

SISKIYOU COUNTY PLANNING COMMISSION
SPECIAL MEETING
August 10, 2016

The Siskiyou County Planning Commission meeting was called to order by Chair Melo at 9:00 a.m. in the Siskiyou County Transportation Conference Room in the county's Transit Center location at 190 Greenhorn Road, Yreka, California.

PRESENT: Commissioners Mike McMahon, Dusty Veale, and Tony Melo

ABSENT: Commissioners Blair Hart and Jeff Fowle

ALSO PRESENT: Greg Plucker, Director of Community Development; Brett Walker, Senior Planner; Jerry Lemos, Senior Environmental Health Specialist; Vurl Trytten, Executive Secretary; Natalie Reed, Deputy County Counsel and Robert L. Chalfant, Attorney for the Planning Commission;

MINUTES:

MOTION: It was moved by Commissioner McMahon, seconded by Commissioner Veale, to approve the minutes of July 20 2016, as mailed with Commissioners Hart and Fowle absent.

VOTED upon and the Chair declared the motion carried unanimously.

PRESENTATIONS FROM THE PUBLIC: None

CONFLICT OF INTEREST DECLARATIONS: None

PUBLIC HEARING PROTOCOL: Chair Melo reviewed the protocol for conducting the Planning Commission meetings.

RIGHTS OF APPEAL STATEMENT: Chair Melo advised that projects heard at this Planning Commission meeting may be subject to appeal within ten calendar days. He directed interested individuals to contact the County Clerk's Office for information. He advised that if you challenge the environmental review or the project proposal in court, you may be limited to raising only those issues raised at the public hearing or in written correspondence delivered to the Planning Department at, or prior to the public hearing. Chair Melo apprized the Commissioners and audience that appeals must be submitted to the County Clerk's Office together with the appeal fee of \$1250.

PUBLIC HEARINGS:

ZONING TEXT AMENDMENT Z-16-02

****CONTINUED FROM THE MAY 18, 2016 PLANNING COMMISSION MEETING****

Proposed amendments to Articles 15 and 36 of Title 10, Chapter 6 of the Siskiyou County Code in order to better define certain conditionally permitted uses, as well as ensure internal consistency in County Code.

**CATEGORICAL EXEMPTION
USE PERMIT**

**APPROVED
APPROVED**

STAFF REPORT:

The previously circulated Staff Report was reviewed by the Commission and a presentation of the project was provided by Mr. Walker.

Mr. Walker said that the Planning Commission had voted to continue the matter to the August Planning Commission meeting. He said that staff was not ready to move forward with the project and recommended the Commission move it to the October 19, 2016 Planning Commission meeting.

AGENCY INPUT: None

PUBLIC INPUT: NONE

Discussion by Commission: NONE

MOTION: Following discussion, it was moved by Commissioner McMahon, seconded by Commissioner Veale to continue this item to the October 19, 2016 Planning Commission meeting.

VOTED upon and the Chair declared the motion carried unanimously with Commissioners Hart and Fowle absent.

DEGRAY ZONE CHANGE (Z-15-06) AND VESTING TENTATIVE PARCEL MAP (TPM-15-04)

The project consists of a rezone and vesting tentative parcel map to subdivide the parcel (APN 036-010-590) into four lots ranging from 2.52 to 5.59 acres, plus a 5-acre designated remainder parcel. The current Rural Residential Agricultural, 2.5-acre minimum parcel size (R-R-B-2.5) zoning would change to Neighborhood Commercial (C-U); Limited Industrial (M-L); and Light Industrial (M-M). The 20.46-acre project site is located on the west side of Interstate 5 at the Abrams Lake Road interchange, on the southerly side of Abrams Lake Road, and on the northerly side of the Union Pacific Railroad tracks. Access to the site is via Upton Road, which bisects the project site. The site is located northwest of the City of Mount Shasta, Siskiyou County, California; Portion of Section 6, T40N, R4W, Mount Diablo Base & Meridian (Latitude 41°20'31.00"N, Longitude 122°20'50.00"W). The Planning Commission will consider the zone change and vesting tentative parcel map and make a recommendation to the Board of Supervisors regarding approval of the proposed zone change, vesting tentative parcel map, and environmental determination.

**MITIGATED NEGATIVE DECLARATION
TENTATIVE PARCEL MAP
ZONE CHANGE**

**APPROVED
APPROVED
RECOMMENDING APPROVAL**

STAFF REPORT:

The previously circulated Staff Report was reviewed by the Commission and a presentation of the project was provided by Senior Planner Walker.

