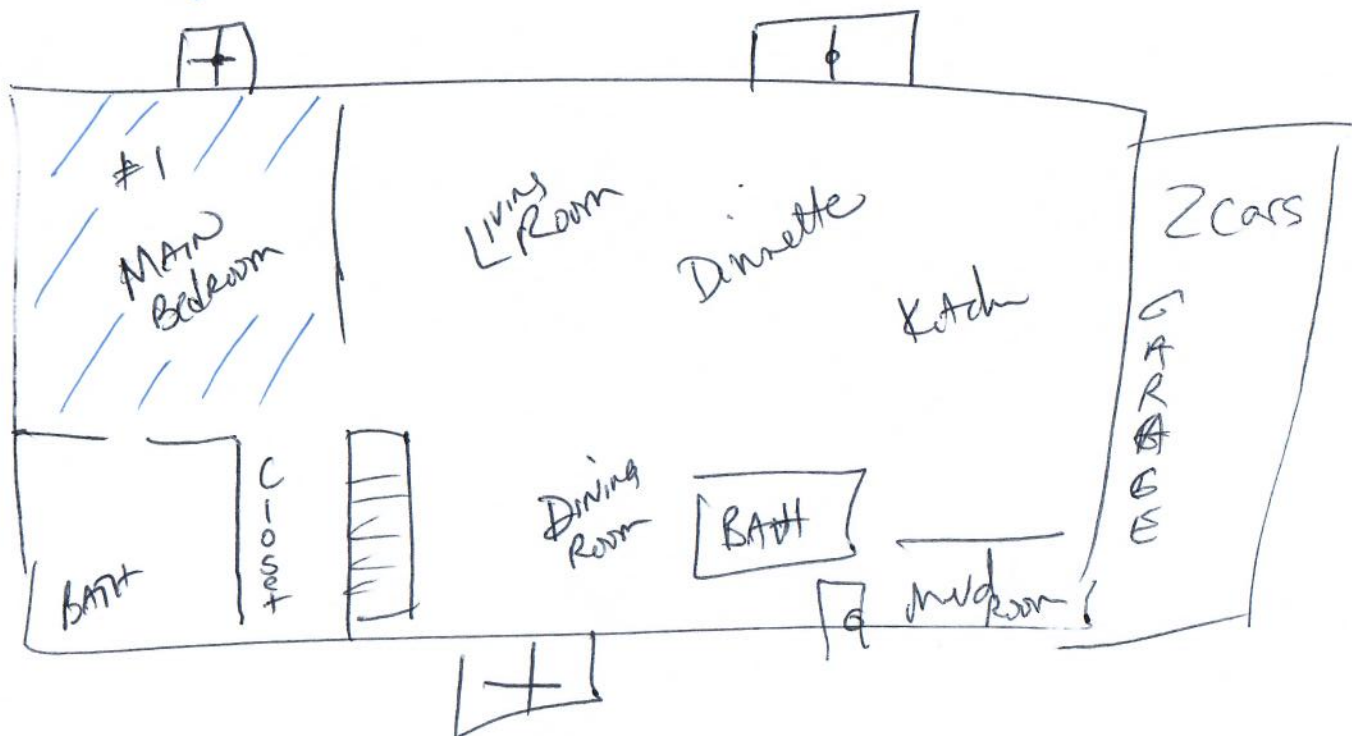
- Areas inundated by 500-year flooding
- Areas inundated by 100-year flooding
- Velocity Hazard

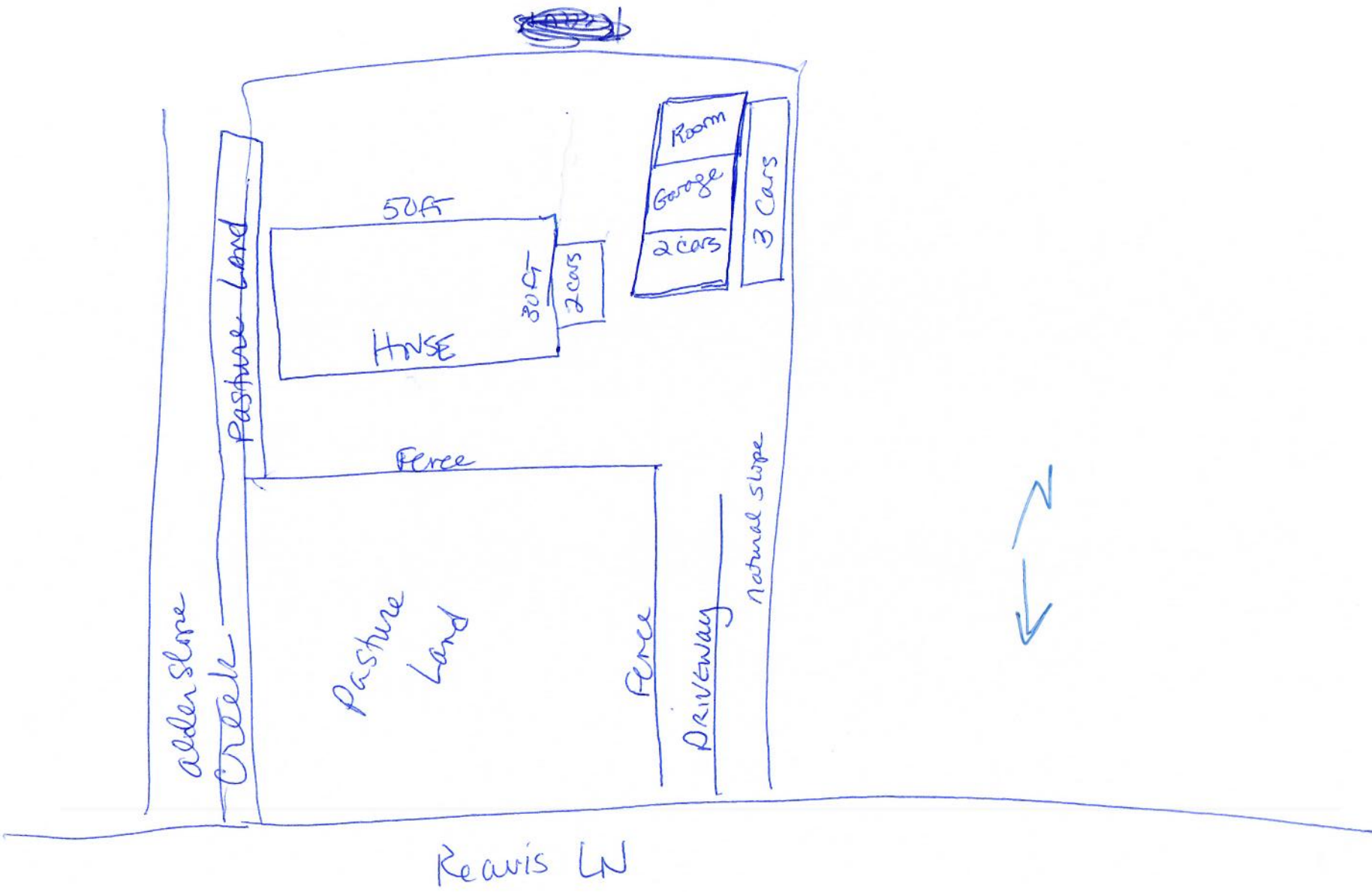
Powered by CoreLogic®

- Protected Areas
- Floodway
- Subject Area



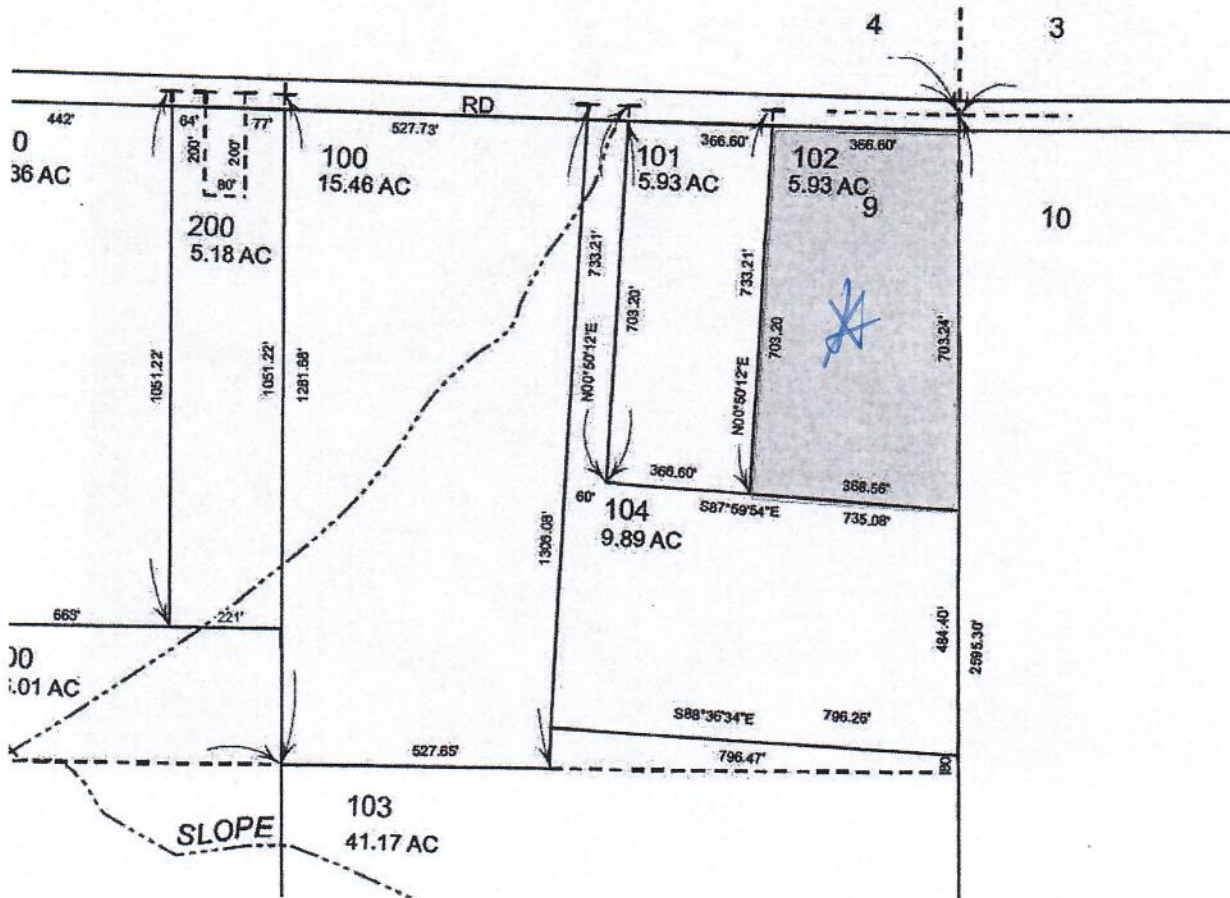
6 total guests





Plat Map

Borrower	Billie Kaska-Suto & John Suto				
Property Address	81814 Reavis Ln				
City	Enterprise	County	Wallowa	State	OR
Lender/Client	Umpqua Bank			Zip Code	97828



USING THIS AS House Rule



HOUSE RULES

**Welcome! We appreciate your caring for our cabin
and hope you enjoy your visit.**

Please observe the following:

1. Please observe the parking areas for this home. Do not park in the grass, or the neighbors areas.
2. NO SMOKING
3. Observe the area quiet time of 8 pm to 8 am
4. No outside fires except the bbq
5. Turn off the heat and lights when not in use
6. Lock the home if you are going to be gone
7. Report damaged or missing items
8. HAVE FUN!!



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

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STAFF REPORT

APP#23-01

APPEAL RE: ZP#23-13

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

Eric Cederstam
71022 Frontage Rd
Wallowa, OR 97885

Mailing Address:
2323 Swyers Drive
Hood River, OR 97031

Kelly and Connie Guentert
71084 Frontage Rd
Wallowa, OR 97885

Kelly Johnson
71072 Frontage Rd
Wallowa, OR 97885

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

Bill Smergut
70988 Frontage Rd
Wallowa, OR 97885

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

CURRENT OWNER: DOLLAR GENERAL
361 Summit Blvd, Ste 110
Birmingham, AL 35243

REQUEST: To appeal the approval of Zone Permit application (ZP#23-16) of a 10,640 square foot building and parking area for a retail store.

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

STAFF REPORT

APP#23-01 – ZP#23-13 DOLLAR GEN

January 30, 2023

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

EXHIBITS IN THIS PACKET:

- Exhibit A- Letter of Appeal
- Exhibit B- Timelines of property sale, permitting and development.
- Exhibit C- Copy of Wallowa County Ordinance No. 2001-004/City of Wallowa Ordinance No. 332-01 A Joint Ordinance Providing for an Agreement between the City of Wallowa and the County of Wallowa Pertaining to the Land Use and Development Regulations to be Applied to the Unincorporated lands within the City of Wallowa Urban Growth Area. Referred to as the *“Wallowa Urban Growth Boundary Agreement”, or WUGBA.*
- Exhibit D- Copy of Zone Permit ZP#23-13
- Exhibit E- Zoning Map
- Exhibit F - Documents from the record.

PREVIOUS PLANNING DEPARTMENT AND OTHER AGENCY ACTIONS:

Lot Line Adjustment LLA#23-01
 Conditional Use Permit CUP#04-15 (mobile restaurant) expired.

APPROVAL CRITERIA:

- City of Wallowa Urban Growth Boundary Agreement (WUGBA)
- City of Wallowa Zoning Ordinance (WZO),
 - Article 1, 1997 [2001 not available from the City of Wallowa]
 - Article 2, Sections 2.1
 - Article 3, Sections 3.4, 3.5
- Other applicable zoning ordinances or goals of Wallowa County Land Development Ordinance and/or laws of the State of Oregon

REFERENCES:

- Wallowa County Land Development Ordinance (WCLDO)
 - Article 2, Use and Development Permits Application Processing and Review Procedures, Section 2.030, Types of Review
 - Article 3, Ministerial Review,
 - Section 3.015, Responsible Review Authority
 - Section 3.020, Review and Decision Process (01)
 - Article 12, Zoning Permit,
 - Section 12.015, Review Procedure

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 January 30, 2023
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- Article 28 Goal V and VI Resource Overlay
 - Section 28.020 (01) Riparian Management Corridors
 - Section 28.020 (01)(A)(2)

APPEAL CRITERIA:

- WCLDO Article 7, Appeals

STAFF COMMENT:

This request is to appeal the decision by the Wallowa County Planning Director (PD) approving Zone Permit ZP#23-13. An appeal of a PD decision is heard by the Wallowa County Planning Commission (PC). The PC shall consider and decide on the below issues to determine the validity of the appeal:

1. Do the Appellants have standing to appeal?
2. Will the appeal be heard *on the record*, or *de novo*?
3. Was the appropriate process used to review the zone permit?
4. Were the appropriate criteria used to make the decision?
5. Does the application meet the applicable criteria as contested by the Appellants?

Finally, the Planning Commission shall, according to WCLDO Article 7 Appeals, Section 7.045.01, “*order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision [...]*”

The remainder of the Staff Comment Section is structured around the above questions. The following information is provided to help the Planning Commissioners decide each issue. See Figure 1 for Vicinity map and proximity of Appellants to the Dollar General site.

Question 1: Do the Appellants have standing to appeal?

WCLDO Article 7 Appeals, Section 7.020.01 states, “*A decision of a review authority pursuant to this ordinance may be appealed [...] by parties who are adversely affected (WCOA 1.065(005)) for decisions which are not noticed. [...]*”. Section 7.020.01(B)(02) requires appeals of non-noticed decisions to be received, “*Within 21 days of the date a person knew or should have known of the decision.*”

In summary, the Appellants must demonstrate that they:

- A. did not know or could not reasonably have known that a permit was issued, and
- B. are adversely affected by the decision.

The Appellants must file their appeal within 21 days of when they “knew” or “should have reasonably known” that development was underway. Failure to file within the required timeframe results in this appeal being untimely.

The property is in the Wallowa Urban Growth Area (UGA) and zoned Commercial-Industrial (W-CI). UGAs are areas planned for future annexation by a city and are zoned based on projected needs for expansion of commercial, industrial and residential uses. This property was zoned W-CI, through a public process, in 1982. There have been no challenges or amendments proposed to change that zoning since that time.

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See Figure 2.

The property was listed for sale on the Multiple Listing Service in 2019 and an approximately four foot (4') by eight foot (8') "for sale" sign was posted on the property in October of 2020, identifying it as Commercial-Industrial -- more than three years prior to the beginning of construction. See below for evidence in the record. See Figure 3.

Regarding (A) above: Zone permit #23-12 was approved March 30, 2023. Site preparation began in December of 2022 in the form of multiple geotechnical test pits using large excavation equipment. Multiple septic test pit excavation, again using heavy equipment, occurred in March 2023. Drilling the necessary well occurred in early June 2023. A commercial structural building permit was issued October 26, 2023 and construction began that day. The appeal was filed November 12, 2023. See Exhibit B for a timeline.

Regarding (B) above: in order for the Appellants to have standing they must also prove that they are, in fact, "adversely affected" as that term is defined by law, and that they are not simply "dissatisfied with the decision of the planning director."

There is a steppingstone format of this hearing – each element, if not proven by Appellants would preclude the Planning Commission having to decide the remainder, but out of an abundance of caution, we are requesting a ruling on each issue – should you find that Appellants have failed to meet their burden of proof on any other allegation of error.

WCLDO, Article 1, Section 1.065 Definitions (006) defines "Adversely Affected – A party's use and enjoyment will be negatively impacted by a land use decision due to identified consequences from the proposed use or development. Examples of adverse effects may include noise, odors, increased traffic, or potential flooding."

The Appellants claim that they were adversely affected because of (Exhibit A. Letter of appeal dated November 12, 2023 P.1-2),

1. "Increased traffic affecting:
 - a) Access to our properties.
 - b) Increased numbers of drivers using our private driveways as turn-arounds.
 - c) Increased driveway maintenance costs due to the lack of public turn-arounds on Frontage Road.
2. Decreased safety at intersection with Hwy. 82.
 - a) The school bus stop for our kids is located here because there are no adequate turn-arounds along Frontage Road.
 - b) Lack of adequate turning space required for typical farm equipment such as trucks, livestock trailers and other farm equipment.
3. Potential harm to fishing and other recreational opportunities in Bear Creek that we currently enjoy.

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APP#23-01 – ZP#23-13 DOLLAR GEN

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4. Negative effects to our use of Frontage Road for safe recreation purposes such as dog walking and bike riding.
5. An increase in light and noise pollution.
6. A decrease in visual quality from our properties.”

The closest Appellant driveway is more than 300 feet beyond the Dollar General driveway entrance off Frontage Road. It is across a bridge with a sign clearly marking it as a Dead End. There is significant vegetation shielding the view between Dollar General and the Appellants, including tall cottonwood trees along Bear Creek (see Figure 4). The Appellants need to prove that a reasonable person would find it likely that what they are claiming will happen. For example: In order to prevail on their argument, Appellants need to demonstrate that it would be more likely than not that prospective store patrons would drive directly past an obvious driveway into the large commercial parking lot, continue to travel down Frontage Road away from the store, cross a single-lane bridge signed “DEAD END”, and continue on at least 100’ to the first driveway.

There is a buffer area of more than one-hundred twenty (120) feet between the Dollar General driveway/parking area and Bear Creek, more than twice the State-defined, Goal 5, safe harbor rule standard setback distance of fifty-feet as the boundary of the riparian corridor. The fifty-foot riparian corridor remains heavily vegetated with cottonwood trees and understory growth. The City does not identify a setback criterion from a stream. If WCLDO criteria were applied, Article 28, Goal 5 and 6 Resource Overlay, Section 28.020(01) Riparian Management Corridors, (A)(2) is consistent with the State in defined 50’ riparian corridor. The Urban Growth Residential Area (the private parcel between the Dollar General parcel and Bear Creek.) has a setback requirement of only 25’ (Section 28.020(01)) from the high bank.

All of the Appellants should have been clearly aware that this parcel was zoned for commercial and industrial uses. They have witnessed development in the tract directly east of this parcel, similarly zoned W-CI, which started in 2019 and involved a card-lock gas station and storage units, with collective building footprints totaling approximately 29,000 sf, and graveled surface area exceeding 3 acres.

The Oregon Court of Appeals affirmed an Oregon Land Use Board of Appeals (LUBA) ruling (“Devin Oil Co, Inc., v. Morrow County and Love’s Travel Stops and Country Stores, Inc., Case number A160178, filed December 30, 2015.”) that specifically addressed the distinction between being “adversely affected” and merely dissatisfied with a decision. This ruling is helpful in analyzing the issue here:

*Under ORS 197.830(3), a person or party adversely affected by a land use decision that is made without a public hearing has standing to appeal that decision to LUBA. A party is adversely affected by such a decision only when the allowed land use **impinges upon that party’s property or personal interests.***

Devin Oil Co. (Devin Oil), appealed a Land Use Board of Appeals (LUBA) dismissal of Devin Oil’s appeal for lack of standing. Under ORS 197.830(3), “a person [or party] adversely affected by” a land use decision that is made without a public hearing has standing to appeal the decision to LUBA. A party is “adversely affected by” a land use decision under ORS 197.830(3), **“when the operation of the allowed land use**

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decision impinges upon that party's property or personal interests. However, mere dissatisfaction with a land use decision does not qualify as an adverse effect under ORS 197.830(3)." The Court found that Devin Oil did not show that it was adversely affected by Morrow County's decision, and therefore lacked standing to appeal the decision to LUBA.

In order to have standing to appeal, Appellants must demonstrate by reasonably persuasive evidence that they A) had no reason to know of the development despite the clear evidence of commercial development activity on the lot well before the filing of their appeal and B) that they are, in fact, adversely affected by virtue of the decision. If either or both are false, the Appellants do not have standing to appeal.

Question 2: Will the appeal be heard *on the record*, or *de novo*?

The Appellants have requested that the appeal be heard *de novo* and staff recommends doing so to make sure that all relevant facts and legal authorities are entered into the record.

Question 3: Was the appropriate process used for review of the zone permit?

The Planning Commission should note that this decision will be based on a different structure than what they are used to seeing. Land use in the UGA is administered through a legal agreement between the county and the city, *The City of Wallowa Urban Growth Boundary Agreement (WUGBA)*, adopted by ordinance (Exhibit C). Per that agreement *WUGBA Article 2, Substantive Provisions, Section 2.030, Use Regulations stipulations that, "Within the Urban Growth Areas designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situated within the corporate limits of the City and within the designated zone.* *WUGBA Article 3, Administrative Provision Section 3.010 Land Use Actions.*

- (1) *All permit applications concerning lands within the Urban Growth Area shall be filed with the County...*
- (2) *The application shall be referred by the Director to the City within three (3) working days after a complete application has been filed with the County Planning Department.*

[...]

- (4) *In the event no response or recommendation is received from the City within forty-five (45) days from the date the application is submitted to the City by the County, the County shall conclude the City has no objections and shall proceed to take the necessary review steps as required by the appropriate County ordinance."*

The Appellants assert that WCLDO Article 4 would have required notice and processing using Administrative Review, versus Ministerial Review. Ministerial land use decisions are made by local planning staff (not the Planning Commission) based on clear and objective standards and requirements applicable to a specific development proposal or factual situation. Examples include zoning permits for a use permitted by code or a determination that a proposed structure meets setback or height requirements. Ministerial decisions do not require a public notice or hearing. Administrative Review is a

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version of Ministerial that adds notice to immediate neighbors (to varying distance depending on zoning) to gather additional information that might affect adding specific allowable conditions of approval, such as directional signage, or a landscape screening. This would not prevent the approval of a permitted use, but allows the decision authority to add conditions to help mitigate concern.

This application was processed as Ministerial Review, given that the use is a permitted outright use with clear and objective standards. Per the WUGBA, the county is required to use the criteria and standards for the City of Wallowa Commercial-Industrial zone (WZO Article 3, Section 3.5, Commercial/Industrial Zone "CI") and not the corresponding WCLDO code provisions. The City of Wallowa was notified within the required time frame, and did not comment within 45 days. Per *WUGBA Article 3, Administrative Provisions Section 3.010 (4)*, the City had no objections, and the County was to proceed using review steps as set forth in the WCLDO, but applying the WZO criteria.

Notwithstanding, the application for a permitted use in the zone with clear and objective standards is consistent with the review process described in WCLDO Article 3, Ministerial Review, the Appellants assert that the County was required to complete an Administrative Review, not Ministerial Review. Assuming for the sake of argument that the Appellants are correct in their position, their argument still necessarily fails as none fall within the category of property owners who would have been provided notice in any event due to their lack of proximity to the relevant property. *"WCLDO Article 4, Administrative Review, Section 4.020(1) Administrative Review requires written notice of review to be given to owners of property lying within: (A) One hundred feet of the exterior boundary of the subject property where the subject property is wholly or in part within an urban growth boundary."* None of the Appellants would have received notice as their properties are all further than 100' from the subject property.

The Appellants also assert that the scope, scale, complexity and location of the Zone permit application should have required a public hearing. Again, for the sake of argument, WCLDO Article 3, Ministerial Review, and Article 4, Administrative Review, do not have a provision allowing Staff to refer an application to the Planning Commission (public hearing) except when "the review authority [is] unable to provide a fair and unbiased review due to conflict of interest, bias, or other substantial cause." Staff had no conflict of interest or inability to provide an unbiased review, and the Appellants have not asserted so, nor provided any proof that this was the case. There is no legal authority for staff to have referred the application to public hearing.

The W-CI zone was established and assigned (through a rigorous public process) for this very type of use, a retail establishment, which is a permitted outright use subject to clear and objective standards. Directly across the highway, in the same zone, is a development that includes storage facilities with a footprint of approximately 19,000 square feet, with 3 acres of gravel parking and driveways. This was processed through Ministerial Review as a permitted outright use. The scale of the Dollar General building is about half the size of the storage facilities, with significantly less area for driveway and parking, and the structure is approximately the same size as the Assembly of God church a few blocks closer toward the city. This is not a project with a scale, scope or complexity exceeding nearby development, and scale, scope and

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complexity are not factors where there is legal authority for the PD to refer the application to the Planning Commission and a public hearing. See Figure 5.

Question 4: Were the appropriate criteria used to make the decision?

Per the WUGBA, the county is required to use the criteria and standards for the City of Wallowa Commercial-Industrial zone (WZO Article 3, Section 3.5, Commercial/Industrial Zone “CI”).

The Appellants assert that WCLDO Article 4.035, Applicable Review Criteria (01) Salmon Habitat Restoration applies to this application. The Salmon Habitat Restoration is County review criteria and applies to areas outside of city and urban growth areas. The County is required per the WUGBA to apply City criteria. The City has not adopted any provisions regarding protections of Salmon Habitat. In this case, state criteria would apply. The Oregon State Department of State Lands regulates waterways, wetlands and “Indigenous Anadromous Salmonid Habitat” protections through Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS). OAR 660-023-0090 defines riparian corridors by cfs (cubic feet per second), and wetlands by state mapping. Streams with less than 1,000 cfs have a riparian corridor of 50’ (feet). Bear Creek, which has an average of 120 cfs (cubic feet per second) prior to any irrigation diversions, is therefore fifty feet (50’) from the high bank (high water line). The Dollar General store is at least 200 feet from the high back. Additionally, there are no inventoried wetlands or riparian corridors on the Dollar General property, so no state protections apply and no state permits are required.

The Appellants cite multiple County criteria, requirements and processes from the WCLDO that do not apply to this application. As a result, Appellant’s reliance on County criteria, codes, and procedures is misplaced and not consistent with the agreement between the City of Wallowa and Wallowa County (WUGBA). In fact, Appellants concede that “the application may be generally consistent with the City of Wallowa Ordinance...” (Letter of Appeal dated November 12, 2023, p. 2).

Question 5: Does the application meet the applicable criteria as contested by the Appellants?

As noted above, the WUGBA Article 2, Substantive Provisions, Section 2.030, Use Regulations stipulates that, *“Within the Urban Growth Areas designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situated within the corporate limits of the City and within the designated zone. WUGBA Article 3, Administrative Provision Section 3.010 Land Use Actions.”*

- (1) *All permit applications concerning lands within the Urban Growth Area shall be filed with the County [...]*

The applicable criteria are therefore those of the City of Wallowa Zoning Ordinance Article 3, Section 3.5 – Commercial/Industrial Zone “CI”:

- (1) **“PERMITTED USES. All uses permitted outright in the “C” Zone and accessory uses.**
- (2) *Heavy and light industrial uses as defined, which take place solely within an enclosed building.*

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(3) *CONDITIONAL USES.*

- (A) *Light and heavy industrial uses which take place outside an enclosed building.*
- (B) *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. Such transportation projects shall address the criteria of Section 5.1(2)(F)*

(4) *PROHIBITED USES. Aggregate resource extraction and processing sites.*

(5) *HEIGHT. Buildings, structures, or portions thereto shall not be erected to exceed a height of 2-1/2 stories or 35 feet, whichever is less, exclusive of basement.*

(6) *SETBACK REQUIREMENTS. In the Industrial zone, setbacks shall be as follows.*

- (A) *No front yard setback is required.*
- (B) *No buildings shall be constructed or located closer than 5 feet from the re lot line.*
- (C) *Interior side yard setback shall be 5 feet.*
- (D) *No building shall be closer to a lot in a residential or agricultural zone than a distance equal to the height of the building or 50 feet, whichever is greater.*

(7) *PARKING REGULATIONS*

- (A) *Residential Off-street Parking. A minimum of two car spaces shall be provided for each 1,500 square feet or less of the ground floor area of the building, plus one car space for each employee.*
- (B) *Bicycle Parking. Bicycle parking shall be provided as per Section 4.12 of this ordinance.*

(8) *BUILDING ORIENTATION. New commercial buildings, particularly retail showing offices shall be oriented to the street near or at the setback line. A main entrance shall be oriented to the street. For lots with more than two front yards, the building(s) shall be oriented to the two busiest streets."*

Insert Permitted Uses of the Commercial "C" Zone:

"Section 3.4 – Commercial Zone "C":

(1) *PERMITTED USES.*

- (A) *Retail trade establishment in which the operation takes place solely within an enclosed building*
 - (B) *Business, governmental or professional offices*
 - (C) *Financial institution*
 - (D) *Personal and business service such as barber shop, tailoring shop, printing shop, laundry or dry cleaning establishment, and electrical repairs shops*
 - (E) *Public park, public recreation areas and community centers*
 - (F) *Retail trade establishments, person, and business services in which the operation takes place solely within an enclosed building and the owner, operator or lessee of the business lives in an apartment on the premises"*
- [...]

The Appellants are not contesting that any of the above applicable criteria have not been met such that the application fails on the merits.

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The Appellants state that lack of public review for this application violates the Wallowa County Comprehensive Plan Goal 1 – Citizen Involvement. This Goal mirrors the Oregon Statewide Planning Goal 1: Citizen Involvement (OAR 660-015-0000(1)). Statewide Planning Goals apply to all jurisdictions including cities and counties, and Goal 1 requires jurisdictions, *“To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.”* There was rigorous citizen involvement in the development of both the County, City and UGA zones. The endeavor, with public support, involvement and buy-in, led to an orderly plan with specific areas dedicated to residential development, resource use, and commercial/industrial development which reflected community values and protected a property owner’s development rights. Each zone has permitted outright uses, uses which the community agreed clearly belonged in the zone as long as clear and objective standards were applied, such as setbacks, height limits, and parking requirements. Conditional Uses were defined for uses that might have a more varied impact on the community, and required additional community involvement to mitigate those impacts.

