

Planning Commission Workshop



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STAFF REPORT

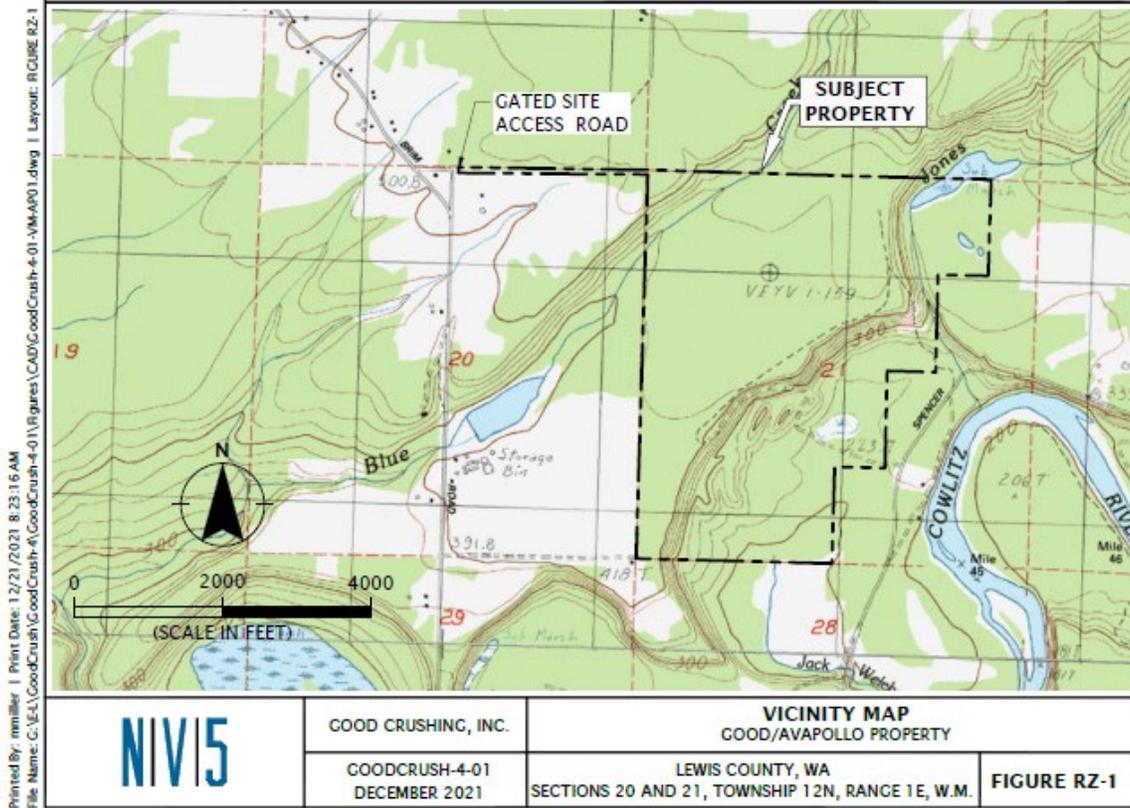
GOOD-AVAPOLLO MINING OPT-IN REZONE PROPOSAL

Date: July 1, 2022
Staff: Mindy Brooks, Senior Long Range Planner
Attachments: A – Good-Avapollo Rezone Application
B – Vicinity Map
C – Supporting Materials
D – SEPA Determination
E – Additional Findings