Mr. Walker described the proposed zoning, subdivision, number of lots, and size of the lots. He further described the location of the site, that the existing parcel was bisected by Upton Road, and described the access and location relative to Upton Road. He directed the Commission to page 4 of the staff report that shows the proposed lot configuration and noted that parcel I would be south of Upton Road. He described the surrounding zoning, uses of the adjacent property, and location. He said that Abrams Lake Road was a buffer between the proposed zoning and the adjacent residential zoning in the area. He said that to the south the residential zoning was south of the rail road tracks, which was a sufficient separation to the adjacent residential zoning. He said that staff had determined that the proposed changes were not incompatible with surrounding uses and zoning. He informed the Commission that suggestions from reviewing agencies had been incorporated into the Conditions of Approval that were in Attachment B-1 in the staff report or had been incorporated into the mitigated negative declaration. He informed the Commission that one public comment had been received from Anne Marsh after the staff report had been sent to the Commission. He said that the comment and staff's response to the comment had been passed out to the Commission before the hearing.

Mr. Walker concluded that with the prepared Notations, Conditions of Approval, and Mitigation Measures, staff had concluded that the potential impacts of the project had been reduced to less than significant. He said that staff recommended that the Commission recommend the project to the Board of Supervisors for their approval by adopting the provided Resolution PC 2016-009. He indicated that there was a suggested motion on page 10 of the staff report.

Commission Questions:

Note: At the beginning of the meeting, Commissioner Veale disclosed to the Commission that he had visited the site of the DeGray zone change.

In response to a question from Commissioner Veale regarding the reason for the different zoning on the property, Mr. Walker explained that the zoning was to allow different uses of the site and to reduce the impacts to surrounding neighbors. He said that the CH (Highway Commercial) near Abrams Lake Road was a better fit for that location with buffers between residences and industrial uses. He said applicant had indicated there may be a mini-storage in this area. He said that the limited industrial zoning would add a little more flexibility and buffer the residential area. He said the heavier industrial zoning was closer do other industrial uses in the area. Commissioner Veale asked what about if the owner sought to put residential housing in this area. Mr. Walker responded that a caretaker's residence would be allowed appurtenant to the mini-storage facility, but would require a use permit to put the residence in that zoning. He added that such a potential project may need to design elements for noise reduction due to the close proximity of the railroad tracks.

AGENCY INPUT: None

Chair Melo opened the Public Hearing.

PUBLIC INPUT:

Al Morris, surveyor for project, and Mr. DeGray came to the speaker's table and said that they were present to answer questions. Mr. DeGray said that he had a question regarding mitigation measure 12.1 regarding business hours for the construction yard site. Mr. Walker clarified that the this measure was regarding business hours, and was not for meant to be operations hours for the construction yard.

There being no further input, the Chair closed the Public Hearing.

Discussion by Commission:

Commissioner McMahon confirmed that this was zoning would be for the construction business or contractors business; but would not involve asphalt like Sousa Ready Mix. Mr. Plucker further clarified that the staff report referred to the business as paving, but it is a construction yard where materials and equipment for construction jobs would be stored on site, and the equipment and materials would move on and off the site.

Mr. Walker read the uses allowed in the proposed zoning. He said that an asphalt batch plant is not a permitted use is this zoning district. Commissioner McMahon asked for clarification regarding the restriction in the proposed zoning. Mr. Walker explained that there would be different zoning districts; neighborhood commercial, light commercial, and limited industrial. He said that the limited industrial is the most restrictive of the proposed zoning designations. He said that there were few additional uses and it was closest to Abrams Lake Road. He said that mini-storage would be on limited industrial as it is not allowed in the neighborhood commercial (CU) zoning district. He added that Upton Road meets county standards and there is wide enough access from Upton Road which would be granted through an encroachment permit from the Public Works Department because Upton Road is a county road.

MOTION: Following discussion, it was moved by Commissioner McMahon, seconded by Commissioner Veale to adopt Resolution PC-2016-009, A Resolution of the Planning Commission of the County of Siskiyou, State of California, Recommending that the Board of Supervisors Adopt the Initial Study/Mitigated Negative Declaration (SCH No. 2016072005) and the Mitigation Monitoring Reporting Program, approve the DeGray Zone Change Request (Z-15-06), and approve the DeGray Vesting Tentative Parcel Map (TPM-15-04)

VOTED upon and the Chair declared the motion carried on the following roll call vote:

AYES: Commissioners McMahon, Veale and Melo

NOES: None

ABSENT: Commissioner Hart and Fowle

ABSTAIN: None

Commission heard the Miscellaneous section of the Agenda next.

MISCELLANEOUS:

1. **FUTURE MEETINGS** - The next regular meeting of the Planning Commission is scheduled for Wednesday, September 14, 2016 in the Yreka City Council Chambers at 701 Fourth Street.
2. **CORRESPONDENCE:** None
3. **STAFF AND COMMISSION COMMENTS**

Mr. Plucker informed the Commission that he would be leaving County of Siskiyou employment on Friday and would be working for Colusa County as their Director of Building and Planning.