The Appellants assert that ORS 215.416(11) requires a Planning Director to hold at least one public hearing on the application. This statute, however, refers to applications for uses requiring quasi-judicial review. It does not apply to Ministerial or Administrative review of permitted uses with clear and objective standards.

Per the WUGBA, an appeal “...shall follow procedures set forth in Wallowa County Zoning Ordinance.” (Section 3.080)

APPEAL CRITERIA

WCLDO ARTICLE 7, APPEALS

SECTION 7.010, PURPOSE: The purpose of this Article is to establish uniform procedures for the appeal of land use decisions and actions provided for in this ordinance.

SECTION 7.015, APPEAL AUTHORITY:

01. Decisions by the Planning Director shall be subject to appeal to the Planning Commission [...]

SECTION 7.020, INITIATION OF APPEAL:

01. A decision of a review authority pursuant to this ordinance may be appealed by parties with standing to appeal (WCOA 1.065(101)) [sic WCLDO Article 1, Section 1.065(141)] for noticed decisions, and by parties who are adversely affected (WCOA 1.065(005)) [sic WCLDO Article 1, Section 1.065(006)] for decisions which are not noticed. Appeals must be received within the prescribed time limits:

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A. For decisions which are noticed the appeal period shall be no less than 12 days from the date of decision and the final date to accept appeals shall be part of the notification. The appeal period may be extended to the end of the next business day if the 12 day period ends on a weekend or holiday.

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

01. Within 21 days of the date of action specified on the permit; or

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

02. The filing of an appeal shall be accompanied by the fee prescribed by resolution of the Wallowa County Board of Commissioners.

03. The appeal document which is filed shall list at least the following information.

A. An identification of the decision sought to be reviewed including the date of the decision.

B. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.

C. The specific grounds for appeal as they relate to relevant review criteria.

SECTION 7.025, SCOPE OF REVIEW ON APPEAL: The scope of review on appeal shall be restricted to the record made on the decision being appealed, unless the appeal authority issues an order stating the scope to be one of the following:

01. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.

02. A De Novo hearing on the merits with new evidence allowed.

SECTION 7.030, REVIEW OF THE RECORD:

01. Unless otherwise provided for by the appeal authority, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include:

A. An oral or written factual report prepared by the Planning Director.

B. All exhibits, materials, pleading, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.

C. The minutes of the hearing below and a detailed summary of the evidence.

02. The appeal authority shall make its decision based upon the record after first granting the right of argument but not the introduction of additional evidence to any party who has filed a notice of appeal.

SECTION 7.035, NOTICE OF APPEAL HEARING: Notice of the hearing held by an appeal authority to consider an appeal shall be mailed at least ten days prior to the hearing to the appellant and all persons who have standing in the proceeding of the issue on appeal.

SECTION 7.040, DE NOVO REVIEW: The appeal authority may decide to hear the entire matter De Novo as defined in Section 1.065. The appeal authority shall consider all of the following in making such a decision.

- 01. Prejudice to the parties.*
- 02. Convenience or availability of proposed new evidence at the time of the initial hearing.*
- 03. Surprise to opposing parties.*
- 04. The competency, relevancy, and materiality of the proposed new testimony or other evidence.*

SECTION 7.045, APPEAL AUTHORITY DECISION:

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

When the appeal authority elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

- 02. Action by the appeal authority shall be decided by a quorum of its members present at the meeting at which review was made and shall be taken either at that or any subsequent meeting. The appeal authority shall render its decision no later than 30 days from the date at which review was made unless otherwise agreed to by the parties and shall file that decision with the County Clerk within twelve days after it is rendered.*

CONCLUSIONS: To be developed at the hearing. The burden of proof for an appeal lies with the Appellant. As listed in WCLDO Article 7, Appeals, Section 7.045(01) *Upon review; the appeal authority may by order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision that is under review.*

STAFF RECOMMENDATION: Staff are required to review a proposal from a fair and unbiased standpoint, applying and evaluating based on applicable criteria, law and code. This Staff Report analyzes the merits of the appeal based on the five questions presented by the Appellants' objections. These questions are repeated below with a Staff Recommendation. The Planning Commission should address each question individually.

Question	Staff Recommendation
1. Do the Appellants have standing to appeal?	The Appellants do not have standing to appeal as they: A) did not file the appeal within 21 days of the date a person knew or <i>should have known</i> of a decision and B) they are dissatisfied with the decision but are not “adversely affected.”
2. Will the appeal be heard <i>on the record</i> , or <i>de novo</i> ?	Hear the case “de novo” to capture all relevant facts and legal authorities.
3. Was the appropriate process used to review the zone permit?	The appropriate review process was used to evaluate the application.
4. Were the appropriate criteria used to make the decision?	The appropriate criteria were used to approve the application.
5. Does the application meet the applicable criteria as contested by the Appellants?	The application met the applicable criteria.

Based on the information provided above, Staff recommend that the Planning Commission deny the appeal and that the decision to approve the application be affirmed on its merits.

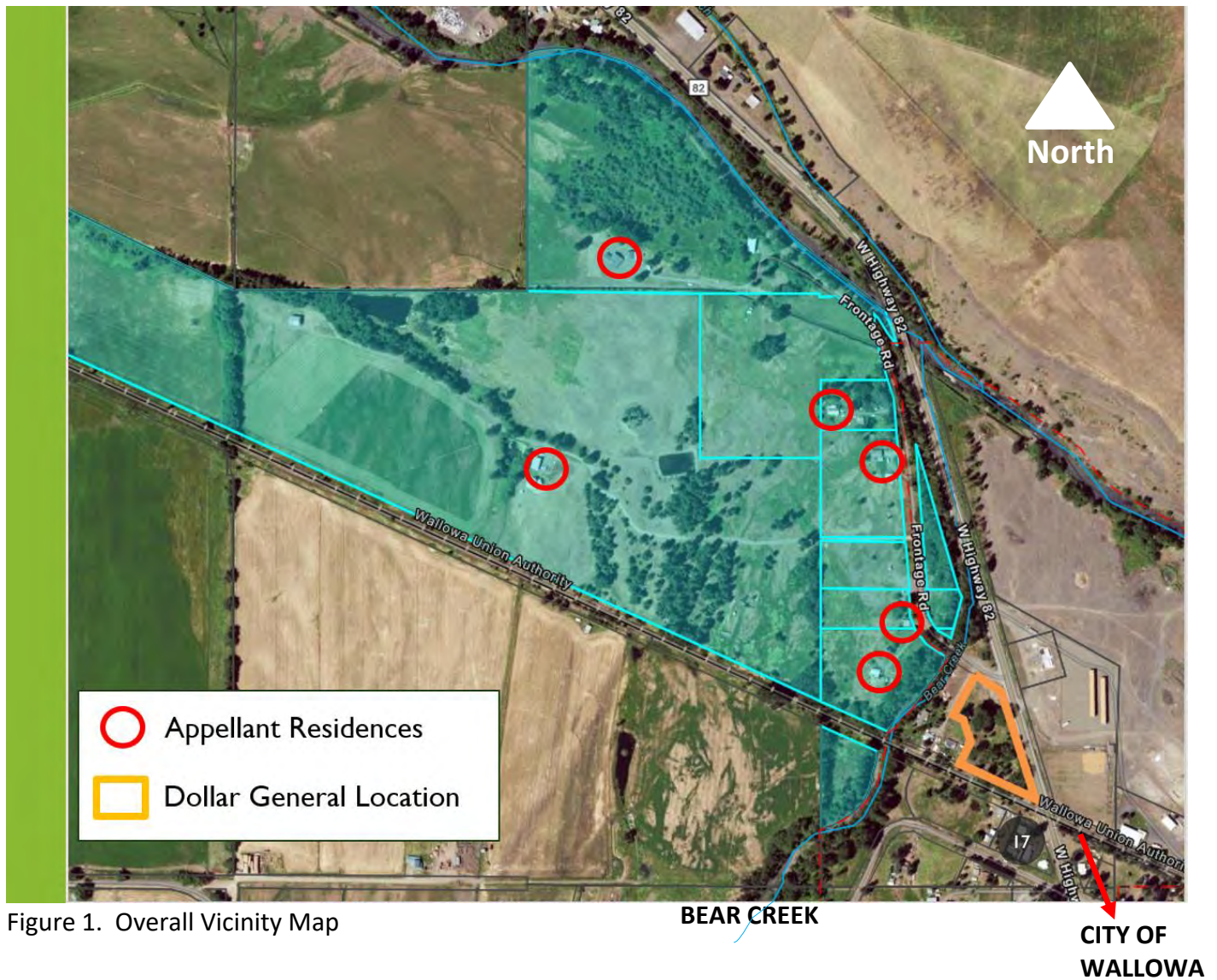
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FIGURES



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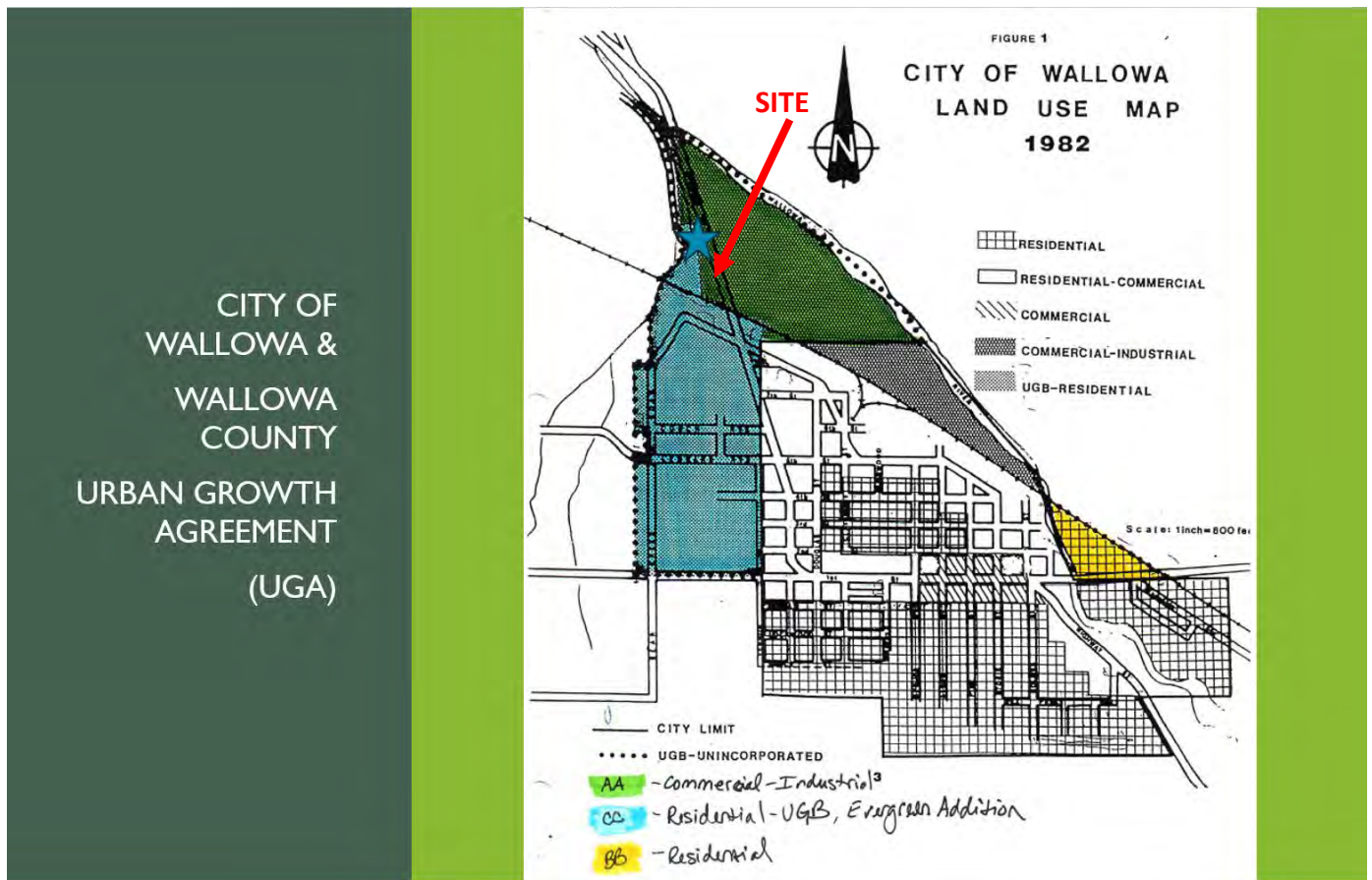


Figure 2. WUGBA Zoning Map



Figure 3. Photo looking East from Highway towards site (Google Maps Street View September 2023).

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Figure 4. Photo towards Frontage Road and the Bridge accessing Appellants properties (Google Maps Street View September 2023).

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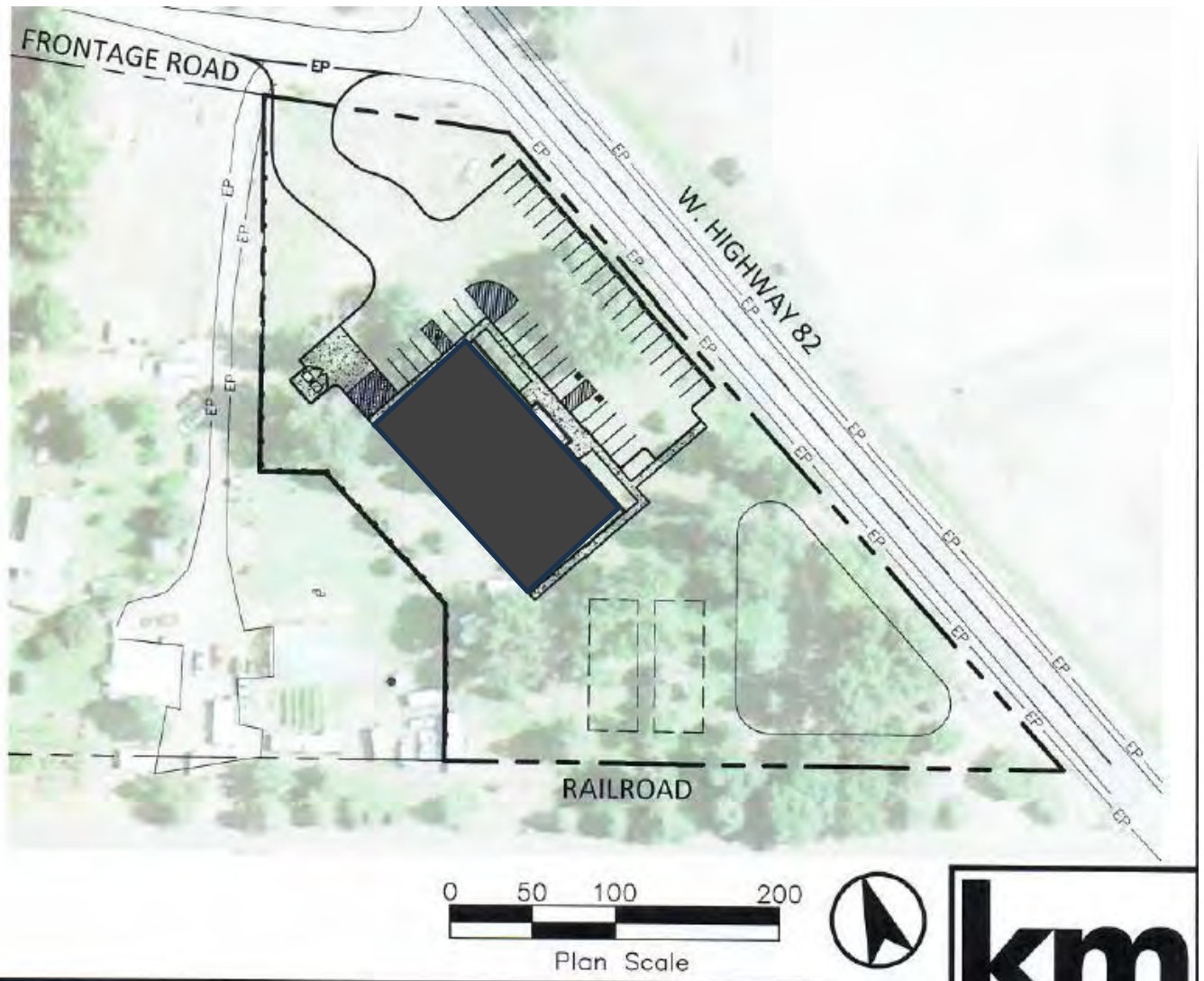


Figure 5. Dollar General Site Map (from ZP#23-13)

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EXHIBIT A: LETTER OF APPEAL

November 12, 2023

Mr. Franz Goebel
Wallowa County Director of Planning
101 S River Street #105
Enterprise, Oregon 97828

Mr. Goebel:

This letter is a formal request by Frontage Road property owners, to appeal the decision approving zone permit **ZP#23-13** issued on March 30, 2023 by the Wallowa County Planning Department. This permit is for construction of a Dollar General retail store at 902 W Hwy. 82, T1N R42E S11, Tax Lot 1300.

Wallowa County Land Use Development Ordinance (WCLDO) 7.020 states that an adversely affected party has the right to appeal such a decision. We were surprised to realize the property had sold and a zone permit issued when we observed heavy equipment and evidence of excavation on the subject property. Our initial awareness ranged from October 26 to November 4, 2023 depending on when we individually traveled past the site. Based on this timeline, our request for appeal is within 21 days of the date "we knew or should have known" of the land use decision.

Per ORS 215.416, this zone permit application is subject to discretionary approval standards in the Wallowa County Comprehensive Land Use Plan, as well as WCLDO and City of Wallowa Zoning Ordinance 330-01, and as such, is a permit "*decision*" as defined by ORS 215.402(4).

Except as provided in ORS 215.416(11), the Planning Director was required to hold at least one public hearing on this application. Applications may be approved or denied without hearing if notice of the decision is given and an opportunity for appeal is provided to any person adversely affected or aggrieved. No public notice of an opportunity for appeal was provided. **ORS 215.416(11) requires public notice of an opportunity for appeal.**

At minimum, approval for this permit application should have triggered an Administrative Review with notices to affected landowners. WCLDO 4.010 requires an Administrative Review "...for uses and developments which may impact neighboring properties and developments, but not to the extent of requiring a public hearing review". WCLDO 4.020.01 requires written notice of review to owners within specified distances of the subject property. It also requires that the review authority "...provide the notice to other parties should it be determined...their interests may be affected by the proposal...". **No required written Notice of Review, which would also include notice to affected parties of their right to appeal the decision, was provided by the Planning Department.**

We own single family residences and small farms ranging in distance from 150 feet to 1200 feet from the subject property and are within sight and sound of the development. The only access to our properties is along Frontage Road, a single-lane, dead-end road with no public turn-arounds. The zone permit application clearly affects our interests with negative impacts to the use and enjoyment of our properties.

Specifically, this development has potential to affect us through:

1. Increased traffic affecting:
 - a) Access to our properties.
 - b) Increased numbers of drivers using our private driveways as turn-arounds.
 - c) Increased driveway maintenance costs due to the lack of public turn-arounds on Frontage Road.

2. Decreased safety at intersection with Hwy. 82.
 - a) The school bus stop for our kids is located here because there are no adequate turn-arounds along Frontage Road.
 - b) Lack of adequate turning space required for typical farm equipment such as trucks, livestock trailers and other farm equipment.
3. Potential harm to fishing and other recreational opportunities in Bear Creek that we currently enjoy.
4. Negative effects to our use of Frontage Road for safe recreation purposes such as dog walking and bike riding.
5. An increase in light and noise pollution.
6. A decrease in visual quality from our properties.

The Planning Department should have reasonably foreseen that our proximity to the subject property, and associated access issues would clearly result in a condition where our "*...interests may be affected...*". **Notice of review and the opportunity to comment is therefore required by WCLDO Article 4.**

Although the type of use listed on the application may be generally consistent with the City of Wallowa Ordinance 330-01 for the Commercial/Industrial zone, requirements found in WCLDO Articles 5, 12 and 36 should have triggered a Public Hearing Review. This application is for a Dollar General retail store of 10,332 square feet with 39 parking spaces, sited prominently along the primary access route into Wallowa County. This location is not within the core business district of the city of Wallowa. The parking lot contains more designated spaces than any other location within either the City of Wallowa or its Urban Growth Boundary, and the building will be larger than any other existing retail store in Wallowa. The only retailers with comparable size in Wallowa County are Safeway and Wallowa County Grain Growers. Finally, the application includes use within approximately 130 feet of Bear Creek, an area of concern identified in the Wallowa County Salmon Habitat Recovery Plan, as adopted by Wallowa County (p.56-58).

The scope, scale, complexity and location of the Dollar General Application should have required review in an open, transparent, and public process. WCLDO 5.010 requires a Public Hearing Review process for applications "*...which may have a significant impact on neighboring uses and developments; ...the health, safety, or welfare of the citizens; or on the provision of public services; therefore, they require review in an open and public forum.*" The Dollar General application meets these criteria as it will clearly have a significant impact on:

- Citizen safety associated with the transportation system and pedestrian access at the proposed development.
- The provision of public services due to potential effects on water quality and riparian habitat of Bear Creek.
- Locally-owned businesses in both the city and county that will suffer revenue loss and potential closure due to the unfair purchasing and pricing tactics of Dollar General.

Consequently, a Public Hearing Review process is required by WCLDO Article 5.

Furthermore, the decision to approve this application using the Ministerial Review process does not comply with WCLDO 12.015 which requires the application be referred to the public hearing review authority "*...if the proposal may conflict with the purposes and intent of this ordinance or land use plan.*"

Additionally, WCLDO 12.020 requires that the application satisfy criteria in Article 36, Salmon Habitat Restoration and expressly prohibits Ministerial Review when:

- Excavation or fill exceeds 50 cubic yards.
- The proposed use is less than 300 feet from surface water.
- Road construction will be required in conjunction with the proposed use.

Additional project proposal elements that should have resulted in the Planning Department determining that a Public Review process was warranted, include:

- Site preparation for a 10,000+ square foot building, parking areas and access roads, large storm drainage pond, septic field and associated utility trenches should have alerted staff that far in excess of 50 cubic yards of excavation or fill would be required. This is the equivalent of less than five dump truck loads.
 - Transportation of fill in excess of 50 cubic yards has been observed between October 30 and November 3, 2023.
- Sheet EX1.0 on the application clearly shows that much of the access road, parking spaces, building and other developments are located within 300 feet of Bear Creek.
- The Preliminary Site Plan on the application identifies a "Project Entrance" and parking access road of approximately 280 feet.

Lastly, WCLDO Article 36 creates a "...system for plans on lands within Wallowa County that will restore and maintain habitat for Chinook salmon and, potentially, other salmonoid fish." WCLDO 36.015 requires management plans "...prior to approval of watershed... applications." WCLDO 36.020 specifies that development plans include consideration of the following key elements and numerous sub-criteria:

- Provisions for protection of water quality.
- Provisions for protection of habitat.

Despite the close proximity to Bear Creek with potential effects to Chinook salmon habitat maintenance and restoration, the application does not include any of the required management or development plans. There are no references to compliance with these criteria identified in the files provided to us by Planning Department staff on November 1 and November 9, 2023. **WCLDO Article 12 and its associated criteria require a Public Hearing Review process before the Planning Department makes such a land use decision.**

The approval of this application is in conflict with the purposes and intent of the WCLDO and Comprehensive Land Use Plan Goals. WCLDO 1.020.03 states that "A use or development shall be approved only...in accordance with the provisions of this ordinance." The primary objective of Goal 1—Citizen Involvement is "To develop a citizen involvement program that insures [sic] the opportunity for citizens to be involved in all phases of the planning process." Policy 2 of Goal 1 includes the statement that "Notification of planning activities be made in newspapers and by radio as well as other means, in an attempt to make affected residents aware of up-coming decisions."

Although there were numerous requirements stipulated in the WCLDO to provide notice of review to affected parties either through the Administrative Review or Public Notice Review process, this application was approved with neither sufficient public notification nor public involvement. Citizen involvement objectives as identified in Goal 1 have not been met. In accordance with WCLDO 7.015.01, we are exercising our right to appeal the decision made using the Ministerial Review process to approve Zone Permit ZP#23-13. Due to the lack of comprehensive review of the many complex issues associated with this application, per 7.025.02 we are requesting a *de novo* hearing on the merits of the application, with new evidence allowed to be submitted and considered, in order to ensure that the requirements of both Wallowa County and the City of Wallowa are met.

Sincerely,

Sweyn and Beckijo Wall
71054 Frontage Road

Sweyn Wall Beckijo J. Wall

Eric Cederstam
71022 Frontage Road

Eric R. Cederstam

Kelly and Connie Guentert
71084 Frontage Road

*Connie Guentert
Kelly Guentert*

Kerry Johnson
71072 Frontage Road

Kerry Johnson by poa Karin Nix

Karin Nix
71220 Frontage Road

Karin Nix

Bill Smergut
70998 Frontage Road

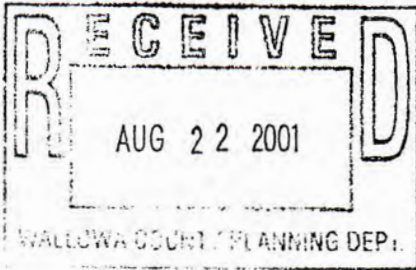
Bill Smergut

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EXHIBIT B. DOLLAR GENERAL SITE DEVELOPMENT TIMELINE

2019	Property Listed for Sale
2020-October	Large “For Sale – Commercial Industrial” Sign installed
2022-October 17	Property went under contract with Dollar General
2022-November 10	KM Engineering Crew completed Lot Line Adjustment Survey & Monumented w/ 5/8” x 24” high rebar with green plastic caps.
2022-December	Large Excavator/Geotech field work - Test Pits
2023-March	Excavator Dug Multiple Test Pits for Septic
2023-March 6	Lot Line Adjustment approved
2023-March 20	Notice Sent to City of Wallowa
2023-April	DEQ on site inspecting Septic
2023-April	Zone Permit Issued
2023-Early June	Well Drilled – Well drilling Rig
2023-October 17	Ownership conveyed to Dollar General
2023-October 26	Commercial Structural Building Permit Issued
2023-October 26	Heavy Equipment -Site excavation for septic and foundations
2023-November 1	Record Request of Zone Permit requested by Sweyn Wall
2023-November 13	Appeal Zone Permit letter hand-delivered to Planning Department
2023-November 13	Record Request of Lot Line Adjustment requested by Sweyn Wall
2023-November 20	Appeal Lot Line Adjustment letter hand-delivered to Planning Department

EXHIBIT C: WALLOWA URBAN GROWTH
BOUNDARY AGREEMENT



WALLOWA COUNTY ORDINANCE NO. 2061-004
CITY OF WALLOWA ORDINANCE NO. 332-01

A JOINT ORDINANCE PROVIDING FOR AN AGREEMENT BETWEEN THE CITY OF WALLOWA AND THE COUNTY OF WALLOWA PERTAINING TO THE LAND USE AND DEVELOPMENT REGULATIONS TO BE APPLIED TO THE UNINCORPORATED LANDS WITHIN THE CITY OF WALLOWA URBAN GROWTH AREA.

THE COUNTY BOARD OF COMMISSIONERS OF WALLOWA COUNTY AND THE CITY COUNCIL OF THE CITY OF WALLOWA ORDAIN AS FOLLOWS:

ARTICLE 1

INTRODUCTORY PROVISIONS

Section 1.010 Title This ordinance shall be known as the "City of Wallowa Urban Growth Boundary Agreement."

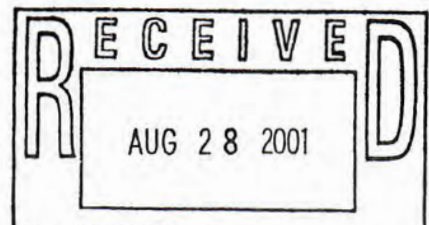
Section 1.020 Purpose. The purpose of the Ordinance is to establish a cooperative agreement between the County of Wallowa and the City of Wallowa in the adoption and administration of the City's Urban Growth Boundary and Urban Growth Area. More specifically, this Ordinance shall establish the Urban Growth Boundary for the City of Wallowa in agreement with the County; shall provide for use provisions and land development standards to guide growth in unincorporated lands within the Urban Growth Boundary; shall specify the means whereby the unincorporated areas within the Urban Growth Boundary may be annexed and the mechanisms for amending this Ordinance; and, shall provide other administrative provisions deemed necessary.

Section 1.030 Definitions. As used in this Ordinance, unless the context shall otherwise require, the singular shall include the plural and the masculine shall include the feminine and neuter. The following words and phrases shall mean:

ADVERSELY A party's use and enjoyment will be negatively
AFFECTED impacted by a land use decision due to identified
consequences from the proposed use or development.

ANNEXATION: An action commenced by a city through a public
hearing, the intent of which is to incorporate
additional land into the legal boundaries of
the city.

CITY: The City of Wallowa, Oregon



CITY OF
WALLOWA
LAND USE PLAN: The fundamental land planning document for the City of Wallowa. It is adopted, revised and amended by the City Council.

COMMISSION: The Wallowa County Planning Commission

COUNTY
COMPREHENSIVE
LAND USE PLAN: The fundamental planning document for Wallowa County. It is adopted, revised, and amended by the County Commissioners. The County Comprehensive Land Use Plan includes maps delineating the City of Wallowa Urban Growth Boundary and Area.

COUNTY: The County of Wallowa, Oregon

COUNTY
COMMISSIONERS: The duly elected governing body of the County

DIRECTOR: The Planning Director for Wallowa County

WALLOWA
TRANSPORTATION
SYSTEM PLAN: A document that guides the management of existing transportation facilities and the design and implementation of future facilities. The Transportation System Plan constitutes the transportation element of the City of Wallowa Land Use Plan.

LAND USE
ACTION: A specific use or development of land or structures thereon that is subject to the applicable County or City land Use Plan and implementing ordinances.

PARTIES WITH
STANDING: A person or organization which:

1. Participates in the hearing or review either orally or in writing; and
2. Either:
 - A. Was entitled to notice of the application prior to the hearing review; or
 - B. Would be adversely affected by final action of the review authority or hearing body.

PERMIT: As used herein, permit shall mean the approval of a proposed land use action including but not limited to, lot line adjustments, major and minor partitions,

	subdivisions, zone changes, conditional uses, variances and zone permits.
PERMIT APPLICATION:	A proposed land use or development action including, but not limited to, lot line adjustments, major and minor partitions, subdivisions, zone changes, conditional uses, variances and zone permits.
PUBLIC FACILITIES AND SERVICES:	Projects, activities, and facilities which the planning agency determine to be necessary for the public health, safety and welfare.
URBAN GROWTH AREA (UGA):	Those unincorporated lands within the acknowledged City of Wallowa Urban Growth Boundary which are necessary to provide for growth and development of the City during the planning period as recorded in the Wallowa County Comprehensive Land Use Plan and associated maps.
URBAN GROWTH BOUNDARY (UGB):	A line encompassing the incorporated and unincorporated lands needed to support the growth and development of the City of Wallowa during the planning period as recorded in the <u>Wallowa County Comprehensive Land Use Plan</u> and associated maps.
WALLOWA COUNTY TRANSPORTATION SYSTEM PLAN:	A document that guides the management of existing transportation facilities and the design and implementation of future transportation facilities. <u>The Wallowa County Transportation System Plan</u> constitutes the transportation element of the <u>Wallowa County Comprehensive Land Use Plan</u> .