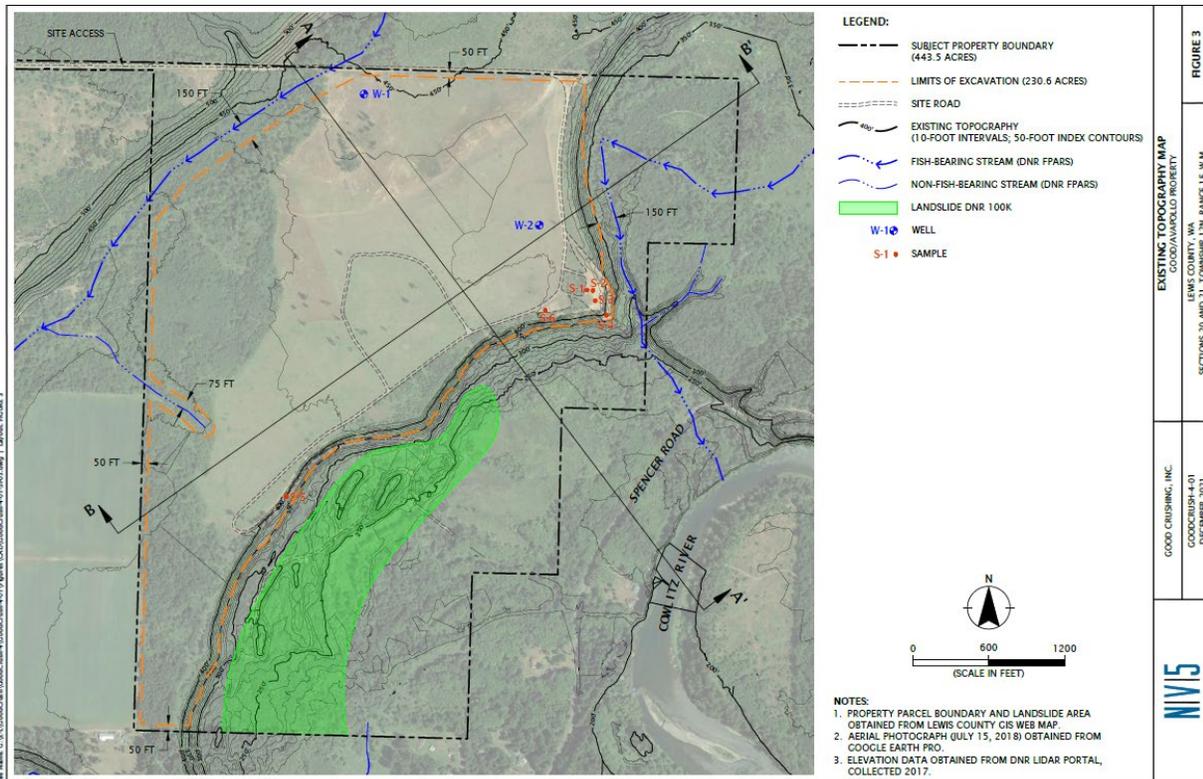
SUMMARY

Alan and Pamela Good along with Avapollo Land Corporation have requested to rezone parcels 028043004001, 028043004002, 028061000000, 028025001000 and 028024001000 from Agricultural Resource Land to Mineral Resource Land. Map 1 is the vicinity map that shows the land proposed for the rezone. The total site size is 443.5 acres. The intended use of the land if rezoned to MRL is to develop a surface mine of gravel, sand, and cobbles. Map 2 shows the proposed mining excavation area.

All materials referenced in this staff report are incorporated by reference into the public record and are found on the Community Development webpage, <https://lewiscountywa.gov/departments/community-development/rezones/>, and listed in Attachment C.



Map 1: Vicinity Map



Map 2: Limits of Excavation

PROCESS

On December 20, 2021, Alan Good and Jason Good, with Avapollo Land Corporation, applied for a comprehensive plan map amendment to Map LU-3 from Resource Lands – Agricultural to Resource Lands – Mineral and the zoning designation from Agricultural Resource Land (ARL) to Mineral Resource Land (MRL). Comprehensive plan map amendments are processed according to Lewis County Code (LCC) 17.05.040, Project permit application Type V, and 17.12, Public Participation Program. The rezone in this case is also a mining “opt-in”, which is allowed by LCC 17.30.850, Process for Petitioning for Designation as a Mineral Resource Land. A comprehensive plan map amendment also includes a required non-project action SEPA review.

The Good-Avapollo Mining Opt-in Rezone Application was determined to be complete on January 26, 2022 and the Notice of Application was published on February 8, 2022 in the Chronicle, posted on the site and mailed to properties within ¼ miles of the site. Public comments were received on the Notice of Application through February 23, 2022. The SEPA determination for the non-project action was issued on May 31, 2022 and public comments were received through June 14, 2022. No appeal of the SEPA determination was filed. The SEPA determination was a determination of non-significance (DNS), which means that the non-project action does not have a probable, significant adverse impact on the environment (see Appendix D).