The Commission recessed at 9:30 and called the meeting back to order at 10:00 a.m. for the following hearing.

10:00 a.m. Butte Creek Minerals, Ltd. (Clifton H. McMillan III, CFO) Vesting Mining Rights Determination Hearing

VESTING MINING RIGHTS

DENIED

STAFF REPORT:

The previously circulated Staff Report was reviewed by the Commission and a presentation of the project was provided by Mr. Plucker.

Mr. Plucker said that he was submitting the staff report and exhibits that had already been produced into the record.

Claimant Clifton McMillan the III CFO of Butte Creek Minerals Ltd. said that he was claiming a vesting mining right for Butte Creek Minerals Ltd. He asked for a correction to the agenda to include his full name. Mr. McMillan said that, while acknowledging the county's Vesting Mining Rights Ordinance, he objected to the costs charged to the applicant for the neutral third party Administrative Law Judge to conduct the hearing. He said that there should be no cost to the applicant for the hearing.

Mr. McMillan said that there was a Planning Commission workshop on vesting mining rights and he was astounded at the miss-information. He commented that the Public Resources Code should have been incorporated into the ordinance verbatim.

Mr. McMillan said that he had contacted an ALJ organization who responded that they could not remember an Administrative Law Judge in their organization who had heard a vesting mining rights determination hearing and the organization had no qualified ALJ to hear a vesting mining rights determination hearing. He said that the organization had no record of Siskiyou County contacting them. He then communicated to Mr. Plucker to provide a neutral Administrative Law Judge to hear this matter, but the cost of hiring an Administrative Law Judge would have been \$8000.00. Mr. McMillan objected to bearing the cost for the Administrative Law Judge and objected that a Court Reporter was not present for the hearing. Mr. McMillan commented that during the compliance hearing the recording system had failed and he did not want that to happen for the current hearing.

Mr. McMillan also objected that the ordinance was not given for review to the state Mining and Geology Board.

Mr. McMillan said that he that the first draft of the staff report had huge distortions in the review and appraisal of the aggregate and gravel on the property. He added that there was false information and that he rejected the legal determinations back in 2007 and to the Board of Supervisors.

Mr. McMillan commented on the Vesting Mining Rights Workshop in Exhibit C.20 and referred to pages 9850 and 9852 of the minutes of the workshop meeting. He said that Ms. Reed was incorrect that there was no SMARA procedure for determining vesting mining rights and said that there was a procedure in the Public Resources Code. He referred to Senate Bill 108 as having established idle and abandoned mines and that vested right cannot happen without willful intent. He also commented on questions asked by Commissioner Hart and comments made by Commissioner Hart during this workshop and referred to the minutes at pages 9845 and 9855.

Mr. McMillan said that the County has long had an ordinance for vesting mining rights determination and mentioned a 1964 vesting mining rights determination regarding a Kidder Creek mine and mentioned vested rights and the Public Works Department and a conflict between two procedures in the past.

Mr. McMillan talked about Exhibit C.22 and the portion that relates to Mr. Plucker's research regarding the Kidder Creek Mine. He referred to a 1996 county ordinance as a key document, and mentioned the Surface Mining Act of 1965. He said that the Staff Report item cites the Public Resources Code process and confirms the county's awareness of reviewing pre-existing mines; but this has never happened, except for the county's Pine Grove pit. He referred to a 1990 document at Exhibit D and D.8 where the county failed in its obligation to do determine vesting mining rights.

Mr. McMillan said that Exhibit C.23, Siskiyou County Ordinance 903 (1979), was pivotal in an on-going discussion that no accommodation for vesting mining rights existed before 1999. He said that Ms. Barber's position was that no vesting mining rights determination was timely made. He said that according to Ordinance 903 (1979) the county required a Planning Commission hearing for a use permit and reclamation plan for mines, but no vesting mining rights determination was done consistent with the Public Resources Code.

Mr. McMillan mentioned the Excel spread sheet in Exhibit A.11. He said that in anticipation of Ordinance 903, he filled out and mailed in his application and his use permit and reclamation plan 7931 was the earliest action after the ordinance passed; and the second was the use permit and reclamation plan 8103 for the Hopkins Pit. He said that he was duped into getting a use permit and reclamation plan and should have had a vested mining rights hearing first. He said that the county ordinance contained a requirement that the reclamation plan be a free standing document noticed and recorded. He said that the County failed to abide by its ordinance with regard to the 2007-2008 noncompliance turmoil and litigation. He referred to Exhibit C.3, to the Timberhitch hearing other pits and reiterated that a vesting mining rights determination hearing should have been held.