Section 1.040 UGB Plan Map and Relationship to Comprehensive Plans, Zoning, and Land Division and Development Ordinances.

- (1) The County hereby accepts and adopts the official UGB Plan Map of the City of Wallowa as the Urban Growth Area Map and definition of the Urban Growth Boundary of the City of Wallowa. The UGB Map shall specify the Land Use Designations as defined in the City Plan, applicable to the lands within the Urban Growth Boundary, including the unincorporated areas.

- (2) The County adopts the City of Wallowa Urban Growth Boundary as shown on the City Land Use Plan Map;
- (3) The County affirms its 1983 adoption of the Land Use Plan designations and City Zone Classifications for the UGA, as set forth in the City Land Use Plan.

ARTICLE 2

SUBSTANTIVE PROVISIONS

Section 2.010 Urban Growth Boundary Administration. The City of Wallowa shall administer all lands within the corporate limits. The County, through its designated officials, shall retain the responsibility for administration of all unincorporated lands within the Urban Growth Boundary. The County's administrative responsibility shall cease immediately upon annexation by the City.

Section 2.020 Land Use Designations and Zones. Three Urban Growth Areas are mapped in the City UGB Plan Map and designated and zoned AA-Commercial/Industrial, BB-"Residential" and, CC-"UGB Residential", and the County has adopted these designations and the City zones for administration prior to annexation (per 1983 urban growth management agreement). Upon annexation, the City zones, as described below and set forth in the City UGB Plan Map, shall also apply:

Area AA: All unincorporated Urban Growth Boundary Lands to the north of the City limits and formerly the Bate's Mill site, as well as two smaller parcels historically utilized as commercial-industrial sites, are zoned COMMERCIAL-INDUSTRIAL (C-I) as defined in the City of Wallowa Zoning Ordinance.

AREA BB: All unincorporated Urban Growth Boundary lands to the east of the City limits are zoned RESIDENTIAL (R) as defined in the City of Wallowa Zoning Ordinance.

AREA CC: All unincorporated portions of the Urban Growth Boundary lying west of the City limits and within the Evergreen Sewer and Water District, as well as certain specified parcels adjacent to the District, are zoned UGB-RESIDENTIAL (UGB-R) as defined in the City of Wallowa Zoning Ordinance.

Until annexation occurs, growth and development shall be governed by the provisions of Section 2.030.

Section 2.030 Use Regulations. Within the Urban Growth Areas designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situated within the corporate limits of the City and within the designated zone.

ARTICLE 3

ADMINISTRATIVE PROVISIONS

Section 3.010 Land Use Actions. All permit applications made prior to annexation shall be processed as follows:

(1) All permit applications concerning lands within the Urban Growth Area shall be filed with the County. The Director and responsible City Staff shall confer to determine the application criteria and forms to be used, appropriate City and County ordinance criteria to be applied, the review process to be followed, and what application fees shall be paid and to whom. The Director shall then inform the applicant of the criteria for a complete application and forms to be filed, criteria to be applied by the review authority, the review process and deadlines to be followed, and application fees to be paid. Upon receipt of the application, the Director will consult with the responsible City staff prior to rendering a final decision on the completeness of the application.

(2) The application shall be referred by the Director to the City within three (3) working days after a complete application has been filed with the County Planning Department.

(3) The City shall review the permit application and, if it deems necessary, shall respond with its recommendation prior to the date set by the Commission for the public hearing to consider the request or the date set by the Director as the last day for comment on a decision on the application. The date set by the Commission or the Director shall not preclude the City from providing the City Council adequate time to review the application at a regularly scheduled meeting.

(4) In the event no response or recommendation is received from the City within forty-five (45) days from the date the application is submitted to the City by the County, the County shall conclude the City has no objections and shall proceed to take the necessary review steps as required by the appropriate County ordinance.

(5) The County shall retain final decision-making authority in reviewing all permit applications.

(6) The decision of the County shall be provided in writing to all parties to the review, including the City, and shall specify the criteria considered, the findings of fact and the final decision of the review body. Said notice shall be mailed within five (5) working days of the decision.

Section 3.020 Public Facilities and Services.

(1) Before annexation, no City streets, water or sewer services will be extended to unincorporated areas within the Urban Growth Boundary, except for existing contractual obligations with Evergreen District and other existing contractual obligations.

(2) The cost of extension or improvement of public facilities, services, sewer, water, and streets, required as a condition of permit approval, shall be borne by the developer, unless the City or County agrees to bear all or a portion of the costs thereof.

(3) The City provides fire coverage for lands within the City limits and will provide fire coverage to lands within the Urban Growth Area through the City of Wallowa Fire Department and Rural Fire District.

Section 3.030 Roads within the Urban Growth Area.

(1) Creation of new streets or improvements of existing streets or existing rights-of-way within the Urban Growth Area shall conform to the City's existing street pattern, City of Wallowa Transportation System Plan specifications, and existing city fire protection road standards.

(2) Road maintenance shall be the responsibility of the County, if, and only if, the road or street is formally accepted by the County into the County road maintenance system pursuant to the provisions of applicable County ordinance and state statutes.

(3) The City shall accept no responsibility for roads or streets of lands within the Urban Growth Area. Annexation of lands served by the roads or streets is required prior to City adoption of roads or

streets into City road system.

(4) In the event an area within the UGA is annexed into the City and contains an existing dedicated street which does not meet City standards, the City may:

- a.) Decline to accept the street system unless the owners bring the street to City Standards.
- b.) Require the applicant for a permit (which would access through said street), to improve the street to City standards as a condition of the permit.

Section 3.040 Annexations.

(1) Only lands within the recognized Urban Growth Boundary shall be subject to annexation. When preparing to review a request for annexation the City shall, in addition to following the procedures of its Charter and Oregon Revised Statutes, allow for the following:

- (a) Notice to the County at the same time as notice to the property owners.
- (b) Notice to property owners in accordance with Oregon State annexation statutes.
- (c) Adequate public notice including notice in the official County newspaper.

(2) In the event any portion of the Urban Growth Area is annexed to the City, the City zoning classification shall be that which is specified in Section 2.020 and in the City UGB Plan Map. In the event of annexation, this agreement shall not restrict the City from later rezoning any property so annexed so long as said action is consistent with the City's Land Use Plan and the laws of the State of Oregon.

Section 3.050 Amendments to Urban Growth Boundary.

(1) Amendments to the City Urban Growth Boundary may be initiated by the City, the County or an affected property owner. The City, in reviewing any proposed amendments to the Growth Boundary, shall consider whether or not it will be practical in the future to provide public facilities and services in a manner consistent with this Ordinance. All amendments to the Growth Boundary shall be consistent

with the criteria of Goal 14 of the Statewide Goals and Guidelines as well as all other applicable Goals, Rules, Plans, and Ordinances.

(2) County review of proposed amendments to the Growth Boundary shall be as prescribed in the County Ordinance for amending the Wallowa County Land Use Map and shall be processed in the manner set forth in Section 3.010(2) of this Ordinance.

(3) No amendment to the Urban Growth Boundary shall occur without the approval of both the City and the County.

Section 3.060 Amendments to Ordinance Text

(1) Amendments to the text of this Ordinance may be initiated by the City, County or affected citizen. Amendments to the text shall be reviewed in the manner prescribed in the County Ordinance for amending the text of the Wallowa County Zoning Ordinance. Text amendments affecting Section 2.020 shall be processed in the manner prescribed below in Section 3.060.

(2) County review of proposed text amendments shall be as prescribed in the applicable County ordinance relating to the Zoning Ordinance and shall be processed in the manner set forth in Section 3.010 of this Ordinance.

(3) Final decision regarding a proposed amendment to the text of this Ordinance shall rest with the County, however, the County shall not approve a text amendment without the prior written approval of the City.

Section 3.070 Land Use Plan and Zone Classification Changes

(1) Application for changes in land use plan designations and zone classifications delineated in Section 2.020 of this Ordinance shall be initiated with the City and shall be initially processed by the City in accordance with provisions of the City Ordinance. The County shall consider an amendment to the provisions of Section 2.020 and referenced maps only upon completion of City action and upon receipt of a written recommendation from the City. The County shall not have the authority to initiate any change to the land use plan designations or zone classifications prescribed by Section 2.020 of this Ordinance.

(2) Changes to land use plan designations and zone classifications prescribed by Section 2.020 of this Ordinance shall be processed by the County in the manner of a text amendment and in accordance with Section 3.060. Final decisions regarding proposed amendment to Section 2.020 of this Ordinance shall rest with the County. The County shall not approve an amendment to Section 2.020 without prior written approval from the City.

Section 3.080 **Appeals.** Any person or party adversely affected or aggrieved, including the City, shall have standing to appeal a decision or ruling of the County. In so doing, the appellant shall follow the procedures set forth in the Wallowa County Zoning Ordinance. The decisions of the County shall be final unless otherwise reviewed under applicable state statutes.

Section 3.090 **Enforcement.** Enforcement of land use regulations specified by this Ordinance and related to unincorporated areas of Urban Growth Boundary shall be the responsibility of the County. Violations of land use regulations shall be prosecuted pursuant to the provisions of the Wallowa County Ordinances.

Section 3.100 **Fees.** All applications submitted pursuant to the requirements of this Ordinance shall be accompanied by the appropriate fee set by the County.

Section 3.110 **Repeal.** All ordinances or parts of ordinances and all previous resolutions related to agreements between the City and County regarding the City Urban Growth Boundary and Area are herewith repealed upon the effective date of this Ordinance.

Section 3.120 **Severability.** The provisions of this Ordinance are severable. If any section, sentence, clause or phrase of this Ordinance is adjudged by a court of competent jurisdiction to be invalid, said decision shall not impair or affect the validity of the remaining portion of this Ordinance.

Section 3.130 **Emergency Clause.** It is the legislative intent of this Ordinance that it take effect immediately upon the authorizing

Adopted
~~Draft~~ for Wallowa - 6/20/01*

signatures of the respective County and City officials.

Section 3.140 Intergovernmental Cooperation and Ordinance Enactment.
As enabled by ORS 190.010, the following signatures bind all parties of interest to this Ordinance.

APPROVED this 14 day of August, 2001
[Signature] [Signature]
City Recorder Mayor

ENACTED By Wallowa County this 16 day of July, 2001

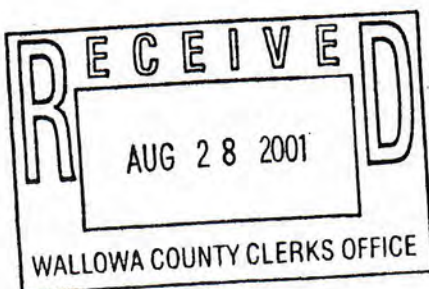
For the Wallowa County Board of Commissioners:

CHAIRMAN, WALLOWA COUNTY BOARD OF COMMISSIONERS

[Signature]
COMMISSIONER

[Signature]
COMMISSIONER

* C:\DATA\wp\UGMA WALLOWA MAY 16, 2001 DRAFT modified 6/20/01
and adopted in that form 7/16/01. File name 5/16/01 is
final version as adopted. withdrawn 7/16/01.

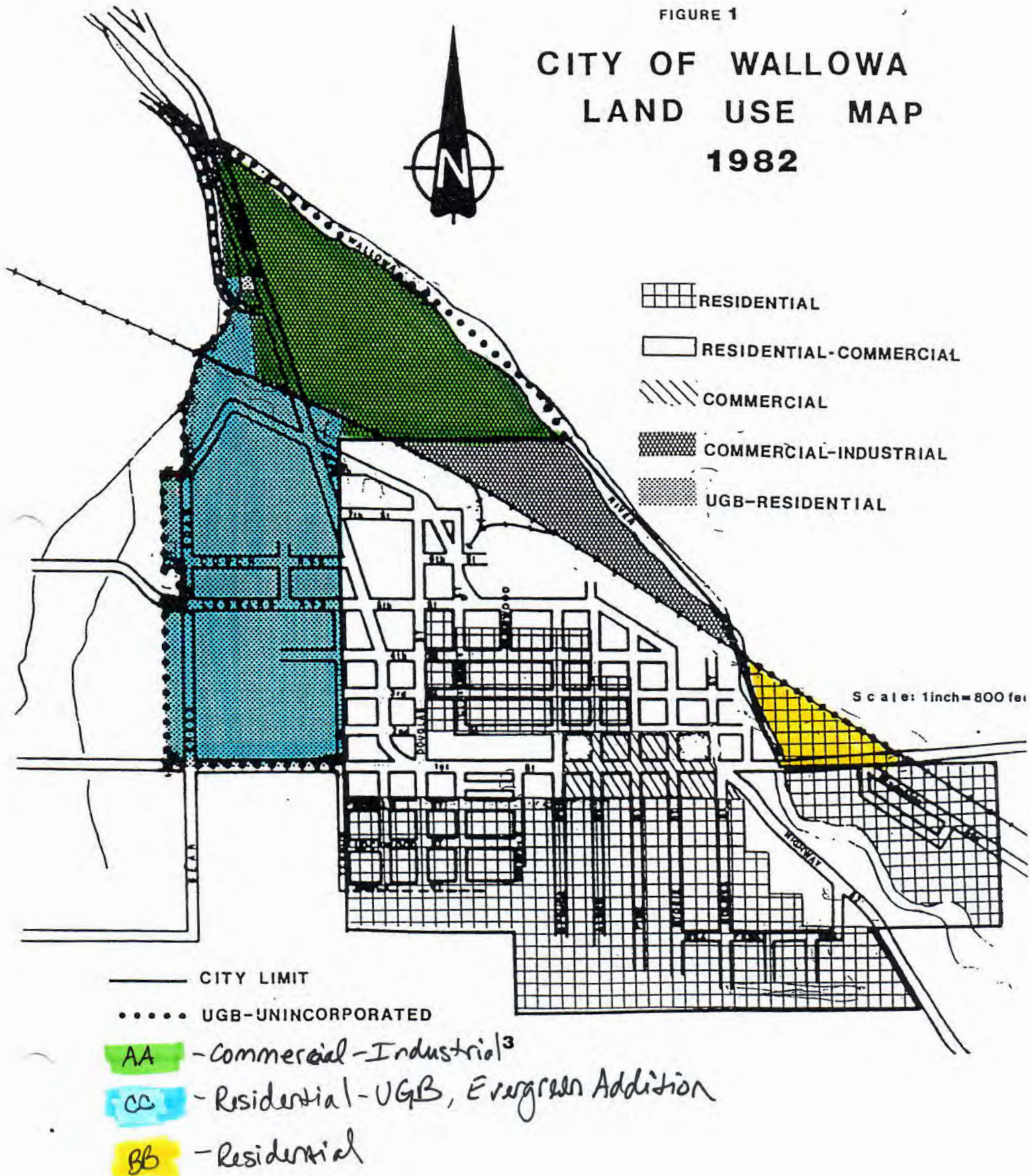


10

STATE OF OREGON
COUNTY OF WALLOWA
I certify that this instrument was
received and recorded in the book
of records of said county.
CHARLOTTE MCIVER
Wallowa County Clerk
by: [Signature]
County Clerk/Deputy
Commissioner Records
August 28, 2001 Ordinance
2001-004 County Agreement
2001-332 City of Wallowa

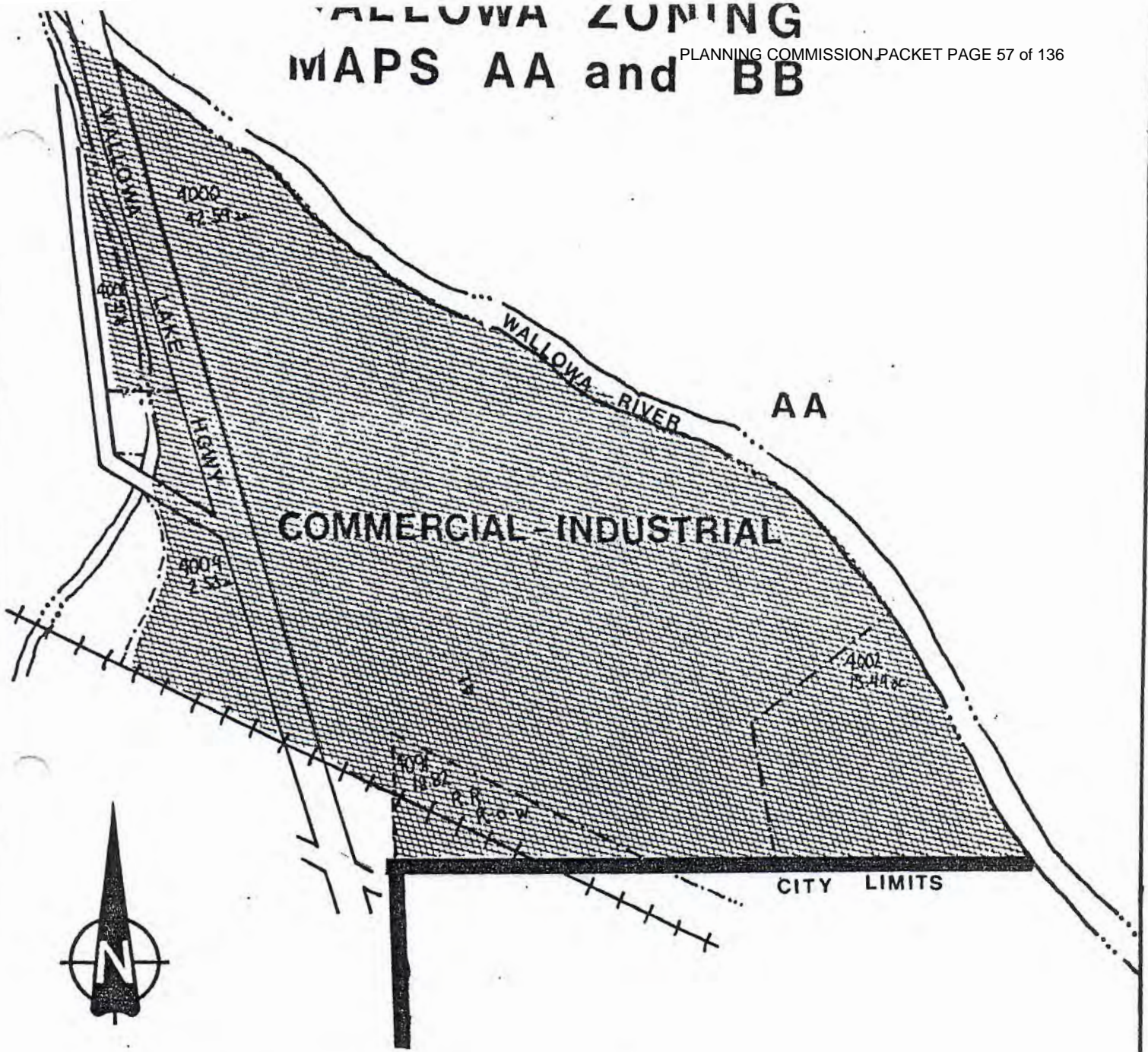
FIGURE 1

CITY OF WALLOWA LAND USE MAP 1982

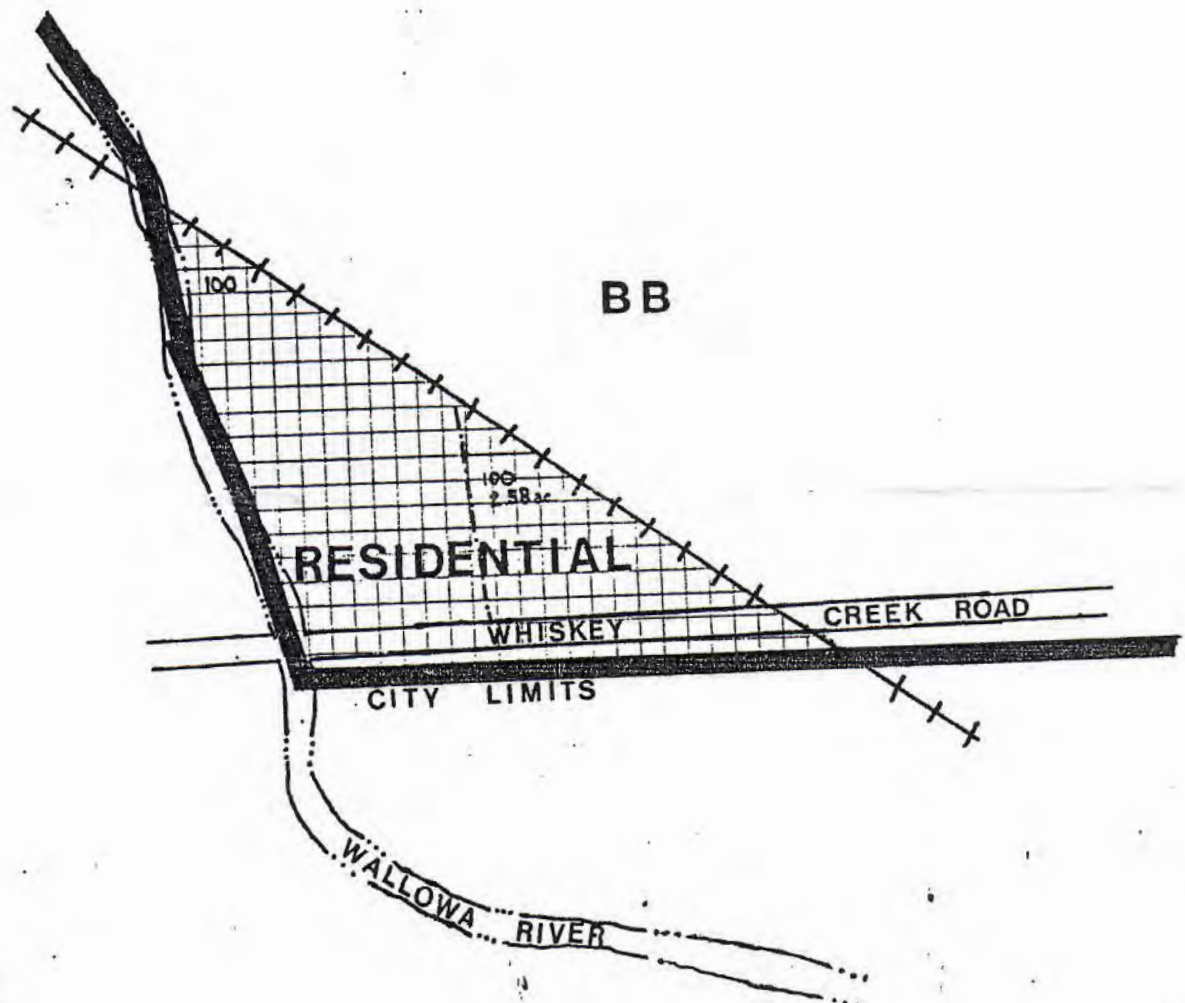


WALLOWA ZONING MAPS AA and BB

PLANNING COMMISSION PACKET PAGE 57 of 136



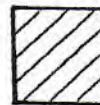
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ZONING MAP CC



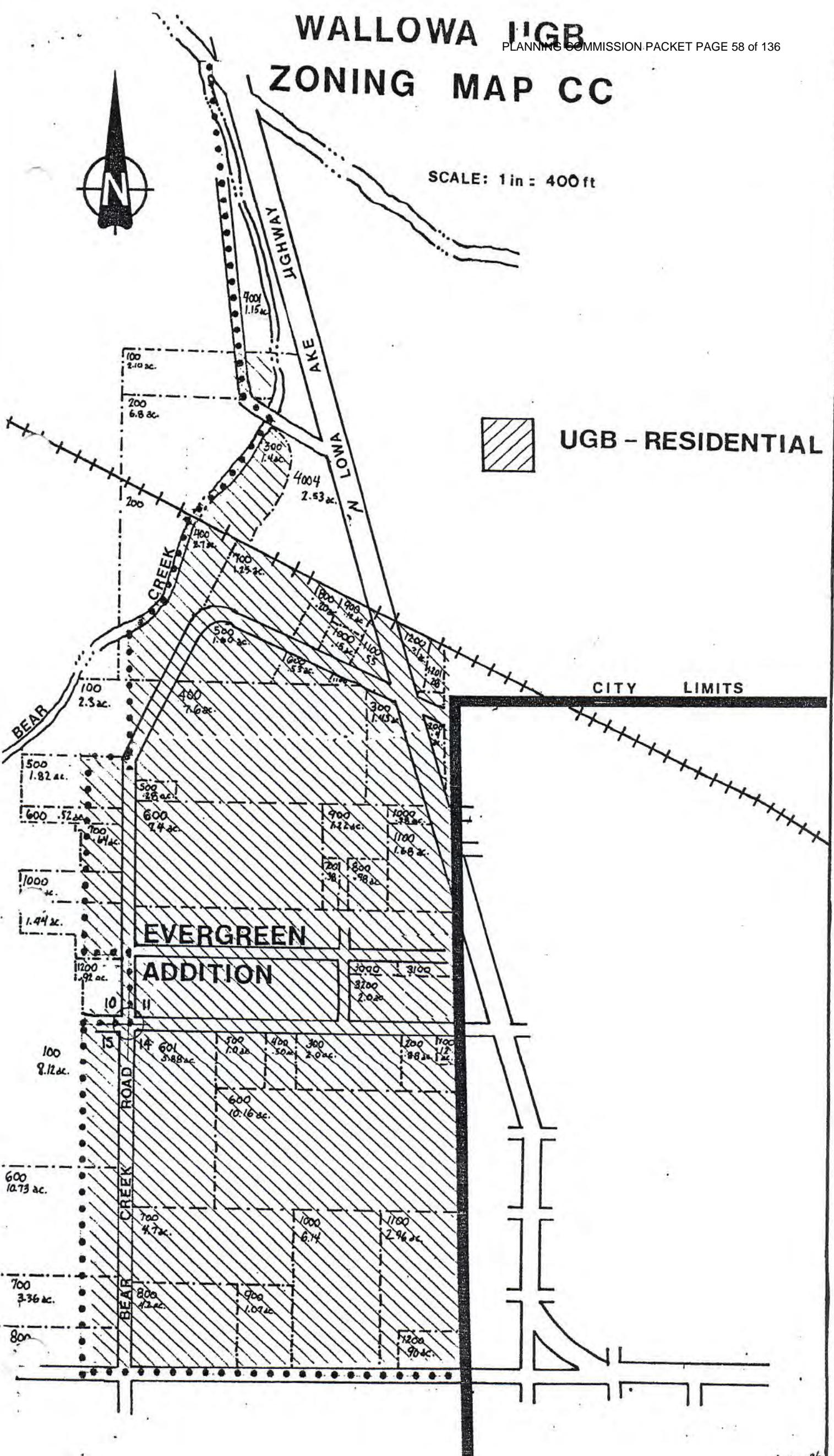
SCALE: 1 in = 400 ft



UGB - RESIDENTIAL

CITY LIMITS

EVERGREEN
ADDITION





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

PERMIT#:	<u>2P#23-13</u>
E-PERMIT#:	<u>903.23.000102.PLNG</u>
DATE FILED:	<u>3.20.2023</u>
TOTAL FEE:	<u>\$400</u>
CHECK #:	<u>00 131877073</u>

ZONE PERMIT APPLICATION

LEGAL OWNER:	<u>John J. Burns and Donna D. Duby</u>	
APPLICANT:	<u>KM Engineering, LLP.</u>	REF#: <u>5130</u>
PROJECT ADDRESS:	<u>902 W Hwy 82, Wallowa County</u>	TWP: <u>1N</u>
MAILING ADDRESS:	<u>5725 N Discovery Way, Boise Idaho 83713</u>	RANGE: <u>42E</u>
APPLICANT PHONE NUMBER:	<u>208.639.6939</u>	SECTION: <u>11</u>
APPLICANT E-MAIL:	<u>shopkins@kmengllp.com</u>	TAX LOT: <u>1300</u>
CONTACT/ PHONE NUMBER (if different):	_____	ACRES: <u>2.53</u>
CONTACT/ EMAIL (if different):	_____	ZONE: <u>OT M-1</u>
PROJECT DESCRIPTION:	<u>Zone permit for future retail store</u>	<u>Wallowa UGA</u>

TO BE PROCESSED, YOUR APPLICATION MUST INCLUDE MAPS SHOWING:

1. PROPERTY LINES, ACCESS, AND EASEMENTS
2. EXISTING AND PROPOSED STRUCTURES WITH SETBACKS TO PROPERTY LINES
3. ANY LIVE WATER, SEPTIC SYSTEM, SURFACE WATER (RIVER, PONDS, DITCHES, ETC), AND DOMESTIC WATER

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

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

Stephanie Hopkins March 16, 2023
 APPLICANT DATE

COUNTY USE ONLY

ACTION Planning Department: ☒ Approved: ☒
TAKEN: Planning Commission: _____ Denied: _____

Conditions of Approval: _____

PERMIT AUTHORIZATION: [Signature]

DATE OF ACTION 3/30/2023

DATE OF EXPIRATION 3/30/2027

jjancaitis@co.wallowa.or.us

From: jjancaitis@co.wallowa.or.us
Sent: Tuesday, March 21, 2023 10:59 AM
To: 'wallowa@eoni.com'; Ken Hall; 'SHobbs@co.wallowa.or.us'
Subject: ZONE PERMIT REVIEW REQUEST
Attachments: ZP#23-13__DUBY-BURNS.pdf

Hello,

We received the attached application for a Dollar General store in the M-1 zone of the City of Wallowa Urban Growth Area. Please let me know if you have any comments or questions by March 30, 2023.

Thank you,
Jean

Jean Jancaitis, PLANNING DEPARTMENT SPECIALIST
Phone: 541-426-4543 ext. 1170
Email: jjancaitis@co.wallowa.or.us
Website: co.wallowa.or.us

Wallowa County Planning Department
101 South River Street, Room 105
Enterprise, Oregon 97828
My Hours: Monday through Thursday, 8:30 am – 5:00 pm
Office Hours: Monday through Thursday, 7:00 am – 5:00 pm

PUBLIC RECORDS LAW DISCLOSURE

This e-mail is a public record of Wallowa County and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

PRELIMINARY SITE PLAN

902 W. HIGHWAY 82
WALLOWA, OREGON

PROTOTYPE:	D	DEVELOPER	DESIGNER
BLGD. S.F.:	10,640	COMPANY: CAPITAL GROWTH BUCHALTER, INC.	COMPANY: CAPITAL GROWTH BUCHALTER, INC.
SALES S.F.:	8,513	NAME: MARK BUSH	NAME: KIRK FARRELLY
ACREAGE:	±2.46	PHONE: (205) 263-4584	PHONE: (205) 263-4589

SITE SUMMARY

ZONING

EXISTING: COMM-IND
 PROPOSED: COMM-IND
 REZONING REQ: Y OR **N**

BUILDING SETBACKS

FRONT: 0'
 REAR: 5'
 INTERIOR SIDE: 5'
 STREET SIDE: 0'

LOT AREA

REQUIRED: NONE
 PROVIDED: ±107,374

LANDSCAPE SETBACKS

FRONT: 0'
 REAR: 0'
 STREET SIDE: 0'

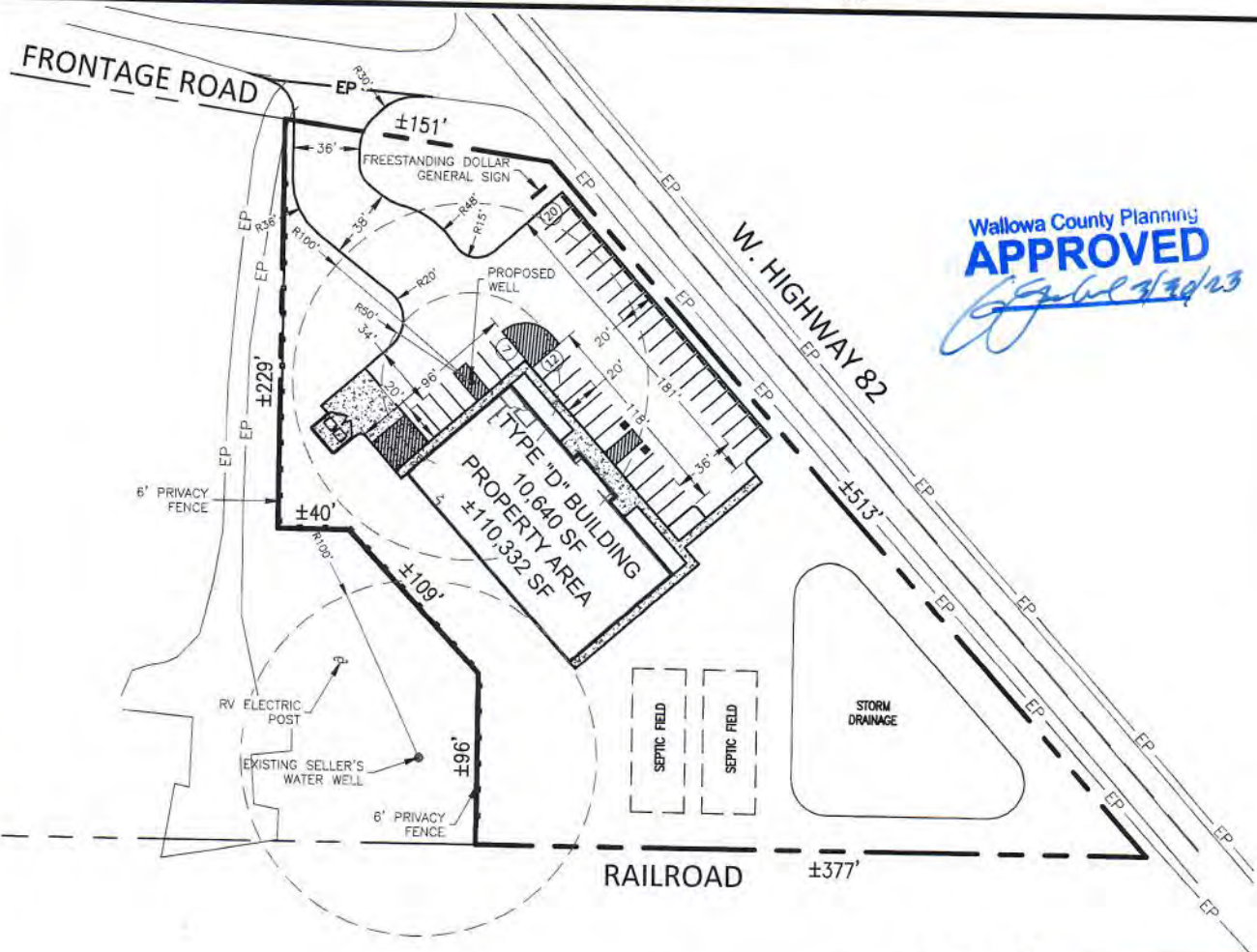
PARKING

REQUIRED: 0
 PROVIDED: 39

UTILITY

WATER: WELL
 SEWER: SEPTIC
 ELECTRIC: PACIFIC POWER
 PHONE: ZIPLY
 NATURAL GAS: T.B.D.

FRONTAGE ROAD



Wallowa County Planning
APPROVED
[Signature] 3/23/23



Plan Scale



DATE: 10/26/2022

PROJECT: 22-166

SHEET:
1 OF 3

DOLLAR GENERAL
 WALLOWA, OREGON

km
 ENGINEERING
 5725 NORTH DISCOVERY WAY
 BOISE, IDAHO 83713
 PHONE (208) 639-6939
 kmengllp.com



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

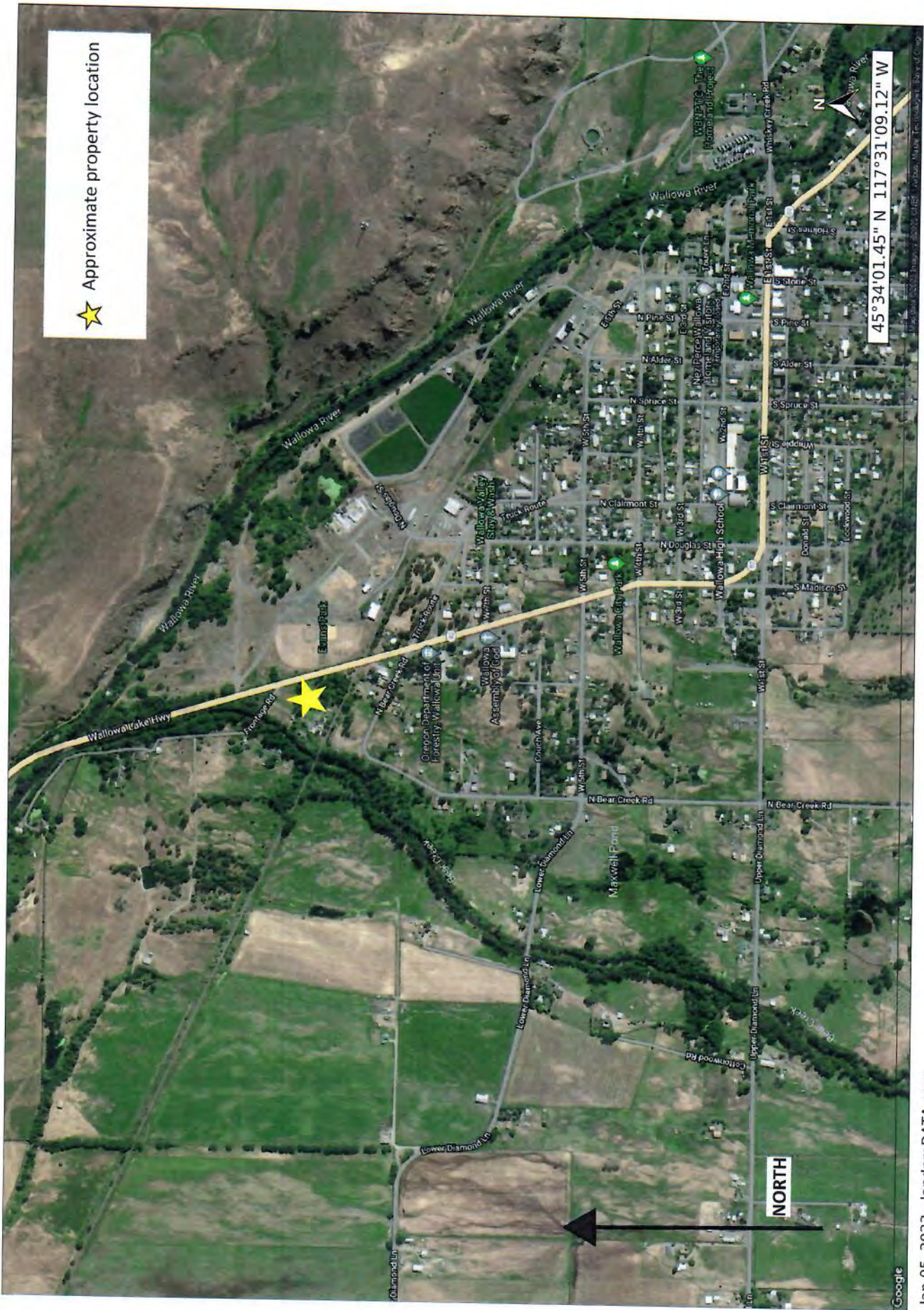
TIME LIMITS ON ZONE PERMITS

A Zone Use Permit shall expire four (4) years from the date of the final decision unless:

1. The applicant submits a written request to the Wallowa County Planning Department for a two-year extension prior to the expiration date of the permit; or
2. The permit is "perfected" by initiation of the approved use as evidenced by, in the case of new construction, completion of any two of the four substantial development actions:
 - a. A domestic water well (or connection to a permanent water system).
 - b. A septic system (or connection to a permanent sewer system).
 - c. Establishment of electric power to the residential site (or permanent alternative electric generations system adequate for the proposed use).
 - d. Construction of the foundation of the principal residence.
3. In the case of reconstruction, remodeling, alteration, or other approved uses, evidence similar to that required for new construction may be accepted by the Planning Department.
4. Validation of completion of substantial development action shall be accomplished by delivery of written evidence acceptable to the Wallowa County Planning Department that the approved action has been initiated and a finding by the department that the permit has been exercised and perfected.



Vicinity Map



Legend

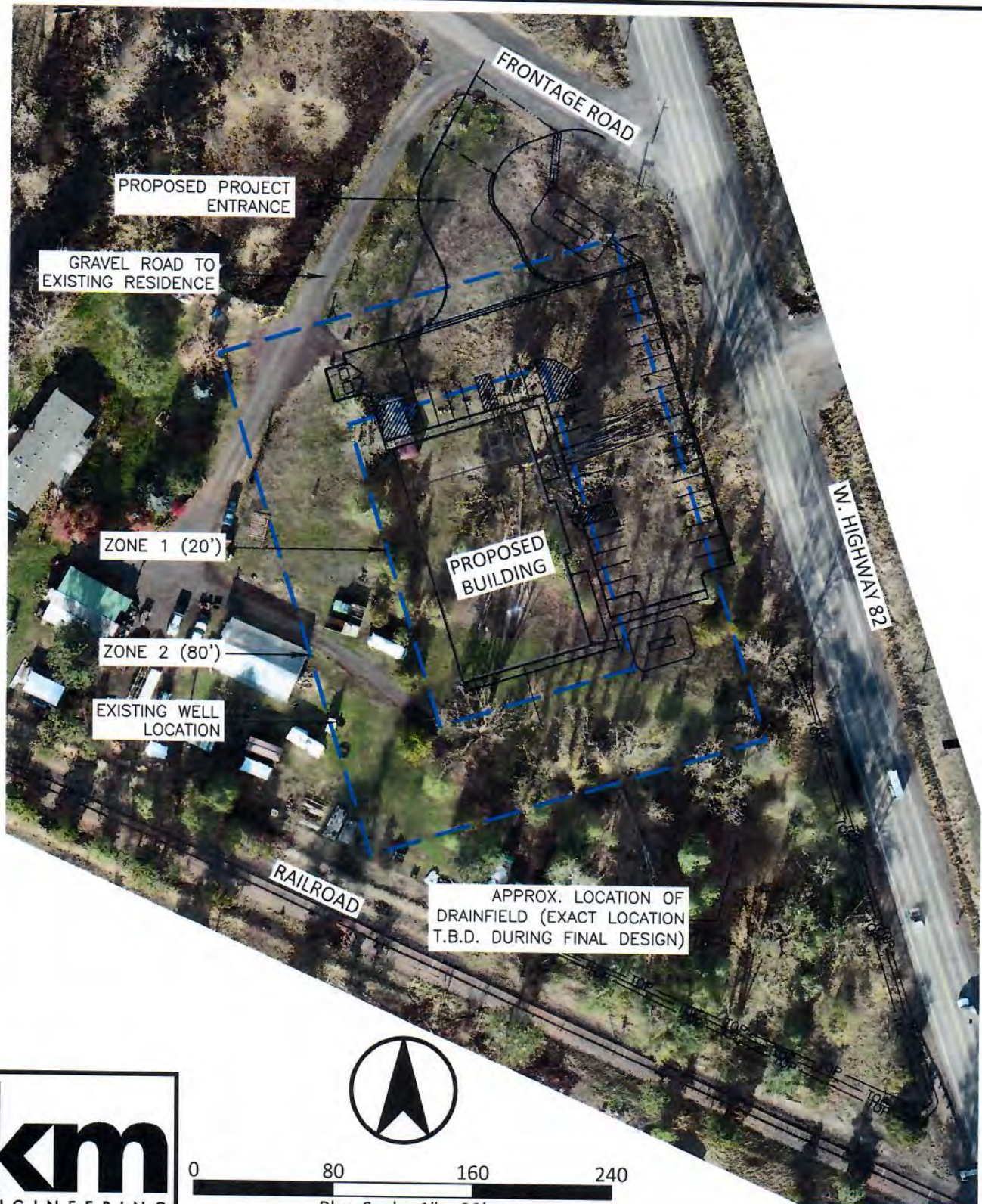


Untitled Map

Write a description for your map.

Google Earth





km
ENGINEERING
5725 NORTH DISCOVERY WAY
BOISE, IDAHO 83713
PHONE (208) 639-6939
kmengilp.com

DATE: 3/15/23

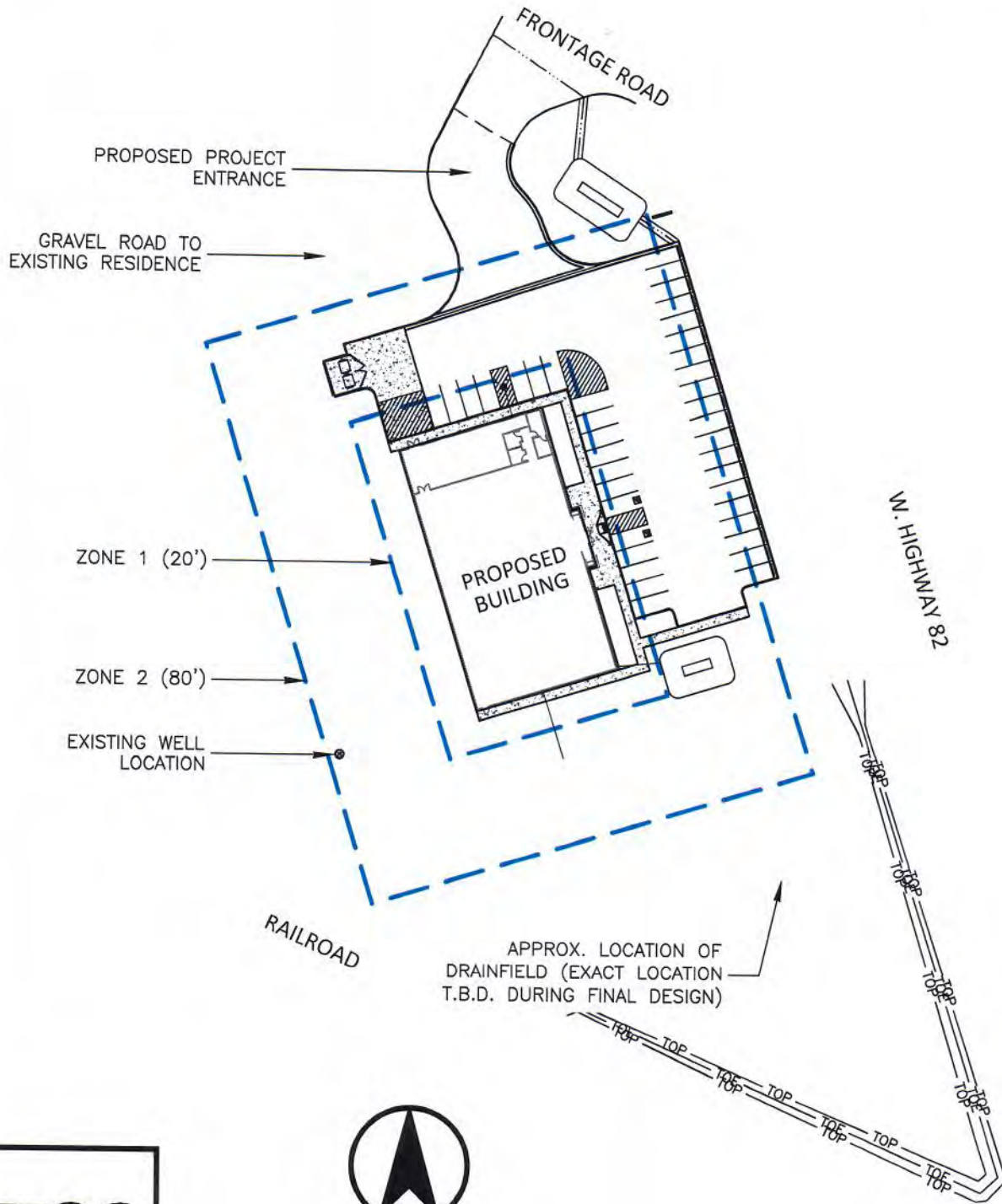
PROJECT: 22-166

SHEET:
EX1.0

DOLLAR GENERAL
WALLOWA, OREGON

FIRE SAFETY BUFFER EXHIBIT

P:\22-166\CAD\EXHIBITS\22-166 FIRE SAFETY BUFFER EXHIBIT.DWG, JOSHUA JANTZ, 3/15/2023, DWG TO PDF.PC3, 08.5X11 P [PDF]



Plan Scale: 1" = 80'



5725 NORTH DISCOVERY WAY
BOISE, IDAHO 83713
PHONE (208) 639-6939
kmengllp.com

DATE: 3/15/23

PROJECT: 22-166

SHEET:
EX1.0

DOLLAR GENERAL
WALLOWA, OREGON

FIRE SAFETY BUFFER EXHIBIT

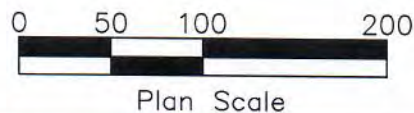
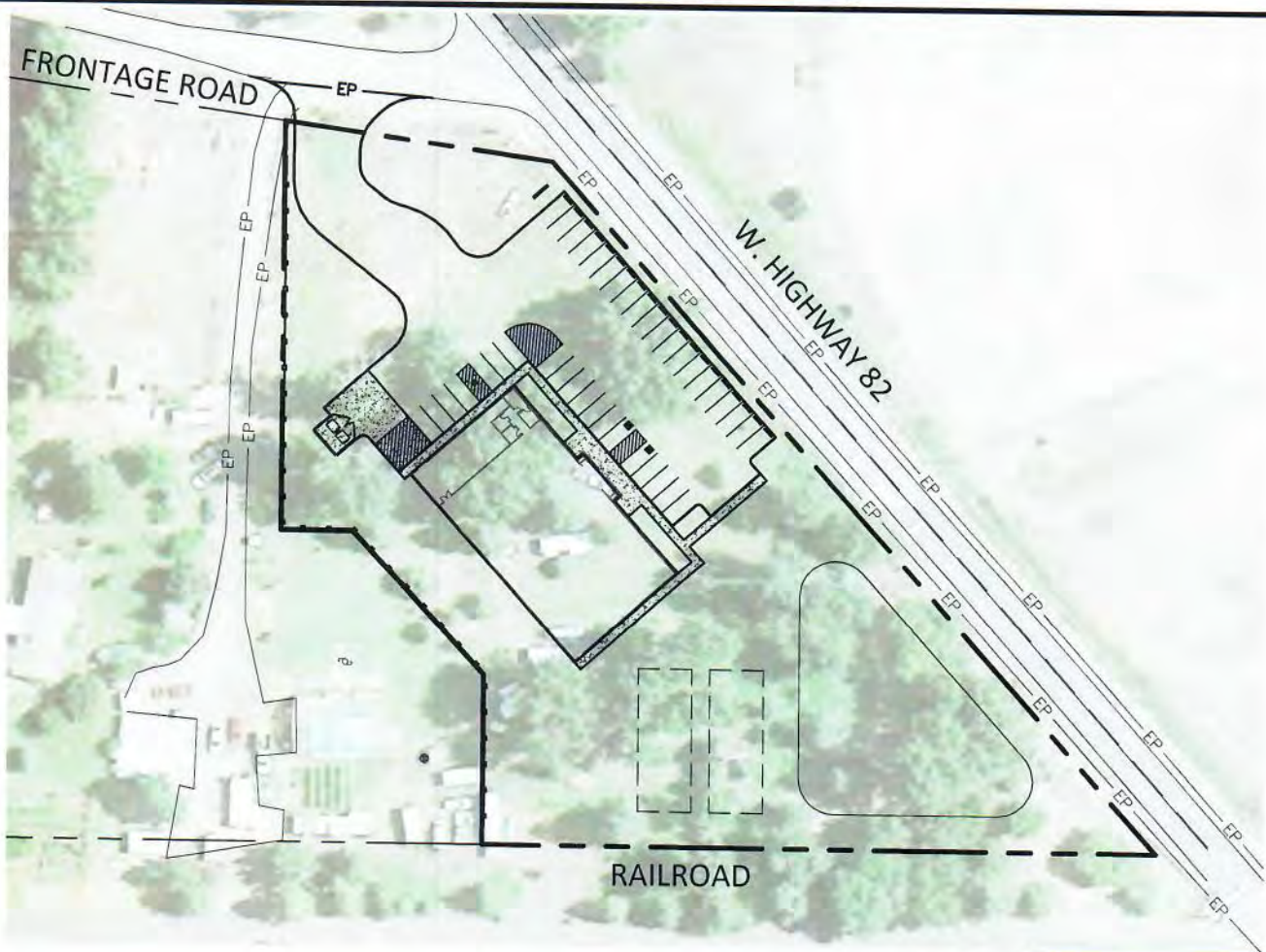
PRELIMINARY SITE PLAN

902 W. HIGHWAY 82
WALLOWA, OREGON

PROTOTYPE:	D	DEVELOPER	DESIGNER
BLGD. S.F.:	10,640	COMPANY: CAPITAL GROWTH BUCHALTER, INC.	COMPANY: CAPITAL GROWTH BUCHALTER, INC.
SALES S.F.:	8,513	NAME: MARK BUSH	NAME: KIRK FARRELLY
ACREAGE:	±2.46	PHONE: (205) 263-4584	PHONE: (205) 263-4589

SITE SUMMARY

ZONING	BUILDING SETBACKS	LANDSCAPE SETBACKS	UTILITY
EXISTING: COMM-IND	FRONT: 0'	FRONT: 0'	WATER: WELL
PROPOSED: COMM-IND	REAR: 5'	REAR: 0'	SEWER: SEPTIC
REZONING REQ: Y OR (N)	INTERIOR SIDE: 5'	STREET SIDE: 0'	ELECTRIC: PACIFIC POWER
	STREET SIDE: 0'		PHONE: ZIPLY
	LOT AREA	PARKING	NATURAL GAS: T.B.D.
	REQUIRED: NONE	REQUIRED: 0	
	PROVIDED: ±107,374	PROVIDED: 39	



DATE: 10/26/2022

PROJECT: 22-166

SHEET:
2 OF 3

DOLLAR GENERAL
WALLOWA, OREGON

km
ENGINEERING
5725 NORTH DISCOVERY WAY
BOISE, IDAHO 83713
PHONE (208) 639-6939
kmengllp.com

PRELIMINARY SITE PLAN

902 W. HIGHWAY 82
WALLOWA, OREGON

PROTOTYPE: D	DEVELOPER	DESIGNER
BLGD. S.F.: 10,640	COMPANY: CAPITAL GROWTH BUCHALTER, INC.	COMPANY: CAPITAL GROWTH BUCHALTER, INC.
SALES S.F.: 8,513	NAME: MARK BUSH	NAME: KIRK FARRELLY
ACREAGE: ±2.46	PHONE: (205) 263-4584	PHONE: (205) 263-4589

SITE SUMMARY

ZONING

EXISTING: COMM-IND
PROPOSED: COMM-IND
REZONING REQ: Y OR **(N)**

BUILDING SETBACKS

FRONT: 0'
REAR: 5'
INTERIOR SIDE: 5'
STREET SIDE: 0'

LOT AREA

REQUIRED: NONE
PROVIDED: ±107,374

LANDSCAPE SETBACKS

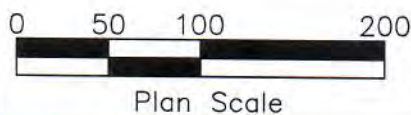
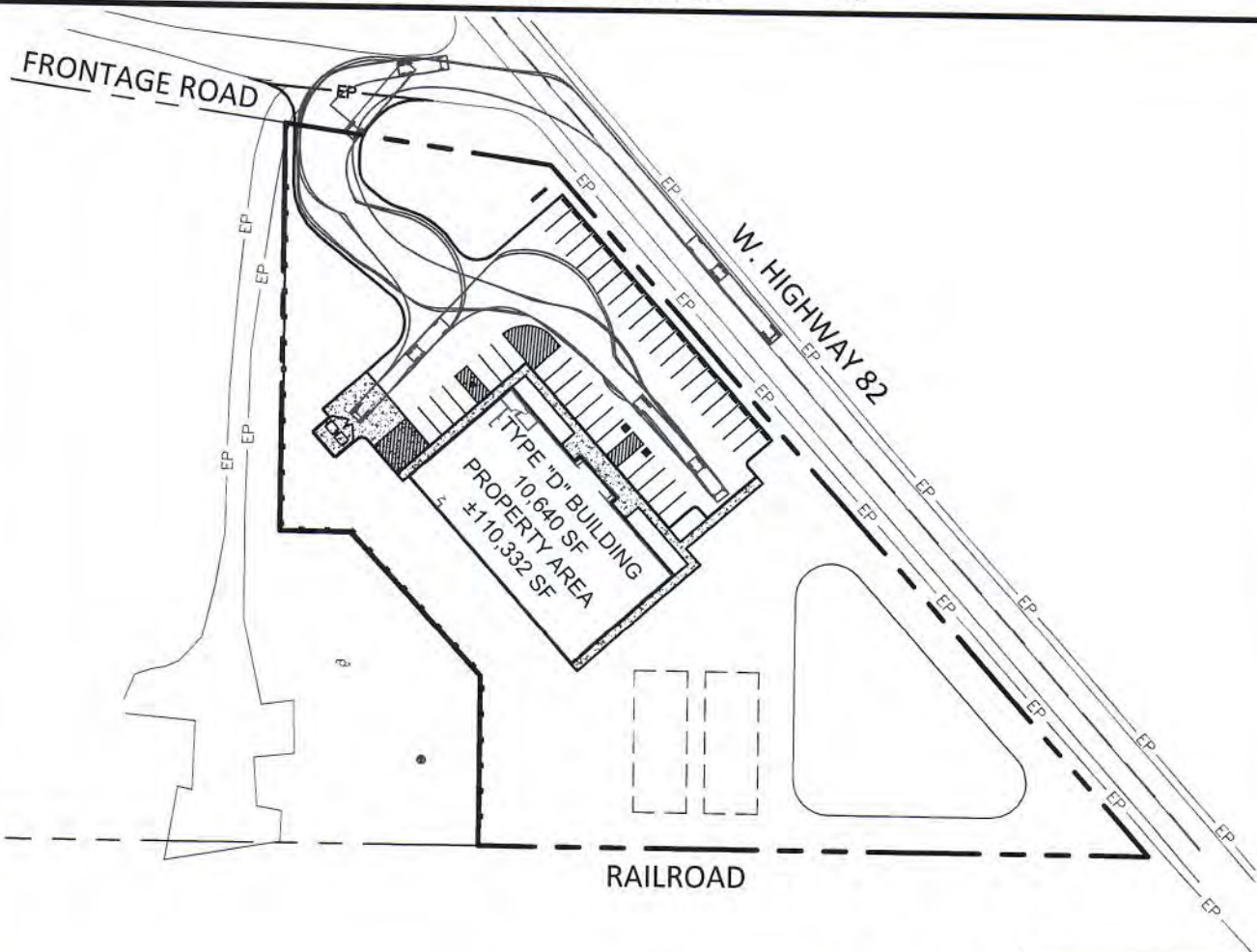
FRONT: 0'
REAR: 0'
STREET SIDE: 0'

PARKING

REQUIRED: 0
PROVIDED: 39

UTILITY

WATER: WELL
SEWER: SEPTIC
ELECTRIC: PACIFIC POWER
PHONE: ZIPLY
NATURAL GAS: T.B.D.



km
ENGINEERING
5725 NORTH DISCOVERY WAY
BOISE, IDAHO 83713
PHONE (208) 639-6939
kmenglp.com

DATE: 10/26/2022
PROJECT: 22-166
SHEET: 3 OF 3

DOLLAR GENERAL
WALLOWA, OREGON

HAZARD CHECKLIST

Project site location/conditions may affect the conditions of the permit. Outcome subject to GIS mapping. An elevation certificate may be required.



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

APPLICANT:

Property Owner: John J. Burns and Donna D. Duby

Project Applicant (if different): KM Engineering, LLP.