Mr. McMillan referred to County Ordinance 13-12 in Exhibit A.2 and more specifically to subsections (a) and (g). He said that subsection (g) provided an escape hatch and is the current determination of vesting mining hearing process. He said that after lengthy delay the ordinance was submitted to the state mining and geology board and was accepted as legally enforceable. He said that he submitted an application for this subsection (g) determination, but it was rejected by the county. He indicated that the correspondence regarding the application and its rejection is in Exhibit C.21 of the staff report.

Mr. McMillan referred to Exhibit C.3, a section of the Public Resources Code and to the aerial photographs in Exhibits C.1 and C.4. These photos were projected on the screen and he pointed out the areas that were previously mined. Some of these photos were taken back to 1944 and showed excavation done by a prior owner. He claimed that the photos shown prove that mining had existed on the property prior to 1976 and that he should have a vested mining right under the section of the Public Resources Code section in Exhibit C.3.

Mr. McMillan said that he had permission from the state Department of Fish & Wildlife and he viewed this as permission granted to mine on the property.

Mr. McMillan said that he had incurred substantial economic burdens and that his expenses were shown in Exhibits C.15 – C.17.

Mr. McMillan referred to the last two pages of Exhibit A.18 which were documents from a job that he did for the U.S. Department of Agriculture and that the aggregate material used for this job came from his pits. He said that he regarded this as permission to mine for the material used, and evidence of authorization to mine and the expense to obtain the aggregate as proof of his vested mining rights.

Mr. McMillan informed the Commission that the land had agricultural zoning and also had a Williamson Act contract on it, and that a copy of the contract was provided as Exhibit C.8. He said that the Williamson Act empowered local jurisdictions to have restrictions over land to preclude urbanization and to preserve agricultural land. He said that the County passed a series of conditions by resolution in 1969 and 1972. He said that the Williamson Act provided that a compatible use was the development of natural resources. He said that this was permission to mine without a use permit. He said that he considered the county's ordinance, which was passed after the Williamson Act Contract was established, constituted an ex post facto law.

Mr. McMillan referred to Exhibit C.10, an excerpt from Siskiyou County Superior Court Judge Dixon's December 8, 2010 decision and read the decision that determined that the Williamson Act Contract ran with the owner of the surface estate and the mineral estate

Chair Melo asked Mr. McMillan if he had had anything new that had not already been produced to the Commission in the staff report and Exhibits in the binders provided to the Commission. Mr. McMillan responded that he wanted to state his case for court record. He added that he had wanted to have a court reporter present.

Mr. McMillan commented on the use permit at Exhibit C.11 and the License at C.12 that were altered and said that they served the purpose to allow extraction of materials for the batch plant

and the county made no objection at the time. He referred to the explanation and application in Exhibit C.13.

Mr. McMillan commented that when he submitted the July 27 reclamation plan application in Exhibit C.14, he was told he needed a use permit to get a reclamation plan.

Mr. McMillan explained that Exhibit C.15 is an excerpt from the transcript of the Board of Supervisors appeal hearing. He noted the statement that no use permit was required prior to 1974.

Mr. McMillan commented that Exhibit C.16 was after the Williamsons had made a complaint to the county and the report of the two geologists who inspected the mining operation. He said that there was a determination that the mine was partially vested.

Chair Melo asked if a mine could be partially vested. Mr. McMillan responded that this was an anomaly, and that according to the Hansen case there was no such thing as a partially vested mine. He said that there were other considerations such as expansion of the mining operation which concerns the doctrine of diminishing assets, but there was no point in going there until the vesting mining rights determination was decided.

Mr. McMillan said that the county has recently taken the position in the staff report and in the presentation that the Williamson Act contracts have no validity or enforceability, because the contracts were adopted by resolution rather than ordinance; and pursuant to state law, resolutions and Williamson Act Contracts are inferior to county ordinances, therefore the Williamson Act contracted land is bound by the restrictions in county ordinances. He then went on to explained the decision of Judge Dixon in the mandamus action which said that both the owner of the surface rights and the mineral rights are subject to the Williamson Act contract and entitled to its benefits. He claimed that the county could have brought up other issues regarding the Williamson Act contract and they did not do so, and so are now precluded from raising other issues regarding the Williamson Act contract. He said that the County acknowledged that natural resources could be developed on Williamson Act contracted land, but there is no right to mine given by the Williamson Act. He added that in 2011 the Board of Supervisors revised the county's Williamson Act Guidelines and Policies and further restricted Williamson Act Contracted lands for future contracts. He said that the state Tax Code takes precedence over the county ordinances and resolutions regarding Williamson Act Contracts.

Chair Melo confirmed with staff that the state had unfunded Williamson Act contracts and continued to withhold that funding. He also confirmed that both county and the land owner were subject to the contract.

Mr. McMillan concluded that the legal basis and validity of the Williamson Act Contract should have been accepted for determining vested mining rights, but Mr. Plucker added additional conditions.