Project Address: 902 W Highway 82

City: Wallowa County

State: OR

Zip Code: 97885

Applicant Phone Number: 208.639.6939

Applicant E-Mail: shopkins@kmengllp.com

Zone: CI

Proposed Activity/ Development (Check One): New Construction ☒ Residential ☐ Non- Residential ☒

Other ☐

Risk Magnitude: Value of Existing Structure/s _____ Value of Proposed Improvement TBD

COUNTY USE ONLY:

Permit # 2P#23-13

Associated Ordinance Article

Condition/Location

Article 24 – Watershed Protection Area

• Watershed Protection Overlay: Yes ☐ No ☒

Article 25 – Floods, Wildfire, and Natural Hazards Area

• Wildfire Risk

1° Fuel Break = 20'
2° Fuel Break = +80'

	None	Level 1	Level 2
Zoning T/G or T/C	<u>No</u>	Yes	N/A
Communities at Risk	No	Extreme or High	Moderate or <u>Low</u>
WUI Zone	No	Extreme or High	Moderate or <u>Low</u>
Wildfire Occurrence Risk			

• Wetlands: Yes ☐ No ☒

• FEMA Floodplain: Yes ☐ (NOTIFY WATERMASTER) No ☒
If Yes (Circle and Describe): 500 Year or 100 Year

• Elevation Certificate Required: Yes ☐ No ☒

Article 29 – Airport Overlay Zone

• Airport Overlay: Yes ☐ No ☒

Article 36 – Salmon Habitat Restoration

• Natural Resource Advisory Council Review: Yes ☐ No ☒

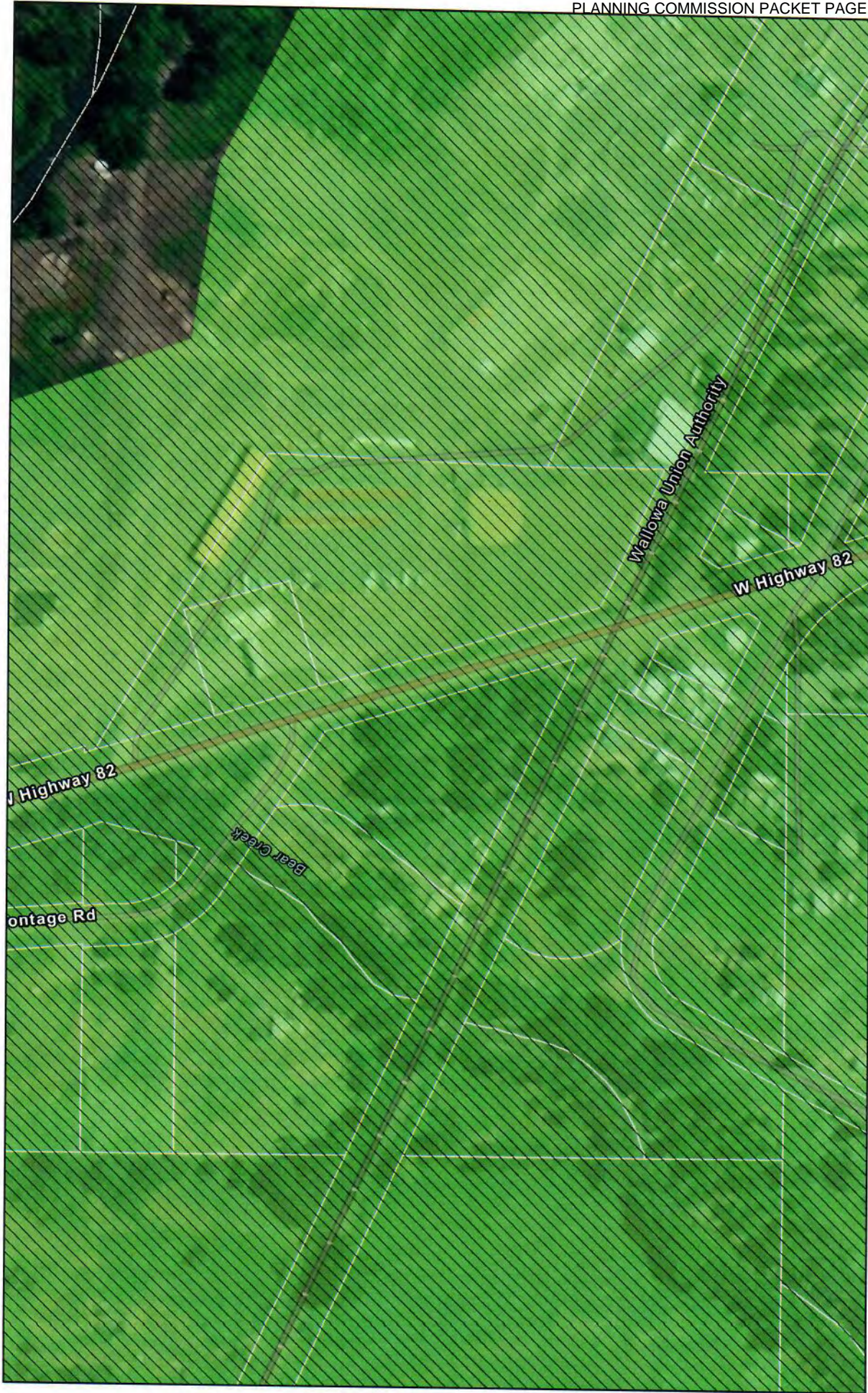
County Official Signature: _____

DUBY FLOODPLAIN & WETLANDS



- FEMA Floodway
 - County Boundary
 - County Streams
 - City Limits
 - Railroad
 - UGB
 - Taxlots
 - FEMA Floodplain USA Wetlands
 - County Streams
 - Riverine
 - X500
 - Palustrine
- Esri Community Maps Contributors, Oregon State Parks, State of Oregon
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Wallowa County
- This map is to be used strictly for information purposes only and should not be taken as expressing any authoritative assertions, opinions, and/or legal descriptions through any information presented.

DUBY CAR & WUI



March 21, 2023

Wallowa County

Taxlots Communities at Risk

Low

WUI Zone

1:4,514

0 0.03 0.05 0.1 mi

0 0.04 0.09 0.17 km

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Wallowa County
Copyright Wallowa County



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

FUEL BREAK STANDARDS

This guide outlines the fuel break standards set forth in Wallowa County Land Development Ordinance Article 25 – Flood, Wildfire, and Natural Hazards for development in Communities at Risk and in the Wildland-Urban Interface. This guide is for informational purposes only and is not to be considered a substitute for the language of state or local regulations.

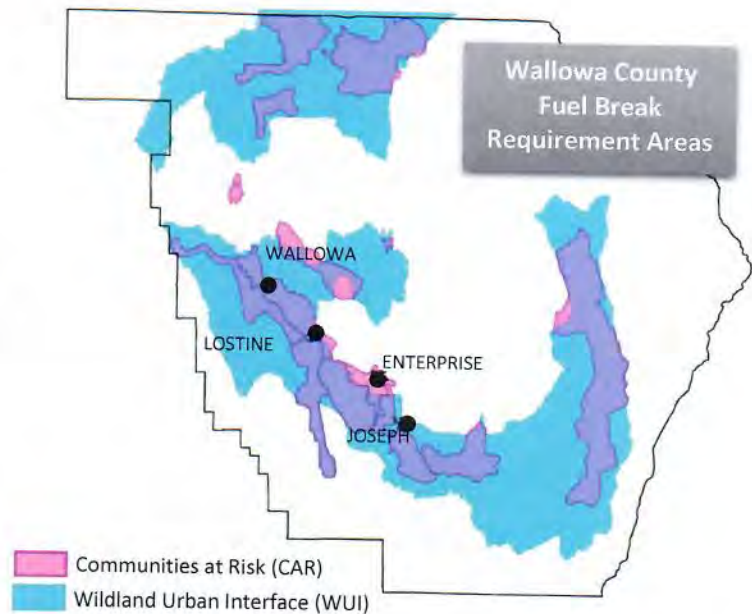
Required Fuel Breaks According to Risk Level and Slope

Fuel-Free Breaks are part of Wallowa County's site standards within designated Communities at Risk (CAR) and Wildland Urban Interfaces (WUI). These standards are designed minimize wildfire hazards and risks. This handout will provide guidance on how to construct these fuel break zones.

The map shows the designated CAR and WUI areas. For more detailed information, contact the Planning Department.

Structures Requiring Fuel Breaks

- Structures of over 1,000 SF
- Dwellings and additions to dwellings
- Structures and new additions to structures associated with private businesses
- All bunkhouses
- Public and private infrastructure projects



Fire Safety Design Standard (Risk) Levels

Level 1 fire safety standards apply to:

1. Timber Grazing or Timber Commercial zones.
2. CARs with "high" or "extreme" risk
3. Portions of WUI Zones with "high" or "extreme" risk of wildfire occurrence.

Level 2 fire safety standards apply to:

1. CARs with "moderate" or "low" risk.
2. Portions of WUI Zones with "medium" or "low" risk of wildfire occurrence.

Fuel Breaks: % Slope	Level 1		Level 2	
	Primary (Zone 1)	Secondary (Zone 2)	Primary (Zone 1)	Secondary (Zone 2)
< 10	30 ft	+100 ft	20 ft	+80 ft
11 - 20	80 ft	+100 ft	55 ft	+80 ft
21 - 30	105 ft	+100 ft	57.5 ft	+80 ft
31 - 40	130 ft	+100 ft	70 ft	+80 ft
> 40	No structures allowed under any circumstances		70 ft	+80 ft



For more information, visit https://co.wallowa.or.us/wp-content/uploads/2021/09/Article-25_CWPP_Amended_09-23-2021.pdf or contact the Planning Department.

Prevent Structure Ignition by Creating Defensible Space

If you wait, you may be too late



% Slope	Level 1 Fuel Breaks		Level 2 Fuel Breaks	
	Primary (Zone 1)	Secondary (Zone 2)	Primary (Zone 1)	Secondary (Zone 2)
< 10	30 ft	+100 ft	20 ft	+80 ft
11 - 20	80 ft	+100 ft	55 ft	+80 ft
21 - 30	105 ft	+100 ft	57.5 ft	+80 ft
31 - 40	130 ft	+100 ft	70 ft	+80 ft
> 40	No structures allowed		70 ft	+80 ft



ZONE 1	ZONE 2	SURROUNDING LANDSCAPE
<p>Goal is to remove fuels that will produce flame lengths in excess of one foot.</p> <ul style="list-style-type: none"> Vegetation within the primary safety zone may include green lawns and shrubs less than 24 inches in height. Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, limbs and other dead vegetation shall be removed from beneath trees. Nonflammable materials (e.g., rock) instead of flammable materials (e.g., bark mulch) shall be placed next to the structure. 	<p>On land owned or controlled by the applicant. Goal is to reduce fuels so that the overall intensity of any wildfire and the likelihood of a crown fire are reduced.</p> <ul style="list-style-type: none"> Vegetation within the secondary fuel-free break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed. 	<p>Work with your neighbors and surrounding community to reduce the threat of wildfire.</p> <p>For more information:</p> <ul style="list-style-type: none"> Oregon Department of Forestry – https://www.oregon.gov/odf/fire/pages/fireprevention.aspx Firewise Communities – https://www.nfpa.org/Public-Education/Fire-causes-and-risks/Wildfire/Firewise-USA

The fuel break standards shall be completed prior to construction and maintenance shall be the continuing responsibility of the property owner.

CONFLICT ACKNOWLEDGMENT STATEMENT

LANDOWNER MUST RECORD WITH
COUNTY CLERK AFTER APPROVAL &
PROVIDE A COPY OF THE RECORDED
DOCUMENT TO THE PLANNING
DEPARTMENT

I (We), John Burns and Donna Duby, am (are) the owner(s) or their legal representative, of certain real property located in Wallowa County, Oregon. The address for the property is 902 W Hwy 82, and the legal description is Township 1N, Range 42E, Section 11, Tax Lot(s) 1300.

I (We) have applied for A zone permit on land, on land adjacent to, or on land that is in close proximity to land zoned Exclusive Farm Use (EFU) and/or Timber/Grazing (T/G). The Wallowa County Right to Farm Ordinance requires a written and recorded statement acknowledging the right of neighboring landowners to conduct farm, forest, and mining operations as authorized by the Oregon Forest Practices Act (or other governing regulations) as a condition of approval. In addition, the Wallowa County Right to Farm Ordinance provides that conflict between authorized farm and forest practices and residential uses will be resolved in favor the Oregon Forest Practices Act. The Wallowa County Right to Farm Ordinance States:

"It is the purpose of this Ordinance to conserve, protect, and encourage the development and improvement of the agricultural and other resource-based industries of Wallowa County and the use of modern technology for the production of food and other resource-based products. Continued rural residential development and/or urbanization gives rise to conflict between resource activities and non-resource uses. Generally accepted resource practices offend, annoy, interfere with, and otherwise affect non-resource uses located on resource lands or nearby resource uses. As a result, resource activities are often subjected to lawsuits or complaints from non-resource users. In the end, agricultural and other resource-based industries are sometimes forced to cease operating when non-resource uses are located nearby. This

causes a decline in available local supplies of food and fiber. Declining access to local production of food and fiber threatens the continued prosperity, health, and safety of Wallowa County and must be avoided. The Wallowa County Court has concluded that the resource-industry base in Wallowa County must be protected from such lawsuits or complaints that limit the productivity of resource lands.”

On behalf of myself (ourselves) and in behalf of my (our) heirs, assigns, and purchasers, I (We) hereby acknowledge the residential use on my (our) property is subordinate to; and conflict will be resolved in favor of; farm, forest, and mining practices which are consistent with the Oregon Forest Practices Act and other applicable regulations. I (We) acknowledge these practices may involve the application of herbicides or fertilizers (including aerial spraying), road construction, changes in view, noise, dust, traffic, and other impacts. I (We) recognize the residential use of our property may be impacted by such activities. In the event of conflict; we agree to give preference to normal farm, forest, and mining practices.

Donna Duly
Applicant

John Burns
Applicant

STATE OF OREGON)
)ss.
County of Wallowa)

On this 23 day of January, 2023,
Donna Duly & John Burns, personally appeared before me, a Notary Public in
and for the aforementioned State and County, and executed the foregoing Conflict
Acknowledgment Statement and confessed it to be a voluntary act.

Makayla Maxwell
Notary Public of Oregon
My Commission Expires: 12-23-2023





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

FLOOD, GEOLOGIC, OR WILDFIRE HAZARD WAIVER NOTICE

REGARDING ESTABLISHMENT AND MAINTENANCE OF DEVELOPMENT IN AREAS SUBJECT TO INUNDATION OR PHYSICAL HAZARDS OF A GEOLOGICAL NATURE OR WILDFIRES

The undersigned hereby certify that we are the owners of the hereinafter legally described real property located in the County of Wallowa, State of Oregon described as:

A parcel of land situated in a portion of the Northwest 1/4 of the Southwest 1/4 of Section 11, Township 1 North, Range 42 East, Willamette Meridian, Wallowa County, Oregon

As recorded in Assessor's map number IN42E11 1300 records of Wallowa County, which property is known as:
902 W Hwy 82, Wallowa, OR 97885

I (We) desire to develop said property and require a Zone Permit from Wallowa County for authorization. I am (we are) fully aware of the fact that the site is in an area subject to inundation, slides, unstable soils and/or wildfires, and that I (we) in consideration of the issuance of said Permit from Wallowa County, agree to indemnify, defend and hold Wallowa County harmless from any loss, claim or liability arising in any manner out of use of the above described property for damages that may occur to our property or buildings thereon due to water or soil conditions, including but not limited to earthquake, floods, slides, water run-off, caving, or other such natural phenomena due to wildfires, whether such damage occurs to me (us) or adjoining land owners, and further agree to release and hold harmless Wallowa County from any damages, law suits, or liability arising therefrom. I (We) assume all risk arising out of the use of the above described property and the County shall have no liability in connection with the issuance of said Zone Permit to me (us) for any condition existing thereon.

This agreement is appurtenant to the real property described herein, and shall run with the land and shall bind and inure to my (our) successors, assigns, heirs, and executors and shall be recorded in the deed records of Wallowa County.

DATED this 23rd day of January, 2023

John Burns _____, Owner
 Print Name

John Burns
 Signature

Donna Duby _____, Owner
 Print Name

Donna Duby
 Signature

STATE OF OREGON)

)ss.

COUNTY OF WALLOWA)

Personally appeared the above named John Burns & Donna Duby and acknowledged the foregoing instrument to be _____ voluntary act and deed.

BEFORE ME this 23rd day of January, 2023

Makayla Maxwell

Notary Public of Oregon

My Commission Expires: 12-23-2023

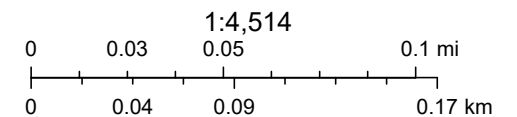


EXHIBIT E: Dollar General Zoning



12/5/2023, 3:55:05 PM

- | | | | |
|-----------------|----------------|---------------|-------|
| County Boundary | County Streams | Zoning | W-CI |
| UGB | Taxlots | EFU | W-UGR |
| Railroad | | R-1 | |



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Wallowa County

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jjancaitis@co.wallowa.or.us

From: jjancaitis@co.wallowa.or.us
Sent: Tuesday, March 21, 2023 10:59 AM
To: 'wallowa@eoni.com'; Ken Hall; 'SHobbs@co.wallowa.or.us'
Subject: ZONE PERMIT REVIEW REQUEST
Attachments: ZP#23-13__DUBY-BURNS.pdf

Hello,

We received the attached application for a Dollar General store in the M-1 zone of the City of Wallowa Urban Growth Area. Please let me know if you have any comments or questions by March 30, 2023.

Thank you,
Jean

Jean Jancaitis, PLANNING DEPARTMENT SPECIALIST
Phone: 541-426-4543 ext. 1170
Email: jjancaitis@co.wallowa.or.us
Website: co.wallowa.or.us

Wallowa County Planning Department
101 South River Street, Room 105
Enterprise, Oregon 97828
My Hours: Monday through Thursday, 8:30 am – 5:00 pm
Office Hours: Monday through Thursday, 7:00 am – 5:00 pm

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EXHIBIT F: DOCUMENTS FROM THE RECORD

Jean Jancaitis

From: Jean Jancaitis
Sent: Thursday, November 9, 2023 10:11 AM
To: sweynwall@gmail.com
Subject: WC Land Development Ordinance Articles
Attachments: Article 07__BoC 2012-06-18.pdf; Article 03__BoC 2003-01-21.pdf; Article12 revised 12-06-04.pdf; ZP#23-13__DUBY-DOLLAR GENERAL.pdf; CITY OF WALLOWA UGB AGREEMENT.pdf

See attached and let me know if I forgot something,

Best,
Jean

Jean Jancaitis, PLANNING DEPARTMENT SPECIALIST
Phone: 541-426-7770
Email: jjancaitis@co.wallowa.or.us
Website: co.wallowa.or.us

Wallowa County Planning Department
101 South River Street, Room 105
Enterprise, Oregon 97828
My Hours: Monday through Thursday, 8:30 am – 5:00 pm
Office Hours: Monday through Thursday, 7:00 am – 5:00 pm

PUBLIC RECORDS LAW DISCLOSURE

This e-mail is a public record of Wallowa County and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

*Did not include Wallowa Commercial/
City of Wallowa Zone Ord Art 3. Sect 3.5 because
we found it on the website.*

From: [Franz Goebel](#)
To: [Kirk Farrelly](#)
Cc: [Mike Bultman](#); [Stephanie Hopkins](#); [Michael Kelly](#); [Paige Sully](#); [Jean Jancaitis](#)
Subject: RE: Wallowa, OR - Dollar General - Notice of Appeal Letter
Date: Tuesday, November 21, 2023 2:47:00 PM
Attachments: [Article 07 - BoC 2012-06-18.pdf](#)
[CITY OF WALLOWA UGB AGREEMENT.pdf](#)
[1997-06-24 - City of Wallowa Zoning.pdf](#)

Hi Kirk,

Just to recap our conversation:

Any party has the ability to appeal a land-use decision. Our ordinances state that the appeal period for a *non-noticed* permit is 21 days after issue, or 21 days after someone could reasonably know that it was issued, or if they are adversely affected. The appellants are claiming that they have standing because they were only aware of the permit after construction started, and that they are adversely affected. Regardless of the validity of their arguments, or their claims of having standing, the county must hear their appeal. This will occur at the next Planning Commission meeting on Tuesday, January 30, 2024 (7PM PST). It is held in the county courthouse and also via Zoom. As I also noted, We received a second appeal to the Lot Line Adjustment yesterday. Notice of that was mailed today so you should be receiving it soon. I will be drafting findings for both permits to clarify applicable criteria and my decisions. I will also be drafting staff reports to the Planning Commission for each. Those will address applicable criteria, the validity of the arguments, and recommendations to the Planning Commission. Because these appeals are of a *Planning Director* decision, they will be heard at the *Planning Commission* meeting. The decision of the Planning Commission (upholding or denying the appeal) can be appealed by either party to the Board of Commissioners, the highest governing body in the County. That decision can then be appealed, again by either party, to the Oregon State Land Use Board of Appeals (LUBA).

As a refresher, the property is in the Wallowa Urban Growth area, which is land in the county formally identified as growth area for the city, should it choose to annex. Land use administration in the area is governed by an agreement between the city and the county.

I am attaching a copy of the county/city agreement for the urban growth area. The agreement defers to the county appeal process so I'm attaching that ordinance (Article 7). The property is zoned Wallowa Commercial-Industrial, (also attached-see Section 3.5). If you would like any additional ordinances, please let us know. Unfortunately, our website is under construction, so those resources need to be requested until it is operational again. As I noted in our call, it is always advisable for an applicant to bring on an attorney for an appeal.

Sincerely,

Franz Goebel
 Director of Planning
 Wallowa County Planning Department
 101 S. River St. Room 105
 Enterprise, OR 97828
plandir@co.wallowa.or.us
 541.426.4543. X 1168



PUBLIC RECORDS LAW DISCLOSURE

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From: Kirk Farrelly <kfarrelly@cgppe.com>

Sent: Tuesday, November 21, 2023 1:03 PM

To: Jean Jancaitis <JJancaitis@co.wallowa.or.us>; Franz Goebel <plandir@co.wallowa.or.us>

Cc: Mike Bultman <MBultman@kmengllp.com>; Stephanie Hopkins <shopkins@kmengllp.com>; Michael Kelly <mkelly@cgppe.com>

Subject: Wallowa, OR - Dollar General - Notice of Appeal Letter

Importance: High

Jean/Franz,

I tried calling each of you just now regarding the attached letter we received in the mail this afternoon. I am very confused and concerned as to why a hearing would be required for an active construction Project that has secured all approvals. I need to understand today if this meeting scheduled for 1/30/2024 is a formality or what could result from same. I am on my cell today at out-of-town meetings, which is 504-258-8770, I need to hear from someone this afternoon on this matter.

Thank you.

Kirk Farrelly, P.E.

D) 205.263.4589 C) 504.258.8770 F) 205.968.9229

361 Summit Blvd, Suite 110, Birmingham AL 35243

E-mail: kfarrelly@cgppe.com

www.cgbuchalter.com

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From: [Kirk Farrelly](#)
To: [Franz Goebel](#)
Cc: [Michael Kelly](#)
Subject: Wallowa, OR - Dollar General - Residential Appeal Coordination
Date: Wednesday, December 6, 2023 11:00:55 AM

Franz,

Good afternoon. Here is a timeline for your reference/use:

Property:

- Broker said he listed the property for sale in approximately October 2020.
- Broker said he put up his for-sale sign in approximately May 2021.
- We started reviewing the property in approximately June 2022 when Dollar General asked us to.
- We went under contract on the property on 10/17/2022.
- Broker said he removed his for-sale sign the day of our land closing, which was October 25, 2023.

Property Investigation:

- Geotechnical Field work with drilling rig occurred on December 12, 2022.
- Surveyor on-site throughout early December 2022 completing field work.
- Late March 2023 Septic Designer/Installer on-site digging test holes with equipment.
- Late April 2023 DEQ was on site inspecting the Septic Designer/Installer test holes to determine septic suitability.
- Early June 2023 Well Drilling occurred with drilling rig.

Construction:

- Heavy Construction Equipment ready for mobilization on 10/24 and construction officially started on 10/26.

-Various other parties have visited the site (Engineers, Bidding General Contractors, and Subcontractors, etc.) throughout the development process.

Hope this helps, and once you have a chance to review, please let me know of any questions or if any further information is needed.

Thank you.

Kirk Farrelly, P.E.

D) 205.263.4589 C) 504.258.8770 F) 205.968.9229

361 Summit Blvd, Suite 110, Birmingham AL 35243

E-mail: kfarrelly@cgppe.com

www.cgbuchalter.com



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COMMENTS



December 13th, 2023

Wallowa County Board of Commissioners
CC: Wallowa County Planning Department
101 S River Street
Enterprise, Oregon 97828

RE: Zoning permit #23-13 and possible impacts to fish listed under the Endangered Species Act

Dear Commissioners,

I am writing on behalf of the Greater Hells Canyon Council (GHCC) regarding permit #23-13 for the construction of a Dollar General in Wallowa, OR. Like others in the community, we were surprised to learn that the permit for this project had been approved seemingly without consideration of impacts to the Bear Creek watershed. **We are requesting a work stoppage until the county can complete the appropriate public process.**

Bear Creek, which originates on public land in the Wallowa-Whitman National Forest, is an important tributary to the Wallowa River and contains multiple species of salmonids protected by the Endangered Species Act. Bear Creek also has three reaches identified in the Wallowa County Salmon Habitat Recovery Plan¹. Any impact to an individual reach and its adjacent lands may impact the overall quality of the creek and the viability of its habitat for salmonids and other species.. As Article 36 of the Plan states: “Wallowa County finds that the salmonoid ecosystem includes the entire watershed not just the in-stream habitat.”

It’s clear from both the application and from seeing the work progress that work is planned to occur within 300 feet of Bear Creek. The Wallowa County Land Use Development Ordinance Section 12.020 subsection 03 states that: “in determining if the Ministerial Review is allowed, the review authority shall find **all** the following:

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

Because of the project's proximity and possible impacts to Bear Creek, it is clear to us that this project should not have been approved using only a ministerial review.

We request that the County immediately order a work stoppage until a public hearing regarding this permit may be held. Additionally, please answer the following questions:

1. What, if any, actions have the permit holder and county taken to ensure no negative impacts to this already impaired reach of Bear Creek (like the management plans referenced in Article 36 of the Ordinance)? Our concerns include water quality impacts from surface runoff as well as potential impacts from a septic system, water quantity issues resulting from drilling a well, and more.
2. Were the appropriate local partners involved in decision making?

¹

https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/5388/Wallowa_Salmon_Recovery_Plan.pdf?sequence=1&isAllowed=y





3. Is consultation with the appropriate federal agencies (US Fish and Wildlife Service/National Marine Fisheries Service) required, and if so has it occurred?
4. The Nez Perce Tribe was a partner in the creation of the Salmon Habitat Recovery Plan and is a leader on fish habitat and watershed restoration in our county. Have they been consulted?
5. Which, if any, Oregon Department of Environmental Quality permits have been applied for and received?

We are grateful that members of our community had the foresight to include protections for fish habitat and watershed health in our county ordinances. Now it's the collective responsibility of our citizens and local government to make sure we follow them.

We are requesting a work stoppage until the county can complete the appropriate public permitting and review process.

Thank you for your time.

Sincerely,

Jamie Dawson

Jamie Dawson
 Conservation Director
 Greater Hells Canyon Council
 Enterprise, OR
 541-963-3950
jamie@hellscanyon.org





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

STAFF REPORT

APP#23-02

APPEAL RE: LLA#23-01

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

Eric Cederstam
 71022 Frontage Rd
 Wallowa, OR 97885

Mailing Address:
 2323 Swyers Drive
 Hood River, OR 97031

Kelly and Connie Guentert
 71084 Frontage Rd
 Wallowa, OR 97885

Kelly Johnson
 71072 Frontage Rd
 Wallowa, OR 97885

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

Bill Smergut
 70988 Frontage Rd
 Wallowa, OR 97885

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

CURRENT OWNER DOLLAR GENERAL
PARENT PARCEL 361 Summit Blvd, Ste 110
TL 1300: Birmingham, AL 35243

PREVIOUS OWNER Donna Duby & John Burns
PARENT PARCEL TL PO Box 1011
1300: Wallowa, OR 97885

OWNER Donna Duby & John Burns
AQUIRING PARCEL PO Box 1011

STAFF REPORT

APP#23-02 – LLA#23-01 DUBY/BURNS - DOLLAR GEN

January 30, 2023

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TL 300: Wallowa, OR 97885

REQUEST:	To appeal the approval of Lot Line Adjustment application (LLA#23-01) which resulted in the Acquiring Parcel changing from 1.677 acres to 2.172 acres, and the Parent parcel changing from 2.830 acres to 2.335 acres. [There may be a slight math error in the application, however the property is fully surveyed]
PARENT PARCEL DESCRIPTION:	The property description is Township 01N, Range 42E, Section 11, Tax Lots 1300 & Tax Lot 1300 Ref#5130 Address: 70970 Frontage Rd, Wallowa, Oregon 97885. Zoning: Wallowa Urban Growth Area Commercial Industrial (W-CI) Access is from Frontage Rd, approximately 90 feet off State Hwy 82.
ACQUIRING PARCEL DESCRIPTION:	The property description is Township 01N, Range 42E, Section 11, Tax Lot 300 Ref#5228 Address: 70972 Frontage Rd, Wallowa, Oregon 97885. Zoning: Wallowa Urban Growth Residential (W-UGR), and after LLA a small area of about .6 acres on the east side remains W-CI.
PROPERTY LOCATION:	Access to both properties is from Frontage Rd, approximately 90 feet off State Hwy 82. The properties are bordered by County Rural Residential (R-1) to the west (west side of Bear Creek), W-CI to the north and east (east side of Hwy 82), and the Wallowa Union Authority (WURA) railroad to the south. South of the WURA is also W UGR.

EXHIBITS IN THIS PACKET:

- Exhibit A- Letter of Appeal
- Exhibit B- Timelines of property sale, permitting and development.
- Exhibit C- Copy of Wallowa County Ordinance No. 2001-004/City of Wallowa Ordinance No. 332-01 A Joint Ordinance Providing for an Agreement between the City of Wallowa and the County of Wallowa Pertaining to the Land Use and Development Regulations to be Applied to the Unincorporated lands within the City of Wallowa Urban Growth Area. Referred to as the “*Wallowa Urban Growth Boundary Agreement*”, or *WUGBA*.
- Exhibit D- Copy of Lot Line Adjustment LLA#23-01
- Exhibit E- Zoning Map
- Exhibit F - Documents from the record.

PREVIOUS PLANNING DEPARTMENT AND OTHER AGENCY ACTIONS:

Conditional Use Permit CUP#04-15 for a mobile restaurant (expired)

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APPROVAL CRITERIA:

- City of Wallowa Urban Growth Boundary Agreement (WUGBA)
- City of Wallowa Zoning Ordinance (WZO),
 - Article 1, Sections (1997 version, version 2001 not available)
 - Article 2, Sections 2.1
 - Article 3, Sections 3.4, 3.5
- OAR 660-004-0005
- ORS 197.830(3)

REFERENCES:

- Wallowa County Land Development Ordinance (WCLDO)
 - Article 2, Use and Development Permits Application Processing and Review Procedures, Section 2.030, Types of Review
 - Article 3, Ministerial Review,
 - Section 3.015, Responsible Review Authority
 - Section 3.020, Review and Decision Process (01)
 - Article 39, Lot Line Adjustment,
 - Section 39.020, Review Procedure

APPEAL CRITERIA:

- WCLDO Article 7, Appeals

STAFF COMMENT:

This request is to appeal the decision by the Wallowa County Planning Director (PD) approving Lot Line Adjustment LLA#23-01. An appeal of a PD decision is heard by the Wallowa County Planning Commission (PC).

Appellants request that the decision for the Lot Line Adjustment (LLA) be withdrawn in tandem with the “related” zone permit #23-13. Staff would like to emphasize that a LLA and a Zone Permit are two distinct land use decisions, each with the ability to be approved or denied separately. There is no legal authority for reviewing this decision with a separate zone permit (which is being appealed concurrently as APP#23-01). Either decision could have proceeded without affecting the other. Therefore, this appeal should be reviewed solely on the merits of how a LLA decision would occur. Criteria that are argued in the letter of appeal regarding the zone permit are not lawfully required criteria for a lot line adjustment and; therefore, should be disregarded.

The PC shall consider and decide on the below issues to determine the validity of the appeal:

1. Do the Appellants have standing to appeal?
2. Will the appeal be heard *on the record*, or *de novo*?
3. Was the appropriate process used to review the Lot Line Adjustment?
4. Were the appropriate criteria used to make the decision?

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5. Does the application meet the applicable criteria as contested by the Appellants?

Finally, the Planning Commission shall, according to WCLDO Article 7 Appeals, Section 7.045.01, “*order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision [...]*”

The remainder of the Staff Comment Section is structured around the above questions. The following information is provided to help the Planning Commissioners decide each issue.

Question 1: Do the Appellants have standing to appeal?

WCLDO Article 7 Appeals, Section 7.020.01 states, “*A decision of a review authority pursuant to this ordinance may be appealed [...] by parties who are adversely affected (WCOA 1.065(005)) for decisions which are not noticed. [...]*”. Section 7.020.01(B)(02) requires appeals of non-noticed decisions to be received, “*Within 21 days of the date a person knew or should have known of the decision.*”

In summary, the Appellants must demonstrate that they

- A. did not know or could not reasonably have known that a permit was issued, and
- B. are adversely affected by the decision.

The Appellants must file their appeal within 21 days of when they “knew” or “should have reasonably known” that development was underway. Failure to file within the required timeframe results in this appeal being untimely.

The property is in the Wallowa Urban Growth Area (UGA) and zoned Commercial-Industrial (W-CI) and Urban Growth Residential (UGR). UGAs are areas planned for future annexation by a city and are zoned based on projected needs for expansion of commercial, industrial and residential uses. This property was zoned W-CI and W-UGR through a public process, in 1982. There have been no challenges or amendments proposed to change that zoning since that time. The parent parcel was listed for sale on the Multiple Listing Service in 2019 and an approximately four foot by eight foot “for sale” sign was posted on the property in October of 2020, identifying it as Commercial-Industrial--more than three years prior to the beginning of construction.

Lot Line Adjustment #23-01 was approved March 06, 2023. Site preparation began in December of 2022 for potential future development in the form of multiple geotechnical test pits using large excavation equipment. Multiple septic test pit excavation, again using heavy equipment, occurred in March 2023 along with the issue of a zone permit (ZP#23-13 – being appealed separately) for the development of a structure and associated parking. Drilling the necessary well occurred in early June 2023. A commercial structural building permit was issued October 26, 2023 and construction began that day. The appeal was filed November 12, 2023.

In order to have standing the Appellants also must prove that they are “adversely affected,” as the term is defined in the law, by the decision, and not merely dissatisfied.

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WCLDO, Article 1, Section 1.065 Definitions (006) defines “Adversely Affected – A party’s use and enjoyment will be negatively impacted by a land use decision due to identified consequences from the proposed use or development. Examples of adverse effects may include noise, odors, increased traffic, or potential flooding.”

The Appellants claim “The LLA application clearly affects our interests with adverse impacts to the use and enjoyment of our properties” (Letter of Appeal dated November 20, 2023, page 1). They go on to list areas on which they assert the ruling will have a significant affect on:

- Citizen safety associated with the transportation system and pedestrian access at the proposed development.
- The provision of public services due to potential effects on water quality and riparian habitat of Bear Creek.
- Neighboring Bear Creek is identified as critical habitat for three species of fish protected under the Endangered Species Act: chinook salmon, steelhead, and bull trout.
- Locally-owned businesses in both the City and County that will suffer revenue loss and potential closure due to the unfair purchasing and pricing tactics of Dollar General.

This lot line adjustment is a distinct land use action with distinct legal issues, and is not dependent on other zone permits, does not change any uses currently allowed in the zones and does not approve any development. It simply relocates a line between two adjacent properties to redistribute area. Arguments addressing development are not relevant as none of those claimed effects flow directly or indirectly from the issuance of the lot line adjustment itself.

The Appellants have provided no compelling evidence that they are “adversely affected” by this land use action. This land use action does not, in and of itself, approve any development, or change uses allowed in the zone.

Here is a specific example of a Land Use Board of Appeals (LUBA) case (#A160178) showing that dissatisfaction does not meet the definition of adversely affected:

Under ORS 197.830(3), a person or party adversely affected by a land use decision that is made without a public hearing has standing to appeal that decision to LUBA. A party is adversely affected by such a decision only when the allowed land use impinges upon that party’s property or personal interests.

Devin Oil Co. (Devin Oil), appealed a Land Use Board of Appeals (LUBA) dismissal of Devin Oil’s appeal for lack of standing. Under ORS 197.830(3), “a person [or party] adversely affected by” a land use decision that is made without a public hearing has standing to appeal the decision to LUBA. A party is “adversely affected by” a land use decision under ORS 197.830(3) when the operation of the allowed land use decision impinges upon that party’s property or personal interests. However, **mere dissatisfaction with a land use decision does not qualify as an adverse effect under ORS 197.830(3)**. The Court found that Devin Oil did not show that it was adversely affected by Morrow County’s decision, and therefore lacked standing to appeal the decision to LUBA.

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The Appellants are dissatisfied with the decision, but must prove that their concerns meet the bar of being “adversely affected” by a change in the location of the property line on someone else’s property.

Question 2: Will the appeal be heard *on the record*, or *de novo*?

The Appellants have requested that the appeal be heard de novo and staff recommends doing so to make sure that all relevant facts and legal authorities are entered into the record.

Question 3: Was the appropriate process used for review of the lot line adjustment?

Land use in the UGA is administered through a legal agreement between the county and the city, *The City of Wallowa Urban Growth Boundary Agreement (WUGBA)*, adopted by ordinance. Per that agreement *WUGBA Article 2, Substantive Provisions, Section 2.030, Use Regulations stipulations that, “Within the Urban Growth Areas designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situated within the corporate limits of the City and within the designated zone.* *WUGBA Article 3, Administrative Provision Section 3.010 Land Use Actions.*

- (1) *All permit applications concerning lands within the Urban Growth Area shall be filed with the County...*
- (2) *The application shall be referred by the Director to the City within three (3) working days after a complete application has been filed with the County Planning Department.*

[...]

- (4) *In the event no response or recommendation is received from the City within forty-five (45) days from the date the application is submitted to the City by the County, the County shall conclude the City has no objections and shall proceed to take the necessary review steps as required by the appropriate County ordinance.”*

Although this application did not involve any development, Staff noticed the City of Wallowa on January 24, 2023. This application was processed as Ministerial Review, per WCLDO Article 39, Section 39.020(01) Review procedure, Ministerial Review, as the application met all of the clear and objective criteria required to apply that review process.

Per the WUGBA, the county is required to use the criteria and standards for the City of Wallowa Commercial-Industrial zone (WZO Article 3, Section 3.5, Commercial/Industrial Zone “CI”). The City of Wallowa was notified within the required time frame and did not comment within 45 days. Per *WUGBA Article 3, Administrative Provisions Section 3.010 (4), the City had no objections*, and the County was to proceed using review steps as set forth in the WCLDO, but applying the WZO criteria.

The review procedure followed for the LLA decision met all of the review criteria outlined in WCLDO Article 39, Lot Line Adjustment Section 39.020(01) Ministerial Review (see Question 4 response for discussion of conforming parcel criteria):

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01. MINISTERIAL REVIEW:

- A. *The proposed Lot Line Adjustment will not result in the creation of a new parcel.*
- B. *Both contiguous parcels involved in the Lot Line Adjustment were lawfully created.*
- C. *The subject parcels, lots, or tracts of land will not be reduced in size to below the minimum area required by the applicable use zone [ORS 92.010 (7)(b)]. [Article reference is outdated, should likely read ORS92.010(9)(b)]*
 - 1. *Adjustments to non-conforming lots or parcels shall not result in greater non-conformity except that:*
 - a. *A reduction in the size of a non-conforming lot or parcel may be approved if it contributes substantially to bringing an adjacent non.-conforming parcel closer to conformance.*
 - 2. *The proposed parcels, lots, or tracts of land as adjusted will comply with other area dimension requirements including, but not limited to, setbacks, frontage, width, depth, and area as prescribed by the applicable use zone. Where the original subject properties do not conform to dimension requirements in the applicable zone, any proposed property line adjustment shall not increase the degree of nonconformity.*
- D. *The proposed lot line adjustment will not, by itself, qualify a lot or parcel for a use or partition otherwise not permitted or requiring review and approval in the applicable use zone.*
- E. *A property line adjustment shall be surveyed in compliance with ORS 92.060 (7)(8)(9), except that a survey is not required under the following conditions:*
 - 1. *The relocation of a common boundary of a lot in a subdivision or a parcel in a partition when the adjusted property line is a distance of even width along the common boundary.*

The Appellants assert that the Planning Department did not provide the required written Notice of Public Hearing, which would also include notice to affected parties of their right to appeal the decision.

There was no legal authority for staff to have referred the application to a public hearing. Assuming for the sake of argument that the Appellants are correct in their position, their argument still fails as none of the Appellants fall within the category of property owners who would have been provided notice in any event due to their lack of proximity to the relevant property. *“WCLDO Article 5, Public Hearing, Section 5.025(1) Public Hearing Review requires written notice of review to be given to owners of property lying within: (A) One hundred feet of the exterior boundary of the subject property where the subject property is wholly or in part within an urban growth boundary.”* None of the Appellants would have received notice as their properties are all further than 100’ from the subject property.

Question 4: Were the appropriate criteria used to make the decision?

Per the WUGBA, the county is required to use the criteria and standards for the City of Wallowa Commercial-Industrial zone (WZO Article 3, Section 3.5, Commercial/Industrial Zone “CI”).

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The Appellants cite multiple County criteria, requirements and processes from the WCLDO that do not apply to this application.

Appellants assert that parcels were non-conforming (under the minimum size), and the lot line adjustment made parcels more non-conforming, and therefore subject to Public Hearing. Again, per the WUGBA, the review criteria are the WZO, not County ordinance. WZO Article 3.5, CI, does not specify a minimum lot size for lots in the zone, so this W-CI lot is therefore conforming, and remains conforming after the adjustment. Development on this parcel would be contingent upon Department of Environmental Quality (DEQ) approval of any required septic systems and the ability for a well to be separated by at least 100' (feet). WZO Article 3.2, Urban Growth Boundary – Residential (UGB-R) identifies the minimum lot size for existing lots (per WUGBA Section 2.020 (Area AA)(Area CC) defined in WZO Section 3.1(4)(D)) where the smallest lot defined is for Duplexes at 10,000 square feet up to 20 units at 45,000 square feet. This UGB-R lot is approximately 78,500 square feet before the adjustment and 91,500 square feet after the adjustment. These are de facto conforming existing lots, and the size change did not lead to more non-conformance for either parcel. The Appellants' assertion is moot.

In fact, Oregon Administrative Rules (OAR) Chapter 660, Division 4 (660-004-0005) Interpretation of Goal 2 (Planning) Exception Process, addresses minimum lot sizes and applying Goal 14 (Urbanization). To prevent urbanization of rural areas, minimum lot sizes are established, however there is no minimum lot size in the UGB, stated in 660-004-0040 (3)(c) This rule does not apply to types of lands listed in (A) Land inside an acknowledged urban growth boundary.

Appellants go on to list the following as reasons to overturn the decision:

“The incomplete and inaccurate information provided on the application needs investigation, and when considered in tandem with zone permit #23-13 presents additional concerns:

- Per WCLDO 39.030.02.5 and stated on the LLA application form, applicants are required to provide a map showing the location of the proposed partition and the location of all existing and proposed structures. Applications must also include any required road improvements. The applicant file provided on November 13, 2023 by the Wallowa County Planning Department does not include existing structures, nor does it include the proposed structures and roadway alteration as shown in #23-13.
- The application appears to incorrectly show zoning for the affected tax lots, listing both parcel 1300 and 300 as Commercial-Industrial. Zone maps in the UGB Agreement (City Ordinance 332-01 and County Ordinance 2001-04) show that tax lot 300 is zoned UGB- Residential.
- The acreage information on the application appears to be incorrect. Acreage before LLA is shown as 2.93 ac for tax lot 1300 and 1.8 acres for tax lot 300 for a total of 4.73 acres. However, the after LLA acreage is shown as 2.335 acres for tax lot 1300 and 2.172 acres for tax

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lot 300 for a total of 4.507 acres. There appears to be a discrepancy of 0.223 acres. All above acreages are different from those identified on the Zone maps in the UGB Agreement. In light of these discrepancies, it is imperative to note the conflict of interest that exists with the property survey. KM Engineering is both the developer and the surveyor for the applicant parcels”

Again, there is no requirement or legal authority to review a lot line adjustment “in tandem with” a zone permit for development. The approval of a LLA is an independent decision and can proceed regardless of any future development. A ruling on one does not affect the ruling on the other.

Regarding showing structures and roadway improvements, structures are depicted in satellite imagery in the application, and enlarging or altering a driveway is not considered a “road improvement.”

Minor scrivener’s errors on applications, as well, do not materially affect review or a review process. Regarding discrepancies with the UGB agreement, when the lot lines moved, the UGB zone lines did not move. It is lawful to have more than one zone on a single parcel, which is the case here, after the adjustment. That does not change the WUGBA, and there is no requirement to change the zone line to match the adjusted parcel line. Changing the zone line location or boundary would have required an amendment to the WUGBA and the County Comprehensive plan. Regarding conflict of interest: there is no conflict between a developer also completing the survey. Surveyors must be licensed. There is a County Surveyor who independently reviews and approves the work submitted with the application so perhaps the Appellant is confusing the surveyor completing the work and the county surveyor who reviews the submittal for approval. In this case, those are different entities, and there is no conflict.

Question 5: Does the application meet the applicable criteria as contested by the appellants?

As noted above, the WUGBA Article 2, Substantive Provisions, Section 2.030, Use Regulations stipulates that, *“Within the Urban Growth Areas designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situated within the corporate limits of the City and within the designated zone. WUGBA Article 3, Administrative Provision Section 3.010 Land Use Actions.*

The applicable criteria are therefore those of the City of Wallowa Zoning Ordinance Article 3, Section 3.5 – Commercial/Industrial Zone “CI”, and Section 3.2 – Urban Growth boundary – Residential (UGB-R Zone) respectively.

There is no legal authority for Appellants’ assertion that the review criteria used for review of the application should be WCLDO Article 39.020 (01) (C), with regard to minimum lot sizes or setback requirements.

Summary

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Staff reviewed the application using WZO criteria as required in the WUGBA.

APPEAL CRITERIA

ARTICLE 7, APPEALS

SECTION 7.010, PURPOSE: The purpose of this Article is to establish uniform procedures for the appeal of land use decisions and actions provided for in this ordinance.

SECTION 7.015, APPEAL AUTHORITY:

01. Decisions by the Planning Director shall be subject to appeal to the Planning Commission [...]

SECTION 7.020, INITIATION OF APPEAL:

01. A decision of a review authority pursuant to this ordinance may be appealed by parties with standing to appeal (WCOA 1.065(101)) [sic WCLDO Article 1, Section 1.065(141)] for noticed decisions, and by parties who are adversely affected (WCOA 1.065(005)) [sic WCLDO Article 1, Section 1.065(006)] for decisions which are not noticed. Appeals must be received within the prescribed time limits:

A. For decisions which are noticed the appeal period shall be no less than 12 days from the date of decision and the final date to accept appeals shall be part of the notification. The appeal period may be extended to the end of the next business day if the 12 day period ends on a weekend or holiday.

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

01. Within 21 days of the date of action specified on the permit; or

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

02. The filing of an appeal shall be accompanied by the fee prescribed by resolution of the Wallowa County Board of Commissioners.

03. The appeal document which is filed shall list at least the following information.

A. An identification of the decision sought to be reviewed including the date of the decision.

B. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.

C. The specific grounds for appeal as they relate to relevant review criteria.

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SECTION 7.025, SCOPE OF REVIEW ON APPEAL: The scope of review on appeal shall be restricted to the record made on the decision being appealed, unless the appeal authority issues an order stating the scope to be one of the following:

- 01. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.*
- 02. A De Novo hearing on the merits with new evidence allowed.*

SECTION 7.030, REVIEW OF THE RECORD:

- 01. Unless otherwise provided for by the appeal authority, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include:
 - A. An oral or written factual report prepared by the Planning Director.*
 - B. All exhibits, materials, pleading, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.*
 - C. The minutes of the hearing below and a detailed summary of the evidence.**
- 02. The appeal authority shall make its decision based upon the record after first granting the right of argument but not the introduction of additional evidence to any party who has filed a notice of appeal.*

SECTION 7.035, NOTICE OF APPEAL HEARING: Notice of the hearing held by an appeal authority to consider an appeal shall be mailed at least ten days prior to the hearing to the appellant and all persons who have standing in the proceeding of the issue on appeal.

SECTION 7.040, DE NOVO REVIEW: The appeal authority may decide to hear the entire matter De Novo as defined in Section 1.065. The appeal authority shall consider all of the following in making such a decision.

- 01. Prejudice to the parties.*
- 02. Convenience or availability of proposed new evidence at the time of the initial hearing.*
- 03. Surprise to opposing parties.*
- 04. The competency, relevancy, and materiality of the proposed new testimony or other evidence.*

SECTION 7.045, APPEAL AUTHORITY DECISION:

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

When the appeal authority elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

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02. *Action by the appeal authority shall be decided by a quorum of its members present at the meeting at which review was made and shall be taken either at that or any subsequent meeting. The appeal authority shall render its decision no later than 30 days from the date at which review was made unless otherwise agreed to by the parties and shall file that decision with the County Clerk within twelve days after it is rendered.*

CONCLUSIONS: To be developed at the hearing. The burden of proof for an appeal lies with the Appellant. As listed in WCLDO Article 7, Appeals, Section 7.045(01) Upon review; the appeal authority may by order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision that is under review.

STAFF RECOMMENDATION: Staff are required to review a proposal from a fair and unbiased standpoint, applying and evaluating based on applicable criteria, law and code. This Staff Report analyzes the merits of the appeal based on the five questions presented by the Appellants' objections. These questions are repeated below with a Staff Recommendation. The Planning Commission should address each question individually.

Question	Staff Recommendation
1. Do the Appellants have standing to appeal?	The Appellants do not have standing to appeal as they: A) did not file the appeal within 21 days of the date a person knew or <i>should have known</i> of a decision and B) they are dissatisfied with the decision but are not "adversely affected."
2. Will the appeal be heard <i>on the record</i> , or <i>de novo</i> ?	Hear the case "de novo" to capture public comment.
3. Was the appropriate process used to review the lot line adjustment?	The appropriate review process was used to evaluate the application.
4. Were the appropriate criteria used to make the decision?	The appropriate criteria were used to approve the application.
5. Does the application meet the applicable criteria as contested by the Appellants?	The application met the applicable criteria.

Based on the information provided above, Staff recommend that the Planning Commission deny the appeal and that the decision to approve the application is upheld on its merits.

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EXHIBIT A: LETTER OF APPEAL

November 20, 2023

Mr. Franz Goebel
 Wallowa County Director of Planning
 101 S River Street #105
 Enterprise, Oregon 97828



Mr. Goebel:

This letter is a formal request by Frontage Road property owners, to appeal the decision approving Lot Line Adjustment (LLA) LLA-23-01 issued on March 6, 2023 by the Wallowa County Planning Department. The Parent Parcel is identified as Tax Lot 1300 and the Acquiring Parcel as Tax Lot 300, T1N R42E S11.

Wallowa County Land Use Development Ordinance (WCLDO) 7.020 states that an adversely affected party has the right to appeal such a decision. We were made aware of the LLA during a November 13, 2023 visit to the Planning Department office and subsequently requested all associated documents. Based on this timeline, our request for appeal is within 21 days of the date "we knew or should have known" of the land use decision.

We own single family residences and small farms ranging in distance from adjacent to 1000 feet and within sight and sound from the subject properties. The only access to our properties is along Frontage Road, a single-lane, dead-end road with no public turn-arounds. The LLA application clearly affects our interests with adverse impacts to the use and enjoyment of our properties.

We request that this decision be withdrawn and both the LLA decision and the related zone permit request #23-13 be reversed and returned to the applicant because it does not meet criteria found in 39.020.2.D. The application proposes to *"...further diminish the area of a parcel already smaller than the minimum lot size and the use is inconsistent with the purpose and intent of the zone in which it is located"*. Specifically, LLA-23-01 adjusts the boundary between tax lots 300 (UGB-R, Urban Growth Boundary Residential) and 1300 (C-I, Commercial-Industrial), which should not be approved, because the commercial use associated with the development of a Dollar General would then occur on land zoned for residential purposes.

In addition to the above conflict with County Ordinances, the complex nature of the LLA application and related zone permit for a Dollar General proposed in #23-13 should have minimally triggered a Public Hearing Review, with notices to affected landowners. WCLDO 5.010 requires a Public Hearing Review process for applications *"...which may have a significant impact on neighboring uses and developments; ...the health, safety, or welfare of the citizens; or on the provision of public services; therefore, they require review in an open and public forum."* This LLA application meets these criteria as it will clearly have a significant impact on:

- Citizen safety associated with the transportation system and pedestrian access at the proposed development.

- The provision of public services due to potential effects on water quality and riparian habitat of Bear Creek.
- Neighboring Bear Creek is identified as critical habitat for three species of fish protected under the Endangered Species Act: chinook salmon, steelhead, and bull trout.
- Locally-owned businesses in both the City and County that will suffer revenue loss and potential closure due to the unfair purchasing and pricing tactics of Dollar General.

This application also does not meet criteria for Ministerial Review as identified in WCLDO 39.020.01(C):

- *"Adjustments to non-conforming...parcels shall not result in greater non-conformity"*. The proposal further reduces Tax Lot 1300 in size below the minimum area required. WCLDO 26.025.01 requires a minimum lot size of 5 acres within Urban Growth Areas. Tax Lot 300 already exceeds the minimum lot size as specified in the City of Wallowa Ordinance 330-01.3.2(4)(E) and therefore, the exception at WCLDO 26.025.01(C)(1)(a) does not apply.
- Tax Lot 1300 does not meet setback requirements as specified in WCLDO 39.020.01(C)(2) and City Ordinance 330-01(3.5)(5)(D): The Dollar General building proposed in zone permit #23-13 appears to be within 50 feet of a lot in a residential zone (parcel 300, UGB-R).

Furthermore, the Planning Department did not provide the required written Notice of Public Hearing, which would also include notice to affected parties of their right to appeal the decision.

The incomplete and inaccurate information provided on the application needs investigation, and when considered in tandem with zone permit #23-13 presents additional concerns:

- Per WCLDO 39.030.02.5 and stated on the LLA application form, applicants are required to provide a map showing the location of the proposed partition and the location of all existing and proposed structures. Applications must also include any required road improvements. The applicant file provided on November 13, 2023 by the Wallowa County Planning Department does not include existing structures, nor does it include the proposed structures and roadway alteration as shown in #23-13.
- The application appears to incorrectly show zoning for the affected tax lots, listing both parcel 1300 and 300 as Commercial-Industrial. Zone maps in the UGB Agreement (City Ordinance 332-01 and County Ordinance 2001-04) show that tax lot 300 is zoned UGB-Residential.
- The acreage information on the application appears to be incorrect. Acreage before LLA is shown as 2.93 ac for tax lot 1300 and 1.8 acres for tax lot 300 for a total of 4.73 acres. However, the after LLA acreage is shown as 2.335 acres for tax lot 1300 and 2.172 acres for tax lot 300 for a total of 4.507 acres. There appears to be a discrepancy of 0.223 acres. All above acreages are different from those identified on the Zone maps in the UGB Agreement. In light of these discrepancies, it is imperative to note the conflict of interest that exists with the property survey. KM Engineering is both the developer and the surveyor for the applicant parcels.

Were the application completed properly to include the proposed development on the parcel, the standard review process identified in WCLDO Article 39 would clearly have required denial or a revised LLA boundary and review in an open, transparent, and public process.

In accordance with WCLDO 7.015.01, we are exercising our right to appeal the decision made using the Ministerial Review process to approve the Lot Line Adjustment. Due to the lack of comprehensive review of the many complex issues associated with this application, we are requesting denial of LLA-23-01 and the associated zone permit request #23-13. If the Planning Commission does not find in favor of denial, per 7.025.02 we are requesting a *de novo* Public Hearing Review on the merits of the application, with new evidence allowed to be submitted and considered in order to ensure that the requirements of both Wallowa County and the City of Wallowa are met.

Additionally, due to the rapid pace of construction at tax lot 1300 relative to the next available appeal hearing date on January 30, 2024, the deviation from public noticing processes, and the potential for irreparable harm to land, habitat and community, **we are requesting that the Wallowa County Planning Department take immediate action to pause all construction activity** at 70970 Frontage Road, T1N R42E S11, Tax Lot 1300 until this matter is resolved through the appeal process.

Sincerely,

Sweyn and Beckijo Wall
71054 Frontage Road

Sweyn Wall Beckijo S-wall

Eric Cederstam
71022 Frontage Road

Eric R. Cederstam

Kelly and Connie Guentert
71084 Frontage Road

*Connie Guentert
Kelly Guentert*

Kerry Johnson
71072 Frontage Road

Kerry Johnson by poa Karen Nix

Karin Nix
71220 Frontage Road

Karin Nix

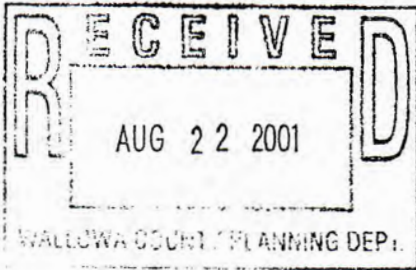
Bill Smergut
70998 Frontage Road

Bill Smergut

EXHIBIT B. DOLLAR GENERAL SITE DEVELOPMENT TIMELINE

2019	Property Listed for Sale
2020-October	Large “For Sale – Commercial Industrial” Sign installed
2022-October 17	Property went under contract with Dollar General
2022-November 10	KM Engineering Crew completed Lot Line Adjustment Survey & Monumented w/ 5/8” x 24” high rebar with green plastic caps.
2022-December	Large Excavator/Geotech field work - Test Pits
2023-March	Excavator Dug Multiple Test Pits for Septic
2023-March 6	Lot Line Adjustment approved
2023-March 20	Notice Sent to City of Wallowa
2023-April	DEQ on site inspecting Septic
2023-April	Zone Permit Issued
2023-Early June	Well Drilled – Well drilling Rig
2023-October 17	Ownership conveyed to Dollar General
2023-October 26	Commercial Structural Building Permit Issued
2023-October 26	Heavy Equipment -Site excavation for septic and foundations
2023-November 1	Record Request of Zone Permit requested by Sweyn Wall
2023-November 13	Appeal Zone Permit letter hand-delivered to Planning Department
2023-November 13	Record Request of Lot Line Adjustment requested by Sweyn Wall
2023-November 20	Appeal Lot Line Adjustment letter hand-delivered to Planning Department

EXHIBIT C: WALLOWA URBAN GROWTH
BOUNDARY AGREEMENT



WALLOWA COUNTY ORDINANCE NO. 2061-004
CITY OF WALLOWA ORDINANCE NO. 332-01

A JOINT ORDINANCE PROVIDING FOR AN AGREEMENT BETWEEN THE CITY OF WALLOWA AND THE COUNTY OF WALLOWA PERTAINING TO THE LAND USE AND DEVELOPMENT REGULATIONS TO BE APPLIED TO THE UNINCORPORATED LANDS WITHIN THE CITY OF WALLOWA URBAN GROWTH AREA.

THE COUNTY BOARD OF COMMISSIONERS OF WALLOWA COUNTY AND THE CITY COUNCIL OF THE CITY OF WALLOWA ORDAIN AS FOLLOWS:

ARTICLE 1

INTRODUCTORY PROVISIONS

Section 1.010 Title This ordinance shall be known as the "City of Wallowa Urban Growth Boundary Agreement."

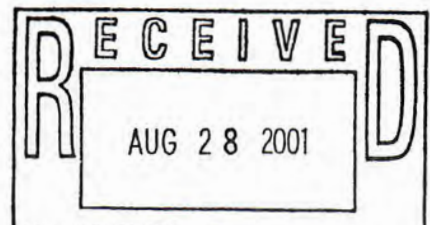
Section 1.020 Purpose. The purpose of the Ordinance is to establish a cooperative agreement between the County of Wallowa and the City of Wallowa in the adoption and administration of the City's Urban Growth Boundary and Urban Growth Area. More specifically, this Ordinance shall establish the Urban Growth Boundary for the City of Wallowa in agreement with the County; shall provide for use provisions and land development standards to guide growth in unincorporated lands within the Urban Growth Boundary; shall specify the means whereby the unincorporated areas within the Urban Growth Boundary may be annexed and the mechanisms for amending this Ordinance; and, shall provide other administrative provisions deemed necessary.

Section 1.030 Definitions. As used in this Ordinance, unless the context shall otherwise require, the singular shall include the plural and the masculine shall include the feminine and neuter. The following words and phrases shall mean:

ADVERSELY A party's use and enjoyment will be negatively
AFFECTED impacted by a land use decision due to identified
consequences from the proposed use or development.

ANNEXATION: An action commenced by a city through a public
hearing, the intent of which is to incorporate
additional land into the legal boundaries of
the city.

CITY: The City of Wallowa, Oregon



CITY OF
WALLOWA
LAND USE PLAN: The fundamental land planning document for the City of Wallowa. It is adopted, revised and amended by the City Council.

COMMISSION: The Wallowa County Planning Commission

COUNTY
COMPREHENSIVE
LAND USE PLAN: The fundamental planning document for Wallowa County. It is adopted, revised, and amended by the County Commissioners. The County Comprehensive Land Use Plan includes maps delineating the City of Wallowa Urban Growth Boundary and Area.

COUNTY: The County of Wallowa, Oregon

COUNTY
COMMISSIONERS: The duly elected governing body of the County

DIRECTOR: The Planning Director for Wallowa County

WALLOWA
TRANSPORTATION
SYSTEM PLAN: A document that guides the management of existing transportation facilities and the design and implementation of future facilities. The Transportation System Plan constitutes the transportation element of the City of Wallowa Land Use Plan.

LAND USE
ACTION: A specific use or development of land or structures thereon that is subject to the applicable County or City land Use Plan and implementing ordinances.

PARTIES WITH
STANDING: A person or organization which:

1. Participates in the hearing or review either orally or in writing; and
2. Either:
 - A. Was entitled to notice of the application prior to the hearing review; or
 - B. Would be adversely affected by final action of the review authority or hearing body.

PERMIT: As used herein, permit shall mean the approval of a proposed land use action including but not limited to, lot line adjustments, major and minor partitions,

	subdivisions, zone changes, conditional uses, variances and zone permits.
PERMIT APPLICATION:	A proposed land use or development action including, but not limited to, lot line adjustments, major and minor partitions, subdivisions, zone changes, conditional uses, variances and zone permits.
PUBLIC FACILITIES AND SERVICES:	Projects, activities, and facilities which the planning agency determine to be necessary for the public health, safety and welfare.
URBAN GROWTH AREA (UGA):	Those unincorporated lands within the acknowledged City of Wallowa Urban Growth Boundary which are necessary to provide for growth and development of the City during the planning period as recorded in the Wallowa County Comprehensive Land Use Plan and associated maps.
URBAN GROWTH BOUNDARY (UGB):	A line encompassing the incorporated and unincorporated lands needed to support the growth and development of the City of Wallowa during the planning period as recorded in the <u>Wallowa County Comprehensive Land Use Plan</u> and associated maps.
WALLOWA COUNTY TRANSPORTATION SYSTEM PLAN:	A document that guides the management of existing transportation facilities and the design and implementation of future transportation facilities. <u>The Wallowa County Transportation System Plan</u> constitutes the transportation element of the <u>Wallowa County Comprehensive Land Use Plan</u> .

Section 1.040 UGB Plan Map and Relationship to Comprehensive Plans, Zoning, and Land Division and Development Ordinances.

- (1) The County hereby accepts and adopts the official UGB Plan Map of the City of Wallowa as the Urban Growth Area Map and definition of the Urban Growth Boundary of the City of Wallowa. The UGB Map shall specify the Land Use Designations as defined in the City Plan, applicable to the lands within the Urban Growth Boundary, including the unincorporated areas.

- (2) The County adopts the City of Wallowa Urban Growth Boundary as shown on the City Land Use Plan Map;
- (3) The County affirms its 1983 adoption of the Land Use Plan designations and City Zone Classifications for the UGA, as set forth in the City Land Use Plan.