Discussion was held regarding the length of the Staff Report presentation and other speakers who had submitted speaker cards. Mr. McMillan requested that a limit be set on the input of other speakers limiting them to specific facts and the claims he had made, but no hearsay. Chair Melo responded that input of other speakers was within his purview. Mr. Plucker informed Chair Melo that he had received two other speaker cards requesting to comment.

Chair Mello called for a 15 minute recess at 11:45 and called the meeting back to order at 12:00 Noon

Mr. Plucker presented the staff report to the Commission. He said that this was an application for a determination of vesting mining rights. He said that he would forego the historic information as it is covered and in the staff report. He said that as part of Mr. McMillan's appeal, the court ordered the county to conduct this vesting mining rights hearing. He explained that Mr. McMillan has submitted his testimony and Siskiyou County Code has established the procedure for the hearing and states that the claimant has the burden of proof. He added that the code also states that no mining operation that has obtained a determination of a vested mining right is required to obtain a use permit. He said that permitting rights under California's Surface Mining and Reclamation Act (SMARA) grant that no use permit would be required with an established vested mining right as long as there are no substantial changes in the mining operation. He explained that if the mine operator or owner commences other operations after a vested mining right determination the mining operation would need a use permit and reclamation plan. He said that the staff report provides a lot of information regarding the requirements to establish vested mining rights under state law and county ordinance.

Mr. Plucker explained the information provided in the staff report. He said that Exhibit B was the original application; information from the applicant is contained in Exhibits C; and Exhibits D is additional evidence identified by staff. He further explained that the existing ordinance requires certain interaction with the applicant but does not obligate staff to make changes to the staff report. He said that preparation of the staff report far exceeded the minimum requirements of the ordinance. He said that the staff report and the oral evidence at the hearing are the totality of the information presented for the Commission to make a determination of vesting mining rights. He added that if established no use permit would be required if the mining operation commenced prior to the county requiring a use permit for a mining operation. He added that the staff report has detailed the ordinances that required a use permit. He said that the first ordinance was adopted in 1946 with specific limits that were expanded in 1956, 1960 and 1970. He explained that pursuant to county code, as related to property, all uses are permitted unless a use permit is required. The ordinance required a use permit for commercial excavation within 100 feet from a road commencing surface mining involving heavy equipment.

He said Mr. McMillan first acquired the subject property in 1967 and 1968, well after mining was required to have a use permit, therefore he could not have obtained a 1976 vested mining rights by Mr. McMillan's own testimony. He stated that there is no evidence that a commercial mining use was established despite the discovery by Mr. McMillan of historic mining evidence. He added that much of what Mr. McMillan submitted happened after 1953. He noted that the information submitted regarding the cinder pit shows that it was well outside of the location of the area that is the subject of the current application for a vesting mining rights determination. He concluded that County staff cannot draw the same conclusion as Mr. McMillan.

Commissioner Veale asked if the material for the narrow gauge railway was considered for a vested mining right.

Mr. Plucker responded that, in staff's opinion, this operation did not support consistent commercial mining activity on the property.

Mr. Plucker noted that 118 acres of the property in question was never covered by a Williamson Act contract. Mr. Plucker explained that upon implementation of the Williamson Act, the county adopted uniform rules for contracted lands which state that the premises shall not be used for anything but agricultural uses. He added that item 7 of those rules listed natural resource development which Mr. McMillan has interpreted as mining, and at the time surface mining was allowed by use permit on Williamson Act contracted lands. He explained that a contract established by resolution cannot outweigh a zoning ordinance requiring a use permit. He further explained that the Board of Supervisor's resolution adopting the uniform rules for the county's Williamson Act program expressly preserves the county's police power. Mr. Plucker noted that the Williamson Act contract Mr. McMillan signed and entered into with the county lists farmland, homestead, and range land as the uses of the Williamson Act contracted land. He added that once signed and adopted the contract cannot be changed without notice. He noted that the County changed the uniform rules in 2011, everyone with a contract was notified of the new provisions.

Mr. Plucker explained the discrepancies between the hand altered use permit and the documentation in the county's use permit file. He said that the property location that is the subject of the altered use permit is a different location from that listed in all of the other documentation in the use permit file, including the public hearing notice and the environmental documents. The documents in the file describe the location of property not owned by Mr. McMillan. Only the altered use permit describes a location on Mr. McMillan's property, and the location described is not within the area where the vested mining rights are applied for. He added that at some point the use permit location was changed, but the changed location was not part of the hearing process before the Planning Commission. He said that staff cannot accept the altered use permit as proof because staff cannot confirm the hearing process on the altered use permit.

Mr. Plucker said that the evidence the applicant has submitted does not establish vesting mining rights. He said that staff did not conduct a vesting mining rights determination in 1974, because they understood that a use permit was required. He explained that since the court decision and direction, staff has found additional information regarding the required use permit process in the past. He explained further that determination of vesting mining rights could not be done by a staff member placing a "v" in a spread sheet that was meant for that staff member's personal use, because there was a process in place and the vesting mining rights determination process never took place. He added that Mr. McMillan was given multiple opportunities to take advantage of the process, but that was not done.