ARTICLE 2

SUBSTANTIVE PROVISIONS

Section 2.010 Urban Growth Boundary Administration. The City of Wallowa shall administer all lands within the corporate limits. The County, through its designated officials, shall retain the responsibility for administration of all unincorporated lands within the Urban Growth Boundary. The County's administrative responsibility shall cease immediately upon annexation by the City.

Section 2.020 Land Use Designations and Zones. Three Urban Growth Areas are mapped in the City UGB Plan Map and designated and zoned AA-Commercial/Industrial, BB-"Residential" and, CC-"UGB Residential", and the County has adopted these designations and the City zones for administration prior to annexation (per 1983 urban growth management agreement). Upon annexation, the City zones, as described below and set forth in the City UGB Plan Map, shall also apply:

Area AA: All unincorporated Urban Growth Boundary Lands to the north of the City limits and formerly the Bate's Mill site, as well as two smaller parcels historically utilized as commercial-industrial sites, are zoned COMMERCIAL-INDUSTRIAL (C-I) as defined in the City of Wallowa Zoning Ordinance.

AREA BB: All unincorporated Urban Growth Boundary lands to the east of the City limits are zoned RESIDENTIAL (R) as defined in the City of Wallowa Zoning Ordinance.

AREA CC: All unincorporated portions of the Urban Growth Boundary lying west of the City limits and within the Evergreen Sewer and Water District, as well as certain specified parcels adjacent to the District, are zoned UGB-RESIDENTIAL (UGB-R) as defined in the City of Wallowa Zoning Ordinance.

Until annexation occurs, growth and development shall be governed by the provisions of Section 2.030.

Section 2.030 Use Regulations. Within the Urban Growth Areas designated Commercial/Industrial, Residential, and UGB Residential, all development shall comply with the City zones as mapped in the UGB Plan Map and with the zone restrictions and land development standards, including those applicable to utilities and roads, which would be applied if the proposed development were situated within the corporate limits of the City and within the designated zone.

ARTICLE 3

ADMINISTRATIVE PROVISIONS

Section 3.010 Land Use Actions. All permit applications made prior to annexation shall be processed as follows:

(1) All permit applications concerning lands within the Urban Growth Area shall be filed with the County. The Director and responsible City Staff shall confer to determine the application criteria and forms to be used, appropriate City and County ordinance criteria to be applied, the review process to be followed, and what application fees shall be paid and to whom. The Director shall then inform the applicant of the criteria for a complete application and forms to be filed, criteria to be applied by the review authority, the review process and deadlines to be followed, and application fees to be paid. Upon receipt of the application, the Director will consult with the responsible City staff prior to rendering a final decision on the completeness of the application.

(2) The application shall be referred by the Director to the City within three (3) working days after a complete application has been filed with the County Planning Department.

(3) The City shall review the permit application and, if it deems necessary, shall respond with its recommendation prior to the date set by the Commission for the public hearing to consider the request or the date set by the Director as the last day for comment on a decision on the application. The date set by the Commission or the Director shall not preclude the City from providing the City Council adequate time to review the application at a regularly scheduled meeting.

(4) In the event no response or recommendation is received from the City within forty-five (45) days from the date the application is submitted to the City by the County, the County shall conclude the City has no objections and shall proceed to take the necessary review steps as required by the appropriate County ordinance.

(5) The County shall retain final decision-making authority in reviewing all permit applications.

(6) The decision of the County shall be provided in writing to all parties to the review, including the City, and shall specify the criteria considered, the findings of fact and the final decision of the review body. Said notice shall be mailed within five (5) working days of the decision.

Section 3.020 Public Facilities and Services.

(1) Before annexation, no City streets, water or sewer services will be extended to unincorporated areas within the Urban Growth Boundary, except for existing contractual obligations with Evergreen District and other existing contractual obligations.

(2) The cost of extension or improvement of public facilities, services, sewer, water, and streets, required as a condition of permit approval, shall be borne by the developer, unless the City or County agrees to bear all or a portion of the costs thereof.

(3) The City provides fire coverage for lands within the City limits and will provide fire coverage to lands within the Urban Growth Area through the City of Wallowa Fire Department and Rural Fire District.

Section 3.030 Roads within the Urban Growth Area.

(1) Creation of new streets or improvements of existing streets or existing rights-of-way within the Urban Growth Area shall conform to the City's existing street pattern, City of Wallowa Transportation System Plan specifications, and existing city fire protection road standards.

(2) Road maintenance shall be the responsibility of the County, if, and only if, the road or street is formally accepted by the County into the County road maintenance system pursuant to the provisions of applicable County ordinance and state statutes.

(3) The City shall accept no responsibility for roads or streets of lands within the Urban Growth Area. Annexation of lands served by the roads or streets is required prior to City adoption of roads or

streets into City road system.

(4) In the event an area within the UGA is annexed into the City and contains an existing dedicated street which does not meet City standards, the City may:

- a.) Decline to accept the street system unless the owners bring the street to City Standards.
- b.) Require the applicant for a permit (which would access through said street), to improve the street to City standards as a condition of the permit.

Section 3.040 Annexations.

(1) Only lands within the recognized Urban Growth Boundary shall be subject to annexation. When preparing to review a request for annexation the City shall, in addition to following the procedures of its Charter and Oregon Revised Statutes, allow for the following:

- (a) Notice to the County at the same time as notice to the property owners.
- (b) Notice to property owners in accordance with Oregon State annexation statutes.
- (c) Adequate public notice including notice in the official County newspaper.

(2) In the event any portion of the Urban Growth Area is annexed to the City, the City zoning classification shall be that which is specified in Section 2.020 and in the City UGB Plan Map. In the event of annexation, this agreement shall not restrict the City from later rezoning any property so annexed so long as said action is consistent with the City's Land Use Plan and the laws of the State of Oregon.

Section 3.050 Amendments to Urban Growth Boundary.

(1) Amendments to the City Urban Growth Boundary may be initiated by the City, the County or an affected property owner. The City, in reviewing any proposed amendments to the Growth Boundary, shall consider whether or not it will be practical in the future to provide public facilities and services in a manner consistent with this Ordinance. All amendments to the Growth Boundary shall be consistent

with the criteria of Goal 14 of the Statewide Goals and Guidelines as well as all other applicable Goals, Rules, Plans, and Ordinances.

(2) County review of proposed amendments to the Growth Boundary shall be as prescribed in the County Ordinance for amending the Wallowa County Land Use Map and shall be processed in the manner set forth in Section 3.010(2) of this Ordinance.

(3) No amendment to the Urban Growth Boundary shall occur without the approval of both the City and the County.

Section 3.060 Amendments to Ordinance Text

(1) Amendments to the text of this Ordinance may be initiated by the City, County or affected citizen. Amendments to the text shall be reviewed in the manner prescribed in the County Ordinance for amending the text of the Wallowa County Zoning Ordinance. Text amendments affecting Section 2.020 shall be processed in the manner prescribed below in Section 3.060.

(2) County review of proposed text amendments shall be as prescribed in the applicable County ordinance relating to the Zoning Ordinance and shall be processed in the manner set forth in Section 3.010 of this Ordinance.

(3) Final decision regarding a proposed amendment to the text of this Ordinance shall rest with the County, however, the County shall not approve a text amendment without the prior written approval of the City.

Section 3.070 Land Use Plan and Zone Classification Changes

(1) Application for changes in land use plan designations and zone classifications delineated in Section 2.020 of this Ordinance shall be initiated with the City and shall be initially processed by the City in accordance with provisions of the City Ordinance. The County shall consider an amendment to the provisions of Section 2.020 and referenced maps only upon completion of City action and upon receipt of a written recommendation from the City. The County shall not have the authority to initiate any change to the land use plan designations or zone classifications prescribed by Section 2.020 of this Ordinance.

(2) Changes to land use plan designations and zone classifications prescribed by Section 2.020 of this Ordinance shall be processed by the County in the manner of a text amendment and in accordance with Section 3.060. Final decisions regarding proposed amendment to Section 2.020 of this Ordinance shall rest with the County. The County shall not approve an amendment to Section 2.020 without prior written approval from the City.

Section 3.080 **Appeals.** Any person or party adversely affected or aggrieved, including the City, shall have standing to appeal a decision or ruling of the County. In so doing, the appellant shall follow the procedures set forth in the Wallowa County Zoning Ordinance. The decisions of the County shall be final unless otherwise reviewed under applicable state statutes.

Section 3.090 **Enforcement.** Enforcement of land use regulations specified by this Ordinance and related to unincorporated areas of Urban Growth Boundary shall be the responsibility of the County. Violations of land use regulations shall be prosecuted pursuant to the provisions of the Wallowa County Ordinances.

Section 3.100 **Fees.** All applications submitted pursuant to the requirements of this Ordinance shall be accompanied by the appropriate fee set by the County.

Section 3.110 **Repeal.** All ordinances or parts of ordinances and all previous resolutions related to agreements between the City and County regarding the City Urban Growth Boundary and Area are herewith repealed upon the effective date of this Ordinance.

Section 3.120 **Severability.** The provisions of this Ordinance are severable. If any section, sentence, clause or phrase of this Ordinance is adjudged by a court of competent jurisdiction to be invalid, said decision shall not impair or affect the validity of the remaining portion of this Ordinance.

Section 3.130 **Emergency Clause.** It is the legislative intent of this Ordinance that it take effect immediately upon the authorizing

Adopted
~~Draft~~ for Wallowa - 6/20/01*

signatures of the respective County and City officials.

Section 3.140 Intergovernmental Cooperation and Ordinance Enactment.
As enabled by ORS 190.010, the following signatures bind all parties of interest to this Ordinance.

APPROVED this 14 day of August, 2001
[Signature] [Signature]
City Recorder Mayor

ENACTED By Wallowa County this 16 day of July, 2001

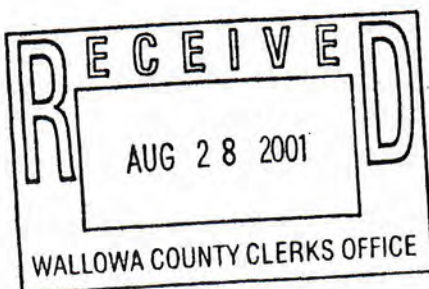
For the Wallowa County Board of Commissioners:

CHAIRMAN, WALLOWA COUNTY BOARD OF COMMISSIONERS

[Signature]
COMMISSIONER

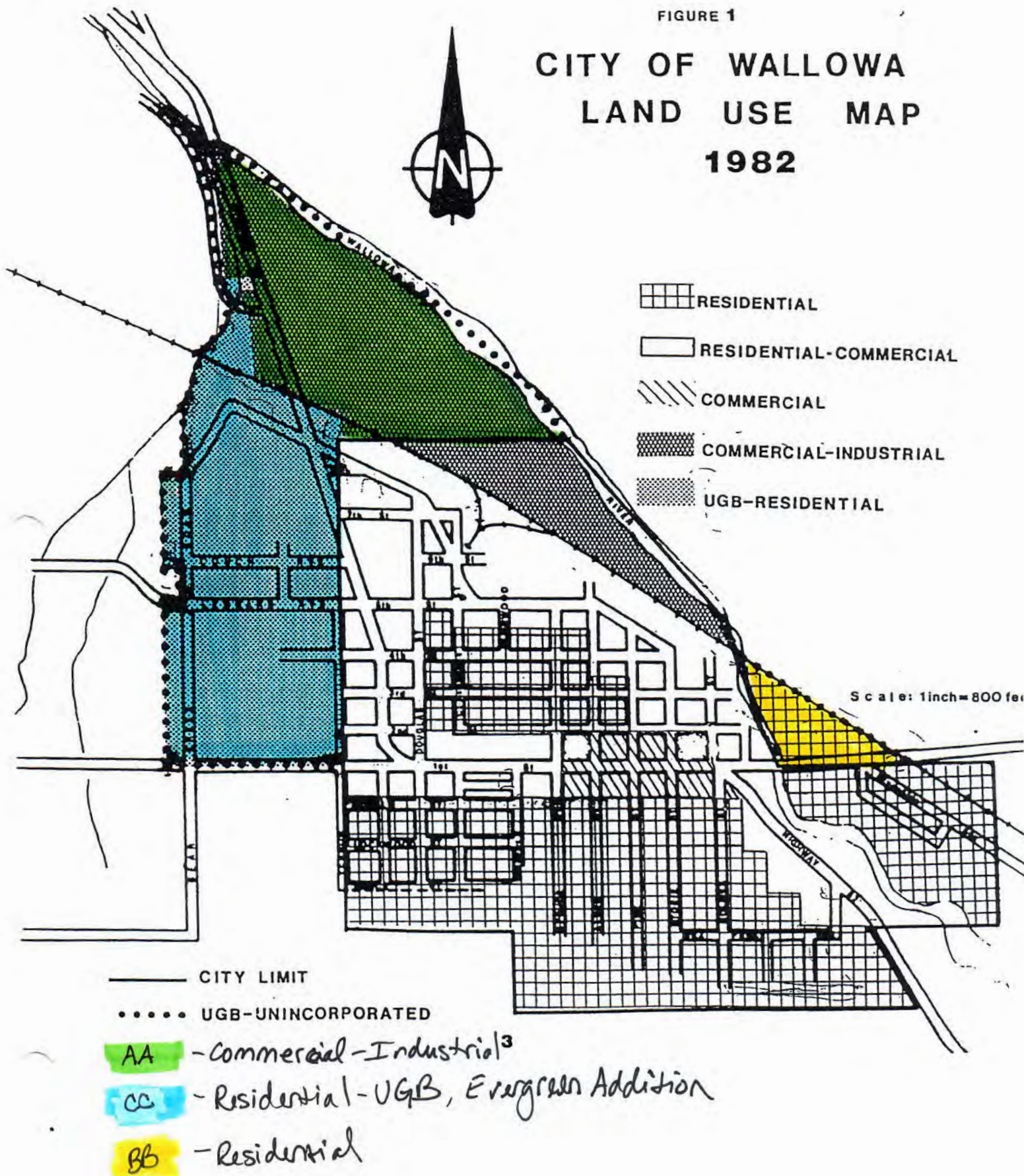
[Signature]
COMMISSIONER

* C:\DATA\wp\UGMA WALLOWA MAY 16, 2001 DRAFT modified 6/20/01
and adopted in that form 7/16/01. File name 5/16/01 is
final version as adopted. withdrawn 7/16/01.



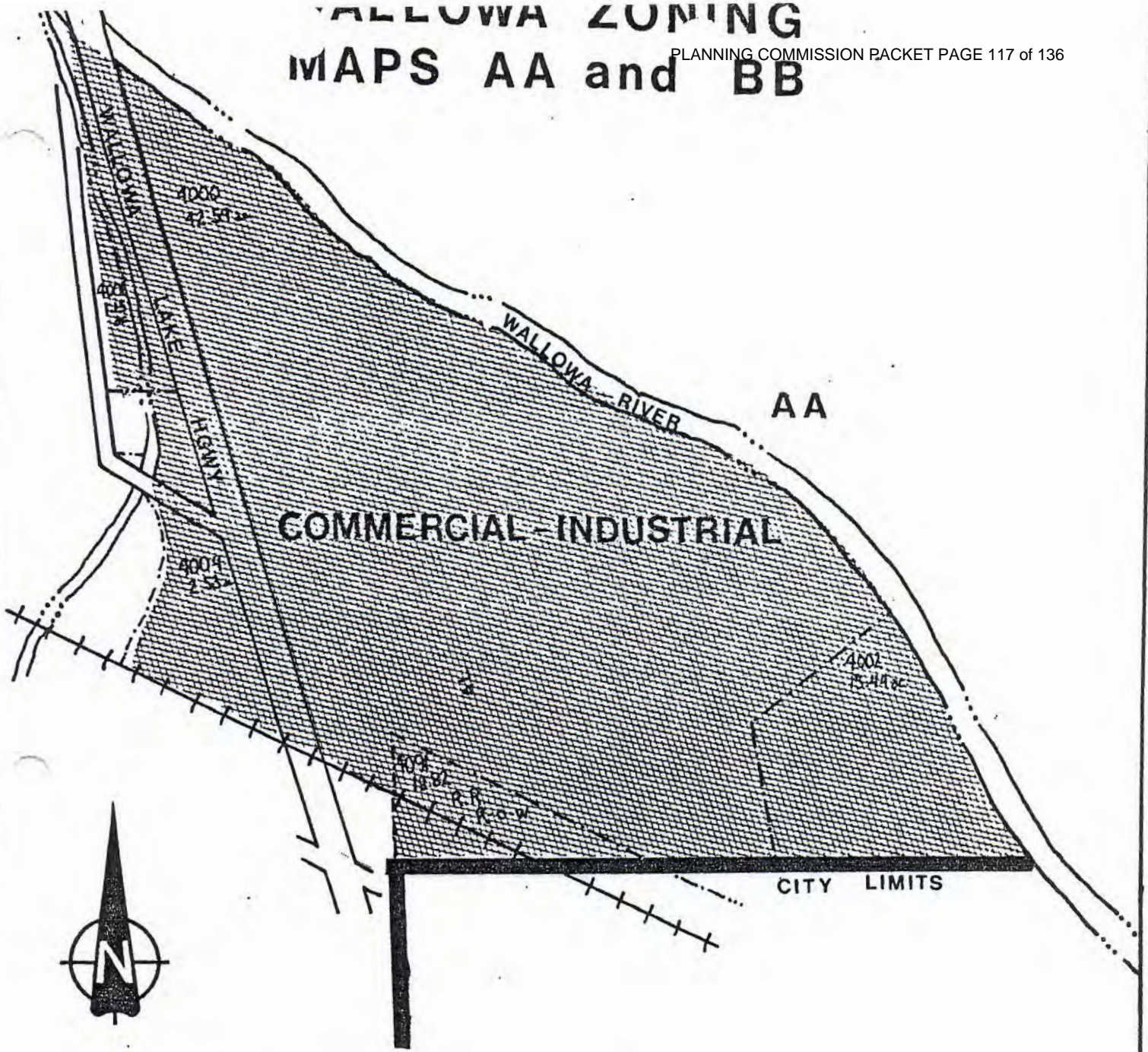
10

STATE OF OREGON
COUNTY OF WALLOWA
I certify that this instrument was
received and recorded in the book
of records of said county.
CHARLOTTE MCIVER
Wallowa County Clerk
by: [Signature]
County Clerk/Deputy
Commissioner Records
August 28, 2001 Ordinance
2001-004 County Agreement
2001-332 City of Wallowa

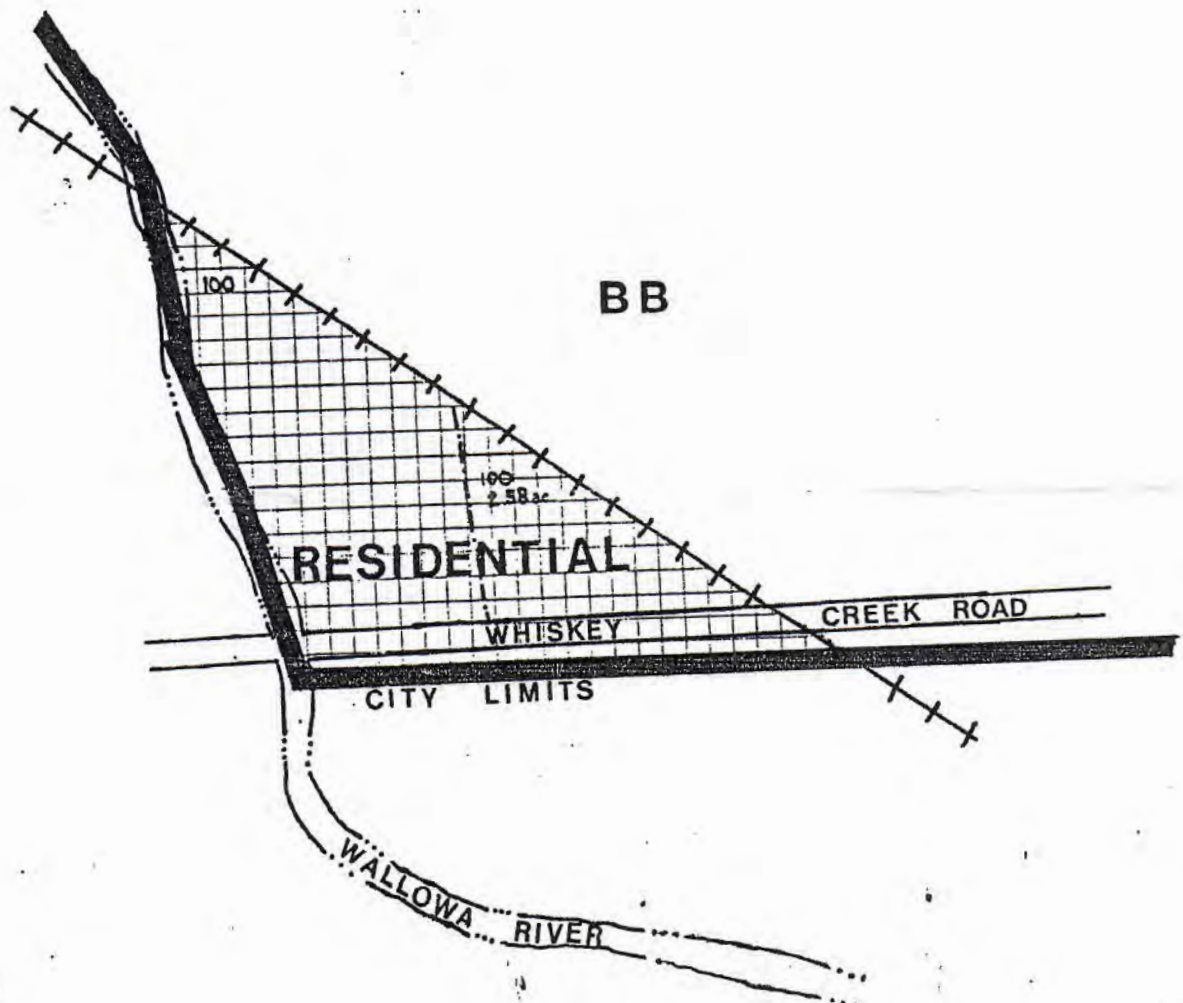


WALLOWA ZONING MAPS AA and BB

PLANNING COMMISSION PACKET PAGE 117 of 136



SCALE: 1 in = 400 ft



PLANNING COMMISSION PACKET PAGE 118 of 136



CITY LIMITS

**EVERGREEN
ADDITION**

NEAR CREEK ROAD

NEAR CREEK ROAD

EXHIBIT D:
LLA#23-01 APPLICATION

Must be printed on legal paper (8 1/2" x 14")

PLANNING COMMISSION PACKET PAGE 119 of 136



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

PERMIT#: LLA#23-01
E-PERMIT#: 903.23.000029.PLVG
DATE FILED: 1-23-23
TOTAL FEE: \$400
CHECK #: CC

LOT LINE ADJUSTMENT

PARENT PARCEL
Reference #: 5130
Township: 1N
Range: 42E
Section: 11
Tax Lot: 1300
Acreage before LLA: 2.93
Acreage after LLA: 2.335
Zone: CI
Assessors Map #: 01N 42E 11CB

ACQUIRING PARCEL
Reference #: 5528
Township: 1N
Range: 42E
Section: 11
Tax Lot: 300
Acreage before LLA: 1.80
Acreage after LLA: 2.172
Zone: CI
Assessors Map #: 01N 42E 11CB

ATTACH THE FOLLOWING INFORMATION:

1. Legal description of the parent property before and after the Lot Line Adjustment.
2. Legal description of the acquiring property before and after Lot Line Adjustment.
3. Map showing parcels before and after Lot Line Adjustment with tax lots lines, TRS, and an aerial photo.
4. Map showing the location of the proposed partition and the location of all existing and proposed structures.

Check with the County Treasurer: TAXES are PAID THRU: 6-30-2023 COUNTY TREASURER INITIAL JMB

John J Burns and Donna D Duby

Applicant/Owner

PO Box 101

Address

Wallowa, OR 97885

City, State, Zip

SIGNATURE OF GRANTOR



OFFICIAL STAMP
MAKAYLA LYNN MAXWELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 995102A
MY COMMISSION EXPIRES DECEMBER 23, 2023

John J Burns and Donna D Duby

Applicant/Owner

PO Box 101

Address

Wallowa, OR 97885

City, State, Zip

SIGNATURE OF GRANTEE

STATE OF OREGON, COUNTY OF WALLOWA)ss
This instrument was acknowledged before me on

Jan 12, 2023 by

John J Burns & Donna D Duby

Makayla Maxwell
Notary Public of Oregon/Commission Expires Dec 23, 2023



OFFICIAL STAMP
MAKAYLA LYNN MAXWELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 995102A
MY COMMISSION EXPIRES DECEMBER 23, 2023

STATE OF OREGON, COUNTY OF WALLOWA)ss
This instrument was acknowledged before me on

Jan 12th, 2023 by

John J Burns & Donna D Duby

Makayla Maxwell
Notary Public of Oregon/Commission Expires Dec 23, 2023

APPROVED BY:

[Signature]
Wallowa County Planning Dept.

3.16.23
Date

[Signature]
Wallowa County Surveyor

3/1/23
Date

SPACE FOR WALLOWA
WALLOWA COUNTY CLERK
RECORDING CERTIFICATE

THIS APPROVAL IS NOT VALID UNTIL THIS DOCUMENT IS RECORDED WITH THE WALLOWA COUNTY CLERK



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

AFFIDAVIT OF LOT LINE ADJUSTMENT

I (WE) John J Burns & Donna D Duby
BEING FIRST AND DULY SWORN, DEPOSE AND SAY:

1. That I ~~am~~ (we are) the record owner(s) of the real property described in the attached and incorporated Lot Line Adjustment Application.
2. That I ~~am~~ (we) have been granted Lot Line Adjustment approval per the Oregon State Statutes 92.010 (7) (b) (11) and 92.060 (7) (8) (9) (10), to relocate the common boundary line between two abutting properties.
3. ~~I~~ We make this affidavit for the purpose of recording the approval in the public records and authorizing the county Assessor to make appropriate changes in the tax assessment records and maps. ~~I~~ We understand that property taxes due Wallowa County must be current in the order for Assessment Records/ Maps to be changed.

112-23
Date

John J Burns

Donna D Duby

Owner John J Burns

Owner Donna D Duby

State of Oregon, County of wallowa

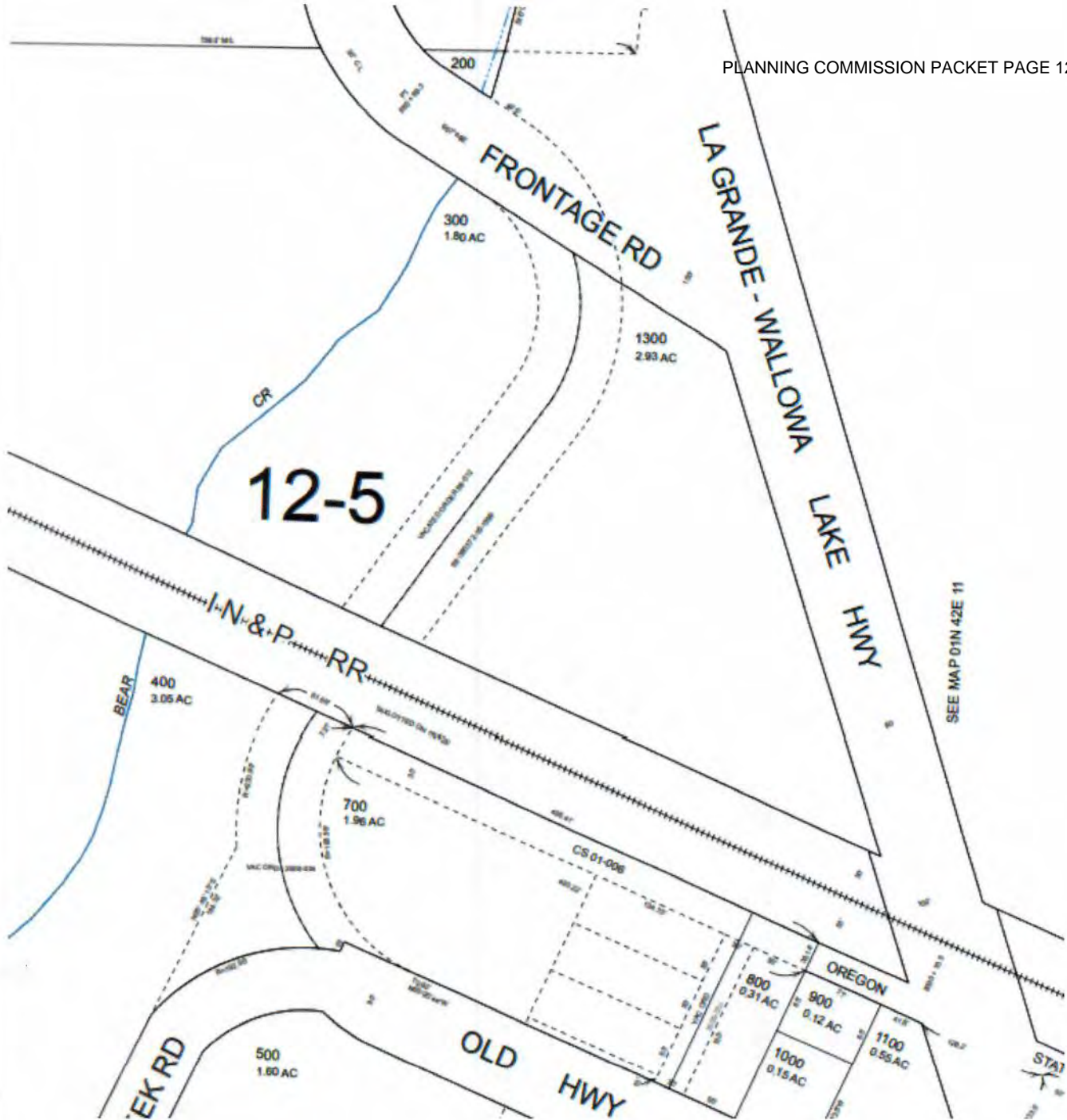
The foregoing instrument was acknowledged before me on the 12th Day of January,
2023, by John J Burns & Donna D Duby



Makayla Maxwell
Notary Public For
My Commission Expires: Dec 23, 2023

Attach Exhibits: Approved Wallowa County Planning Department Lot Line Adjustment; and legal descriptions and assessor maps of both parcels before and after Lot Line Adjustment.

Note: A copy of this affidavit and attached exhibits must be provided to the Planning Department.



ArcGIS Web Map

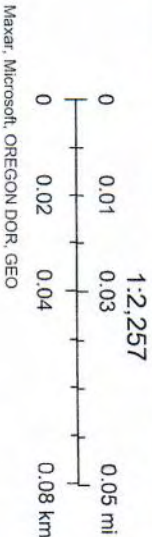


11/2/2022, 1:44:17 PM

taxlot

CountyLines

mapIndex



Capital Growth Buchalter, Incorporated

Situated in a portion of the Northwest 1/4 of the Southwest 1/4 of Section 11, Township 1 North, Range 42 East, Willamette Meridian, Wallowa County, Oregon
2023



0 50 100 150
Plan Scale: 1" = 50'

SURVEYOR'S NARRATIVE

THE PURPOSE OF THIS RECORD OF SURVEY IS TO DEPICT THE ADJUSTMENT OF EXISTING PARCELS TO PARCELS A AND B, AS SHOWN HEREON. THIS SURVEY IS BASED UPON THE RETRANSMISSION OF THE SURVEY DATA, RECORDS OF SURVEY AND DEEDS AS REFERENCED HEREON.

THE NORTHERLY, EASTERLY AND SOUTHERLY BOUNDARY LINES OF THE SUBJECT PROPERTY ARE BOUND BY ODOT HIGHWAY AND OMBAN RAILROAD RIGHT-OF-WAY, RESPECTIVELY. THE MAPS REFERENCED HEREON WERE USED TO DELINEATE SAID RIGHTS OF WAY, AND THE ADJUSTMENTS WERE MADE TO CONFORM WITH THE RECORD MEASUREMENTS PURPORTED ON SAID SURVEYS.

THE WESTERLY BOUNDARY LINE WAS DETERMINED BY A FIELD SURVEY OF THE EXISTING MONUMENTS AND WITNESS CORNERS WERE SET ALONG THE TOP OF BANK TO PERPETUATE THE AS-SURVEYED LOCATION OF SAID BEAR CREEK.

SURVEYOR'S NOTE: PURSUANT TO CS2018-044, NETWORK POINT NUMBERS 5 AND 6 WERE RECOVERED IN 9000 CONDITION WHILE CONDUCTING THIS SURVEY.

FELDKORP WAS COMPLETED ON 11/10/2022.

HORIZONTAL DATUM

THE HORIZONTAL DATUM USED FOR THIS PROJECT IS NAD 83 (2011) EPOCH 2010.000. COORDINATES ARE PROJECTED TO THE OREGON COORDINATE REFERENCE SYSTEM (COORS) LA GRANDE ZONE, INTERNATIONAL FEET. PROJECTION DATA IS PROVIDED IN OAR 734-005-015. GRID COORDINATE ZONE DISTANCES CLOSELY MATCH GROUND DISTANCES.

LEGEND

FOUND 2 1/2-INCH ALUMINUM CAP, PER WALLOWA COUNTY MONUMENT RECORDS

FOUND 5/8-INCH REBAR, AS NOTED

SET 5/8-INCH X 24-INCH REBAR WITH PLASTIC CAP MARKED "GREEN 9693"

SET 5/8-INCH X 24-INCH REBAR WITH PLASTIC CAP MARKED "GREEN 9693" AS REFERENCE MONUMENT

CALCULATED POINT

PROPERTY BOUNDARY LINE

PARCEL LOT LINE

ADJACENT BOUNDARY LINE

SECTION LINE

CENTERLINE

VACATED RIGHT-OF-WAY LINE

SURVEY TIE LINE

COUNTY SURVEY

PARTITION PLAT

WITNESS CORNER

PER REFERENCE

RIGHT-OF-WAY

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON

SEPT 14, 2021

ALEX GREEN

96938PLS

REVISE: 08-30-2023

02/15/23

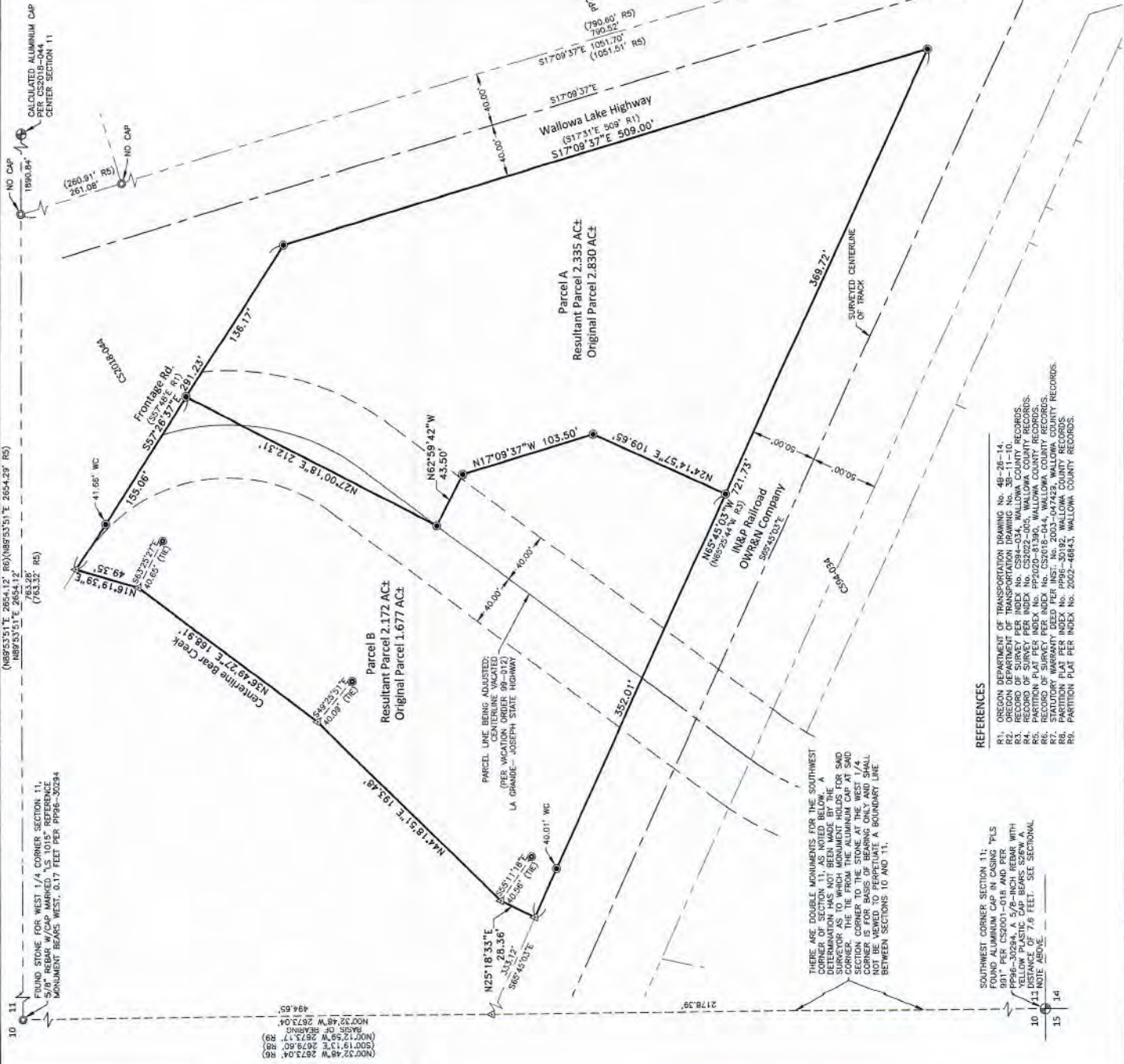
WALLOWA COUNTY SURVEYOR

RECEIVED

FILED

INDEX

km
ENGINEERING
3000 N. W. 10th Ave.
Boise, Idaho 83721
PHONE (208) 639-6939
kmgrip@gmail.com



REFERENCES

- R1. OREGON DEPARTMENT OF TRANSPORTATION DRAWING NO. 48-26-14.
R2. OREGON DEPARTMENT OF TRANSPORTATION DRAWING NO. 38-11-10.
R3. RECORD OF SURVEY PER INDEX NO. CS84-034, WALLOWA COUNTY RECORDS.
R4. RECORD OF SURVEY PER INDEX NO. CS84-034, WALLOWA COUNTY RECORDS.
R5. PARTITION PLAT PER INDEX NO. PP0202-81390, WALLOWA COUNTY RECORDS.
R6. RECORD OF SURVEY PER INDEX NO. CS2018-044, WALLOWA COUNTY RECORDS.
R7. PARTITION PLAT PER INDEX NO. PP02-80142, WALLOWA COUNTY RECORDS.
R8. PARTITION PLAT PER INDEX NO. 2002-46843, WALLOWA COUNTY RECORDS.

SOUTHWEST CORNER SECTION 11:

FOUND ALUMINUM CAP IN CASING "PLS"
CS2018-044, WALLOWA COUNTY RECORDS.
PP046-300-000, WALLOWA COUNTY RECORDS.
YELLOW PLASTIC CAP BEARS S26°W A
DISTANCE OF 7.6 FEET. SEE SECTIONAL
NOTE 860VE.



February 15, 2023
Project No. 22-166
Legal Description

Parcel A

A parcel of land situated in a portion of the Northwest 1/4 of the Southwest 1/4 of Section 11, Township 1 North, Range 42 East, Willamette Meridian, Wallowa County, Oregon and being more particularly described as follows, with reference to Wallowa County Survey No. 2023-001:

Commencing at a found stone marking the West 1/4 corner of said Section 11, which bears N00°32'48"W a distance of 2,673.04 feet from a found aluminum cap marking the Southwest corner of said Section 11;
Thence S00°32'48"E a distance of 494.65 feet;
Thence S65°45'03"E a distance of 685.13 feet to a set 5/8-inch by 24-inch long rebar with plastic cap marked "Green PLS 96936" (hereinafter known as "set 5/8-inch rebar"), on the northerly right-of-way line of the OWR&N Company Railroad and being the **POINT OF BEGINNING**.

Thence leaving said northerly right-of-way line, N24°14'57"E a distance of 109.65 feet to a set 5/8-inch rebar;
Thence N17°09'37"W a distance of 103.50 feet to a set 5/8-inch rebar;
Thence N62°59'42"W a distance of 43.50 feet to a set 5/8-inch rebar;
Thence N27°00'18"E a distance of 212.31 feet to a set 5/8-inch rebar on the westerly right-of-way line of the Wallowa Lake Highway;

Thence following said westerly right-of-way line the following two (2) courses:

1. S57°26'37"E a distance of 136.17 feet to a set 5/8-inch rebar;
2. S17°09'37"E a distance of 509.00 feet to a set 5/8-inch rebar on said northerly railroad right-of-way line;

Thence leaving said westerly right-of-way line and following said northerly railroad right-of-way line, N65°45'03"W a distance of 369.72 feet to the **POINT OF BEGINNING**.

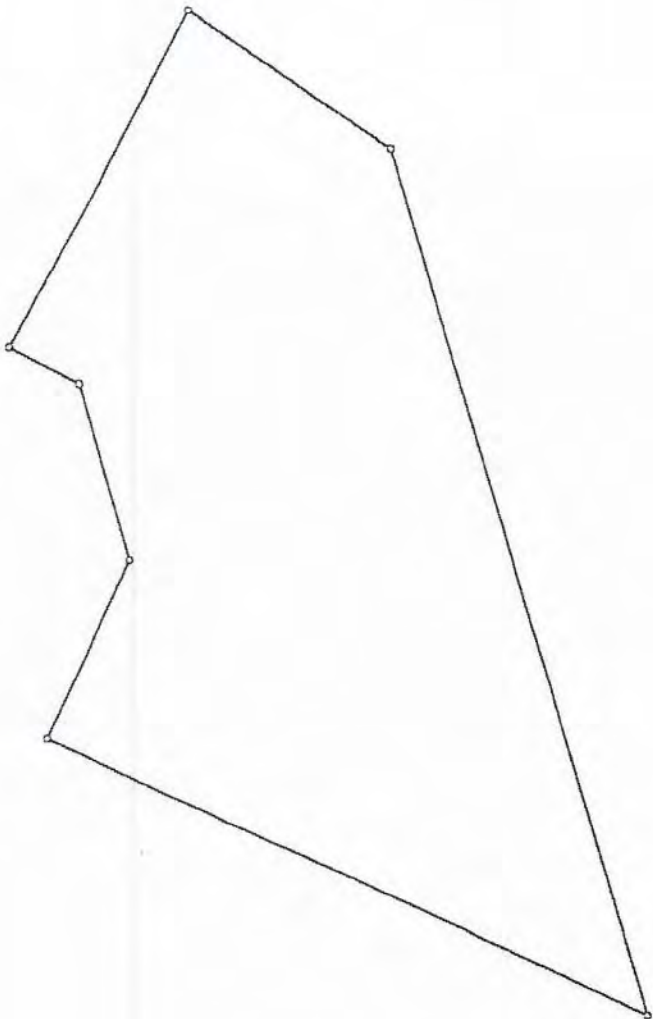
Said parcel contains 2.335 acres, more or less, and is subject to all existing easements and/or rights-of-way of record or implied.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
SEPT 14, 2021
ALEX GREEN
96936PLS

RENEWES: 06-30-23

02/15/23



OK ✓

Title:		Date: 12-13-2022
Scale: 1 inch = 100 feet	File: Deed Plotter.des	
Tract 1: 2.335 Acres: 101697 Sq Feet: Closure = s29.5953e 0.01 Feet: Precision =1/141321: Perimeter = 1484 Feet		
001=n24.1457e 109.65	004=n27.0018e 212.31	007=n65.4503w 369.72
002=n17.0937w 103.50	005=s57.2637e 136.17	
003=n62.5942w 43.50	006=s17.0937e 509.00	



February 15, 2023
Project No. 22-166
Legal Description

Parcel B

A parcel of land situated in a portion of the Northwest 1/4 of the Southwest 1/4 of Section 11, Township 1 North, Range 42 East, Willamette Meridian, Wallowa County, Oregon and being more particularly described as follows, with reference to Wallowa County Survey No. 2023-001:

Commencing at a found stone marking the West 1/4 corner of said Section 11, which bears N00°32'48"W a distance of 2,673.04 feet from a found aluminum cap marking the Southwest corner of said Section 11;
Thence S00°32'48"E a distance of 494.65 feet;
Thence S65°45'03"E a distance of 333.12 feet to the point of intersection of the northerly right-of-way line of the OWR&N Railroad and the centerline of Bear Creek, being witnessed by a set 5/8-inch by 24-inch long rebar with plastic cap marked "Green PLS 96936" (hereinafter known as "set 5/8-inch rebar"), which bears S65°45'03"E a distance of 40.01 feet and being the **POINT OF BEGINNING**.

Thence leaving said northerly railroad right-of-way line and following the centerline of said Bear Creek the following four (4) courses:

1. N25°18'33"E a distance of 28.36 feet to a point being referenced by a set 5/8-inch rebar, which bears S55°11'18"E a distance of 40.56 feet;
2. N44°18'51"E a distance of 193.48 feet to a point being referenced by a set 5/8-inch rebar, which bears S49°25'51"E a distance of 40.09 feet;
3. N36°49'27"E a distance of 168.91 feet to a point being referenced by a set 5/8-inch rebar, which bears S63°25'27"E a distance of 40.65 feet;
4. N16°19'39"E a distance of 49.35 feet to a point on the westerly right-of-way line of the Wallowa Lake Highway, said point being witnessed by a set 5/8-inch rebar, which bears S57°26'37"E a distance of 41.66 feet;

Thence leaving said centerline and following said westerly right-of-way line, S57°26'37"E a distance of 155.06 feet to a set 5/8-inch rebar;

Thence leaving said westerly right-of-way line, S27°00'18"W a distance of 212.31 feet to a set 5/8-inch rebar;

Thence S62°59'42"E a distance of 43.50 feet to a set 5/8-inch rebar;

Thence S17°09'37"E a distance of 103.50 feet to a set 5/8-inch rebar;

Thence S24°14'57"W a distance of 109.65 feet to a set 5/8-inch rebar on said northerly railroad right-of-way line;

Thence following said northerly railroad right-of-way line, N65°45'03"W a distance of 352.01 feet to the **POINT OF BEGINNING**.

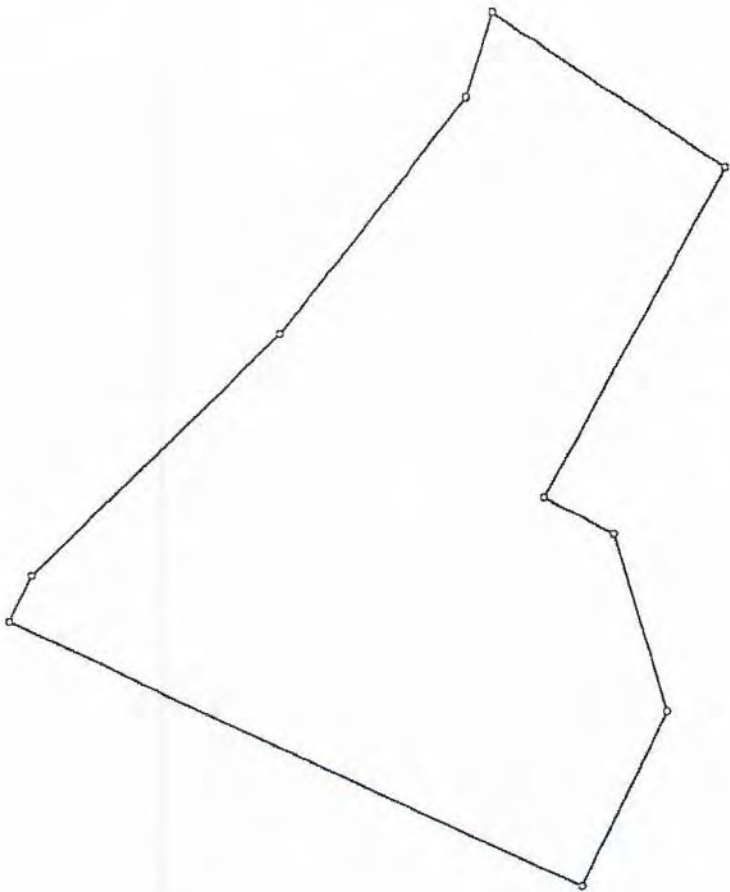
Said parcel contains 2.172 acres, more or less, and is subject to all existing easements and/or rights-of-way of record or implied.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
SEPT 14, 2021
ALEX GREEN
96936PLS

RENEWALS: 06-30-23

02/15/23



Title:		Date: 12-13-2022
Scale: 1 inch = 100 feet	File: Deed Plotter.des	
Tract 1: 2.172 Acres: 94606 Sq Feet: Closure = n81.0516e 0.01 Feet: Precision = 1/142420: Perimeter = 1416 Feet		
001=n25.1833e 28.36	005=s57.2637e 155.06	009=s24.1457w 109.65
002=n44.1851e 193.48	006=s27.0018w 212.31	010=n65.4503w 352.02
003=n36.4927e 168.91	007=s62.5942e 43.50	
004=n16.1939e 49.35	008=s17.0937e 103.50	

OK ✓

064177

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this _____ day of _____, 20____, by first party Donna D. Duby whose post office address is P.O. Box 101, Wallowa, OR 97885 to second party, John J. Burns and Donna D. Duby whose post office address is P.O. Box 101 Wallowa, Or 97885

WITNESSETH, That the said first party, for good consideration and for the sum of \$ 1.00 paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim to John J. Burns and Donna D. Duby, husband and wife

the following described parcel of land, and improvements and appurtenances thereto in the County of Wallowa, State of Oregon, to wit:

AS RECORDED IN THE WALLOWA COUNTY BOOK OF TAX RECORDS: TWO TAX LOTS AS FOLLOWS: REFERENCE #5130 LOT #01N4211CB-1300 AND REFERENCE #5528 LOT #01N4211CB-300

see attached Exhibit A

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Witness

First Party

Witness

Second Party

STATE OF

COUNTY OF

On Sept. 16-2010 before me Coralene Ann Schaeffer personally appeared Donna D. Duby, John J. Burns personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Signature

Affiant: ☒ Known ☐ Unknown

ID Produced: On D.

[Seal]



064177

EXHIBIT "A"

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF OR, COUNTY OF Wallowa, CITY OF Wallowa,
DESCRIBED AS FOLLOWS:

TRACT 1:

A TRACT OF LAND LYING AND BEING IN THE NW1/4SW1/4, SECTION 11, TOWNSHIP 1 NORTH, RANGE 42 EAST OF THE WILLAMETTE MERIDIAN, WALLOWA COUNTY, OREGON, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHERE THE WEST LINE OF THE STATE HIGHWAY INTERSECTS THE NORTH LINE OF THE RIGHT OF WAY OF THE OWR&N COMPANY IN THE SOUTHWEST QUARTER OF SECTION 11, T1N, R42 EWM; RUNNING THENCE IN A NORTHERLY DIRECTION ALONG THE WEST LINE OF SAID STATE HIGHWAY TO THE CENTER OF THE MAIN CHANNEL OF BEAR CREEK; THENCE UP THE CENTER OF THE MAIN CHANNEL OF BEAR CREEK IN A SOUTHERLY DIRECTION TO THE NORTH LINE OF THE RIGHT OF WAY OF THE OWR&N COMPANY; THENCE ALONG THE NORTH LINE OF THE RIGHT OF WAY OF THE OWR&N COMPANY IN AN EASTERLY DIRECTION TO THE POINT OF BEGINNING.

ALSO, THAT PORTION OF VACATED LA GRANDE-JOSEPH STATE HIGHWAY ADJOINING ABOVE-DESCRIBED TRACT OF LAND ON THE EAST AS VACATED BY WALLOWA COUNTY ORDER NO. 99-012, AND DISCLOSED BY INSTRUMENT RECORDED AS MICROFICHE NO. 99-38037.

TRACT 2:

THAT PORTION OF NW1/4SW1/4, SECTION 11, TOWNSHIP 1 NORTH, RANGE 42 EAST OF THE WILLAMETTE MERIDIAN, WALLOWA COUNTY, OREGON, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 500 FEET EAST AND 593 FEET NORTH OF THE SOUTHWEST CORNER OF THE NW1/4SW1/4 OF SAID SECTION 11, SAID POINT BEING ON THE NORTH RIGHT OF WAY LINE OF THE OWR&N COMPANY, AND ALSO BEING THE POINT OF INTERSECTION OF THE EAST RIGHT OF WAY LINE OF THE LA GRANDE-JOSEPH STATE HIGHWAY (AS SAID HIGHWAY EXISTED 8/23/23) AND THE NORTH RIGHT OF WAY LINE OF THE SAID OWR&N COMPANY; THENCE SOUTHEASTERLY ALONG THE NORTH BOUNDARY LINE OF THE RIGHT OF WAY OF SAID RAILROAD TO A POINT WHERE IT INTERSECTS THE WEST RIGHT OF WAY BOUNDARY LINE OF THE PRESENT WALLOWA LAKE HIGHWAY; THENCE NORTHWESTERLY ALONG THE WEST BOUNDARY LINE OF THE SAID PRESENT WALLOWA LAKE HIGHWAY TO A POINT, SAID POINT BEING THE INTERSECTION OF THE PRESENT WALLOWA LAKE HIGHWAY RIGHT OF WAY BOUNDARY AND THE AID LA GRANDE-JOSEPH STATE HIGHWAY (AS SAID HIGHWAY EXISTED 8/23/23); THENCE SOUTHWESTERLY ALONG THE EAST BOUNDARY LINE OF SAID LA GRANDE-JOSEPH STATE HIGHWAY (AS SAID HIGHWAY EXISTED 8/23/23) TO THE POINT OF BEGINNING.

ALSO, THAT PORTION OF VACATED LA GRANDE-JOSEPH STATE HIGHWAY ADJOINING ABOVE-DESCRIBED TRACT OF LAND ON THE WEST AS VACATED BY WALLOWA COUNTY ORDER NO. 99-012, AND DISCLOSED BY INSTRUMENT RECORDED AS MICROFICHE NO. 99-38037.

APN NO. 5130 AND 5228

STATE OF OREGON }
COUNTY OF WALLOWA }

I certify that this instrument was
received and recorded in the book
of records of said county.

Dana Roberts

Wallowa County Clerk

by: _____ Deputy

DOC#: 00064177

RCPT: 72174

9/16/2010 2:32 PM

REFUND:

40.00

.00

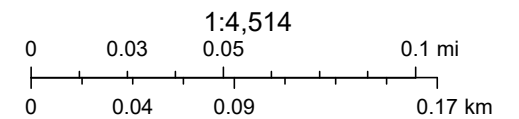
END OF DOCUMENT

EXHIBIT E: Dollar General Zoning



12/5/2023, 3:55:05 PM

- | | | | |
|-----------------|----------------|---------------|-------|
| County Boundary | County Streams | Zoning | W-CI |
| UGB | Taxlots | EFU | W-UGR |
| Railroad | | R-1 | |



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Wallowa County

This map is to be used strictly for information purposes only and should not be taken as expressing any authoritative assertions, opinions, and/or legal descriptions through any information presented.

EXHIBIT F: DOCUMENTS FROM THE RECORD

Jean Jancaitis

From: Jean Jancaitis
Sent: Thursday, November 9, 2023 10:11 AM
To: sweynwall@gmail.com
Subject: WC Land Development Ordinance Articles
Attachments: Article 07__BoC 2012-06-18.pdf; Article 03__BoC 2003-01-21.pdf; Article12 revised 12-06-04.pdf; ZP#23-13__DUBY-DOLLAR GENERAL.pdf; CITY OF WALLOWA UGB AGREEMENT.pdf

See attached and let me know if I forgot something,

Best,
Jean

Jean Jancaitis, PLANNING DEPARTMENT SPECIALIST
Phone: 541-426-7770
Email: jjancaitis@co.wallowa.or.us
Website: co.wallowa.or.us

Wallowa County Planning Department
101 South River Street, Room 105
Enterprise, Oregon 97828
My Hours: Monday through Thursday, 8:30 am – 5:00 pm
Office Hours: Monday through Thursday, 7:00 am – 5:00 pm

PUBLIC RECORDS LAW DISCLOSURE

This e-mail is a public record of Wallowa County and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

*Did not include Wallowa Commercial/
City of Wallowa Zone Ord Art 3. Sect 3.5 because
we found it on the website.*

From: [Franz Goebel](#)
To: [Kirk Farrelly](#)
Cc: [Mike Bultman](#); [Stephanie Hopkins](#); [Michael Kelly](#); [Paige Sully](#); [Jean Jancaitis](#)
Subject: RE: Wallowa, OR - Dollar General - Notice of Appeal Letter
Date: Tuesday, November 21, 2023 2:47:00 PM
Attachments: [Article 07 - BoC 2012-06-18.pdf](#)
[CITY OF WALLOWA UGB AGREEMENT.pdf](#)
[1997-06-24 - City of Wallowa Zoning.pdf](#)

Hi Kirk,

Just to recap our conversation:

Any party has the ability to appeal a land-use decision. Our ordinances state that the appeal period for a *non-noticed* permit is 21 days after issue, or 21 days after someone could reasonably know that it was issued, or if they are adversely affected. The appellants are claiming that they have standing because they were only aware of the permit after construction started, and that they are adversely affected. Regardless of the validity of their arguments, or their claims of having standing, the county must hear their appeal. This will occur at the next Planning Commission meeting on Tuesday, January 30, 2024 (7PM PST). It is held in the county courthouse and also via Zoom. As I also noted, We received a second appeal to the Lot Line Adjustment yesterday. Notice of that was mailed today so you should be receiving it soon. I will be drafting findings for both permits to clarify applicable criteria and my decisions. I will also be drafting staff reports to the Planning Commission for each. Those will address applicable criteria, the validity of the arguments, and recommendations to the Planning Commission. Because these appeals are of a *Planning Director* decision, they will be heard at the *Planning Commission* meeting. The decision of the Planning Commission (upholding or denying the appeal) can be appealed by either party to the Board of Commissioners, the highest governing body in the County. That decision can then be appealed, again by either party, to the Oregon State Land Use Board of Appeals (LUBA).

As a refresher, the property is in the Wallowa Urban Growth area, which is land in the county formally identified as growth area for the city, should it choose to annex. Land use administration in the area is governed by an agreement between the city and the county.

I am attaching a copy of the county/city agreement for the urban growth area. The agreement defers to the county appeal process so I'm attaching that ordinance (Article 7). The property is zoned Wallowa Commercial-Industrial, (also attached-see Section 3.5). If you would like any additional ordinances, please let us know. Unfortunately, our website is under construction, so those resources need to be requested until it is operational again. As I noted in our call, it is always advisable for an applicant to bring on an attorney for an appeal.

Sincerely,

Franz Goebel
 Director of Planning
 Wallowa County Planning Department
 101 S. River St. Room 105
 Enterprise, OR 97828
plandir@co.wallowa.or.us
 541.426.4543. X 1168



PUBLIC RECORDS LAW DISCLOSURE

This e-mail is a public record of Wallowa County and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

From: Kirk Farrelly <kfarrelly@cgppe.com>

Sent: Tuesday, November 21, 2023 1:03 PM

To: Jean Jancaitis <JJancaitis@co.wallowa.or.us>; Franz Goebel <plandir@co.wallowa.or.us>

Cc: Mike Bultman <MBultman@kmengllp.com>; Stephanie Hopkins <shopkins@kmengllp.com>; Michael Kelly <mkelly@cgppe.com>

Subject: Wallowa, OR - Dollar General - Notice of Appeal Letter

Importance: High

Jean/Franz,

I tried calling each of you just now regarding the attached letter we received in the mail this afternoon. I am very confused and concerned as to why a hearing would be required for an active construction Project that has secured all approvals. I need to understand today if this meeting scheduled for 1/30/2024 is a formality or what could result from same. I am on my cell today at out-of-town meetings, which is 504-258-8770, I need to hear from someone this afternoon on this matter.

Thank you.

Kirk Farrelly, P.E.

D) 205.263.4589 C) 504.258.8770 F) 205.968.9229

361 Summit Blvd, Suite 110, Birmingham AL 35243

E-mail: kfarrelly@cgppe.com

www.cgbuchalter.com

Confidentiality Note: The information contained in this email and document(s) attached are for the exclusive use of the addressee and may contain confidential, privileged and non-disclosable information. If the recipient of this email is not the addressee, such recipient is strictly prohibited from reading, photocopying, distributing or otherwise using this email or its contents in any way and must immediately delete this e-mail.

From: [Kirk Farrelly](#)
To: [Franz Goebel](#)
Cc: [Michael Kelly](#)
Subject: Wallowa, OR - Dollar General - Residential Appeal Coordination
Date: Wednesday, December 6, 2023 11:00:55 AM

Franz,

Good afternoon. Here is a timeline for your reference/use:

Property:

- Broker said he listed the property for sale in approximately October 2020.
- Broker said he put up his for-sale sign in approximately May 2021.
- We started reviewing the property in approximately June 2022 when Dollar General asked us to.
- We went under contract on the property on 10/17/2022.
- Broker said he removed his for-sale sign the day of our land closing, which was October 25, 2023.

Property Investigation:

- Geotechnical Field work with drilling rig occurred on December 12, 2022.
- Surveyor on-site throughout early December 2022 completing field work.
- Late March 2023 Septic Designer/Installer on-site digging test holes with equipment.
- Late April 2023 DEQ was on site inspecting the Septic Designer/Installer test holes to determine septic suitability.
- Early June 2023 Well Drilling occurred with drilling rig.

Construction:

- Heavy Construction Equipment ready for mobilization on 10/24 and construction officially started on 10/26.
- Various other parties have visited the site (Engineers, Bidding General Contractors, and Subcontractors, etc.) throughout the development process.

Hope this helps, and once you have a chance to review, please let me know of any questions or if any further information is needed.

Thank you.

Kirk Farrelly, P.E.

D) 205.263.4589 C) 504.258.8770 F) 205.968.9229
361 Summit Blvd, Suite 110, Birmingham AL 35243
E-mail: kfarrelly@cgppe.com
www.cgbuchalter.com



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