Mr. Plucker commented that when the law changed, the ordinance was submitted to the State Mining and Geology Board, but prior to that it was not necessary.

Mr. Plucker concluded that the information was presented in his oral presentation was given briefly, but the submitted written staff report is more detailed. He informed the Commission that staff was available for questions.

Chair Melo confirmed that the License Agreement in Exhibit C.12 is not a county document.

Commissioner Veale confirmed that a use permit was required and none was procured.

Commissioner McMahon confirmed with that vested mining rights do run with the land. He then asked if the mining for the narrow gauge railroad could be considered to establish a vested mining right. Mr. Plucker explained that if that the mining operation started before the county required a use permit and there was evidence of a continuous commercial mining operation up to 1953 when the county required a use permit for a mining operation; the county could recognize the vested mining right. He added that he does not see that level of evidence of consistent and continuing commercial ordinance in the area that Mr. McMillan applied for a determination of vesting mining rights.

Commissioner McMahon commented that going back to the time before the 1953 requirement for a use permit there would not be very many people or businesses that would have kept this level of records regarding any mining activity. Mr. Plucker responded that he was looking for some sort of documentation that would be more substantial. He said that the courts have said that in order to establish vested mining rights, the applicant has to establish objective evidence of mining activity and expansion of mining activity. Commissioner McMahon asked if the vested mining right would be only to the original footprint of the mine. Mr. Plucker responded that the Courts' test would be for the applicant to produce objective, manifested intent to mine with a geotechnical report; planned out entire geology of the site; and objective evidence to support intent to expand the mine. He added that this would be the next step after establishing the vesting mining rights.

Commissioner Veale confirmed that the Commission was conducting the hearing because the court ordered the vesting mining rights hearing. Mr. Plucker explained that if vesting mining rights are established, the applicant would not have the right to mine on the totality of the property. He said that would be the next round of hearings, because there are additional tests that must be met to expand the area of the vesting mining rights determination in the application.

Chair Melo confirmed that counsel for the Planning Commission was present.

Statements from the Public:

Jonz Norine, Attorney at Law stated, that he was present as attorney for the Williamsons and added that he had been involved since 2008. He passed out a copy of the "UPDATE APPRAISAL" dated January 15, 2001 and a copy of the appraisal was handed out to the Commission. He added that when the Williamsons purchased the property from Dr. Thom in 2006, the Mineral rights were deeded separately from the surface rights.

Mr. Norine explained that the Williamsons were aware that mining had happened on the property, but it appeared to be an abandoned mine that needed to be reclaimed. He said that in 2006/2007 the County looked into it; and said there was a use permit, but the mine had not been reclaimed and might be abandoned. He said that this was an important context for the determination of vesting mining rights.

Mr. Norine further explained that if the Commission determines that there is a vested mining right, the mining operation would not have to comply with SMARA. He said that there is value to having mineral rights, and in the 2001 appraisal of the property, it was found that the mineral rights were of nominal value. He said that the Williamsons asked the county to look into the status of the mine. He said that during the process of the appeal procedurally the vesting

mining rights determination became procedurally important. He said that the question of whether there was a permit required before 1976 had now been answered, since there was a permit required since 1953; so the applicant needed a use permit and did not have one. He said that if the applicant did not have authorization to mine, it does not matter that there was vested mining going on. He added that even if he had a vested right, Mr. McMillan would owe royalties on the material that was extracted from the vested mining right area. He said that there was no evidence of commercial mining or of a heavy commitment to mine.

Mr. Norine said the issue of abandonment of the mine was brought up, but that would be a secondary hearing after the determination of the vesting mining rights.

Mr. Norine stated that by 1989 Dr. Thom owned the property. Commissioner Veale asked why there was litigation. Mr. Norine responded that when the Williamsons asked about abandonment of the mine, the county issued an Order to Comply, and Mr. McMillan then sued the Williamsons alleging the Williamsons were trying to take away his mineral rights.

Mr. Norine handed out an appraisal report to the Commission. He referred them to page 17 of the report at the bottom that states that the aggregate is now inadequate for state and federal uses, though it could be used for internal use nobody is going to buy it commercially. He said that in addition two inspectors came from JF Shea and Georgia Pacific to look at the gravel and determined that the gravel is not worth anything. He said that the mine is not vested, looked and looks abandoned, and the aggregate is worthless. He said if the Commission determines that there is no vested mining right, then they can hold the compliance hearing.

Brian Christiansen presented and narrated a drone video of the property from July 2016. He said that the reclamation never happened, the County is responsible for enforcing reclamation laws; the County could have an environmental disaster on the property.

Mr. Norine said that Mr. McMillan allegedly leased back the property. He also said that Mr. McMillan had sporadically taken aggregate off the property and owed royalties to the Williamsons for those aggregate sales.

There were no questions from the Commission.

Rebuttal from Mr. McMillan:

Mr. McMillan said that the testimony has no relevance to the vested mining rights determination. He said that the mechanism provided by Senate Bill 108 allowed any questionable abandonment of a mine to reach a status of idle, and his mine is now in compliance with the status of idle with the state. He added that the frequency of the work is different in a rural area. He said that the quality of the aggregate has been established and he had provided material to Salt Lake City. He added that the quality of the aggregate material has no bearing on the vesting mining right determination hearing. He said that vested mining rights was part of the 2007 hearing before the Planning Commission. He added that he would have laid to rest the use permit issues, but he did not want to pay the insurance policy because he had statutory immunity.

Mr. McMillan said that when the Williamsons bought the property from the lease holders, it was the lease holders who miss-represented the property. He said that it did not come to him or to

Dr. Thom because they had a lease option. He said that the Williamsons were informed when they took possession of the property that they did not hold the mineral rights, but the Williamsons were unhappy with the mineral rights situation.

Mr. McMillan said that the use permit was in county records and that the County had many hand altered documents. He asked how the state could allow production of asphalt without a use permit, because a bond had to be posted,

Mr. McMillan said that one of the big problems is how to value the mineral rights. He added that he felt he knew it had value because he sold it for 30 cents per yard on a state job. He said the value placed by other people has no relevance.

Mr. McMillan responded to the police power described in the contracts themselves (found at Exhibit C.1971 Williamson Act Contract page 2 section 6) stating that the paragraph was in the future tense. He further responded that the application for an Agricultural Preserve Williamson Act Contract from 1972 did not ask for future uses in the section that asked for the uses of the property where he had put farmland, homestead and range land.

Mr. McMillan said that the pond in the picture presented to the commission was part of the approved reclamation plan for the mine area.

Commissioner Veale asked who owns the equipment shown in the video. Mr. McMillan responded it was all owned by his trust. He added that even though the paint is faded that has nothing to do with functionality. He said that it is all usable equipment and the tires can be replaced. He said that the concrete batching plant was ready to mix concrete. He added that all of the equipment is retrievable.

Commissioner McMahan asked about the tires and barrels of oil on the property and if the old oils and tires had been taken care of. Mr. McMillan responded that the tires were still there. He said that the oil barrels were exported from the ranch operation and transported to his mine without his knowledge. He said they were not his oil barrels, the Williamsons framed him for a mining violation. He said that there were a few tires on truck rims that were due to be recycled. He added that a huge amount of equipment was scrapped out and grading and reseeding was done for the reclamation in 2013 that was all in compliance with SMARA.

Mr. McMillan said that there were old historical mines in the county and mines that are not on a spread sheet or in the mining database of the county that do not have a use permit or a reclamation plan.

Chair Melo commented that Mr. McMillan was getting off track and said that he had ten minutes to address his issue.

Mr. McMillan said that the County never uniformly enforced mine compliance and determination of vesting mining rights. He said that the comments by Mr. Norine were irrelevant and the issues are on hold until this determination. He concluded saying that he has the right to mine under the Williamson Act,

Mr. Norine said that Mr. McMillan did not meet his burden of proof and there is no historical commercial mining.

Mr. McMillan spoke again to say Mr. Norine's presentation was inaccurate and that he had done the required reclamation and his mine is an idle mine.

Chair Melo called for a 5 minute break at 12:50 and called the meeting back to order at 12:55 p.m.

MOTION: Following discussion, it was moved by Commissioner Veale, seconded by Commissioner McMahon to close the public hearing.

VOTED upon and the Chair declared the motion carried unanimously with Commissioners Hart and Fowle absent.

Discussion by Commission:

Commissioner McMahon confirmed with Mr. Plucker that Mr. McMillan's mine achieved idle mine status in 2013. Commissioner McMahon asked if it wasn't a huge assumption to have not considered it abandoned. Mr. Plucker responded that the issue was Senate Bill 108 that allowed any abandoned mine to move to an interim management plan and achieve idle mine status through its provisions even if they were abandoned. He added that this related only to the 1979 use permit mine area, it does not deal with any of the rest of the property. He said that the vesting mining rights determination might re-open that idle mine determination, but reiterated that the idle mine status covers only the 1979 use permit area.

Commissioner McMahon said that Mr. Hickel's name had been mentioned and asked if Mr. Hickel had been the inspector on the annual inspections of the mine. Mr. Plucker responded that he could not tell specifically, but there were additional inspections of the mine in response to complaints the County had received.

Commissioner McMahon commented that he knew that the county was not diligent in doing the annual mine inspections but wanted to confirm that a fee was involved for the annual inspections, and asked if fees had been collected in the intervening years and further asked if that would be sufficient to establish recognition of a legitimate enterprise going on under the 1979 use permit. Mr. Plucker confirmed that annual inspection fees were collected and said that the Timberhitch Mine owes the county in excess of \$11,000 in unpaid fees.

Commissioner Veale said that he was trying to clarify what he was trying to arrive at that there is not enough evidence to show that there was a vested mining right, because the applicant did not comply with the requirement to have use permits. He asked if he was saying this correctly. He then said that use permits were required back to 1953, but the applicant did not have the required use permits; therefore the vested rights are null and void. He asked if he was saying that correctly. Mr. Plucker responded that this would be Commissioner Veale's determination based on the evidence; and in terms of that type of question, Mr. Plucker referred Commissioner Veale to the Commission's attorney. Mr. Chalfant responded that this was what Commissioner Veale had to decide today; that based on the evidence present, does the applicant fall under the vesting mining rights statute. He said that he understood what Commissioner Veale was saying and said that the phrasing could be changed. Commissioner Veale said that he was trying to get the phrasing correct for a resolution. Mr. Chalfant responded that he would have to draft the resolution based on the evidence presented and would need some time to do this. He gave one

example of changing the phrasing by saying that the applicant was required to have a use permit to mine on the property back to 1953, but there is no evidence that the applicant had the required permit. He added that any mining would have been unlawful activity, and the applicant cannot establish a vested mining right through unlawful mining activity. Mr. Chalfant said that there are other issues involved and it cannot be addressed piecemeal. He explained that the applicant is claiming a right to mine under the Williamson Act Contract, so that would have to be addressed as well. He added that the applicant is relying on the O'Hare use permit, and that argument would have to also be addressed. Commissioner Veale said that this is what he wanted to put in the motion. Mr. Chalfant further explained that a Williamson Act Contract, as a matter of law, cannot be considered as granting a use permit to mine under the Siskiyou County Code; and also as a matter of law, the Williamson Act Contract cannot remove the county's police powers and its ability to enforce those police powers through land use regulations.

Chair Melo asked for further clarification and Mr. Chalfant explained that the Williamson Act Contract imposes further land use restrictions, and in return the holder of the contract gets a tax break; but the contract specifically states that that the county retains its police powers which means all of the county's land use regulations must be obeyed.

Commissioner McMahon asked about the mining on the land back into the 1800s and early 1900s, and asked if that could be considered as vested mining rights. Mr. Chalfant explained that the question is not whether there was mining on the property, because the determination of a vested mining right is a conclusion. He confirmed that a vested right does run with the land, but historical mining is not necessarily evidence of a diligent pursuit of commercial mining when there is no continuous record and documentation of that commercial mining. He mentioned the classic case for establishing a vested mining right is the Hansen case. He added that mining was regulated by the county from 1953 to the present, and one of the determinations the Commission needed to make is whether the historical mining that may have taken place on the subject property rises to the level of a determination of a vested mining right.

Chair Melo asked for clarification regarding vested mining rights and the requirement for a use permit, and said the code sections he read seemed to be contradictory. Mr. Chalfant responded that what the codes say is that if there is an established vested mining right, you do not need a use permit to mine; which is what the applicant is trying to do. He added that the applicant is saying that he does not need a use permit to mine, because he has a vested mining right, and is asking the Commission to determine that he has that right. Mr. Chalfant continued in another way saying that if you do not have a vested mining right, then you have to have a use permit to mine. He added that not having to get a use permit is viewed as less regulation. He said that this is all an attempt by the state to get control of mining.

Discussion was held regarding the resolution and preparation of the resolution. Mr. Plucker commented that the Planning Commission must adopt a resolution, because the lack of a written resolution might interfere with an appeal.

MOTION: Following discussion, it was moved by Commissioner Veale, seconded by Commissioner McMahon directing the Commission's Attorney, Mr. Chalfant, to prepare a draft resolution with findings for the Planning Commission's consideration to implement the decision of the Commission to disapprove the application to establish vested mining rights.

Mr. Chalfant reiterated Commissioner Veale's motion stating that what he had heard was that Commissioner Veale wanted to move to adopt staff's recommendation that there is no vested mining right in this case and to direct Mr. Chalfant to prepare a formal resolution and findings for the Commission's approval.

Commissioner Veale confirmed Mr. Chalfant's reiteration of his motion. Commissioner McMahon clarified that this was option 2 in the "Suggested Motion" section of the staff report.

VOTED upon and the Chair declared the motion carried unanimously with Commissioners Hart and Fowle absent.

There being no further input, the Chair adjourned the meeting at 2:20 p.m.

Respectfully submitted,



Brett Walker, Senior Planner for
Greg Plucker, Secretary