As a Type V permit application, rezones are required to have a public hearing before the Lewis County Planning Commission prior to a decision by the Board of County Commissioners. Further, to approve a comprehensive plan map amendment the approval criteria of LCC 17.12.100 must be met.

The Planning Commission will hold at least one workshop, at which staff will present an analysis of the proposal against the approval criteria and answer commissioner questions. The applicant is invited and may respond to direct questions from the commissioners. The public is also invited to attend; however, public comments are not taken during the workshop. Following the workshop, Planning Commission will hold a duly noticed public hearing to receive testimony on the proposal prior to making a decision to recommend, or not, that the Board of County Commissions approve the comprehensive plan map amendment and zone change. Public comments may be submitted as testimony for the hearing.

ANALYSIS

The staff analysis is divided into three parts:

Part 1 – Summary of Public Comments

Part 2 – Approval Criteria 17.30.720

Part 3 – Approval Criteria 17.12.100(1)

Part 1 – Summary of Public Comments

Comments have been received on the Notice of Application and the non-project SEPA determination. The full comments are found on the webpage <https://lewiscountywa.gov/departments/community-development/rezones/>. A total of nine (9) members of the public and three (3) local/state/tribal agencies provided comments.

The comments are summarized with staff responses below.

Public comments:

- Negative impact on property values
- Noise
- Air pollution
- Impacts to water quality in streams
- Aquifer contamination
- Impacts on fish and wildlife
- Visual impacts to surrounding properties
- Increased truck traffic on local roads

Staff response to public comments:

The proposed comprehensive plan map amendments and zone change are non-project actions; therefore, project-level impacts are unknown and cannot be assessed at this time. Project-level impacts will be assessed at the time of project permitting and through future SEPA analyses. Currently, project level permitting for new surface mining areas located in MRL zoning classification will require, at a minimum, the Lewis County Hearing Examiner's decision be based upon compliance with the criteria established for the requirements of the following LCC sections (this is not an exhaustive list):

- 17.25, Shoreline Management
- 17.30, Resource Lands
- 17.42, Table 2, Land Use Summary
- 17.110, State Environmental Policy Act
- 17.130, Adequate Public Facilities and Services
- 17.142.020, General Land Use Standards
- 17.142.210, Surface Mining Areas
- 17.158, Special Use Permit

Traffic impacts will be addressed at the time of permitting and local and state requirements will need to be met. LCC 17.142.020(3)(d) requires the surface mining proposal is in compliance with the air quality standards adopted by the Southwest Clean Air Agency (SWCAA) and any SWCAA permit issued for a project.

Cowlitz Indian Tribe comments:

The Cowlitz Indian Tribe provided comments on the SEPA DNS. This site contains fish bearing and non-fish-bearing streams and wetlands; Jones Creek has documented Lower Columbia River coho, a federally threatened species, and associated critical habitat. The site also supports wildlife; for example, cavity-nesting ducks (Wood Duck and Hooded Merganser breeding/brooding habitat) and winter range for elk are identified in the Washington Department of Fish and Wildlife. The Cowlitz Indian Tribe has invested time and resources into fish and wildlife habitat restoration in the area. Salmon, smelt, waterfowl, and elk all remain important traditional foods for the Cowlitz.

Historic villages are still undisturbed in the vicinity of the proposal. The Cowlitz Indian Tribe has requested formal consultation on the project and recommend an Inadvertent Discovery Plan be attached to the permit.

Staff response to Cowlitz Indian Tribe comments:

Requirements of LCC 17.25, Shoreline Management, and 17.38, Critical Area, will need to be addressed during project permitting. There is a 150-foot buffer around two fish-bearing streams on the site. The stream buffer regulations in effect at the time of a complete project permit application will need to be met. There are also wetlands and hydric soils located on the parcels, which at a minimum, will require submittal of a wetland determination with the project application.

At the time of project level permitting, the project site will be reviewed for any mapped historic and cultural sites, and a project-level SEPA threshold determination and Notice of Application will be sent to the Department of Archeology and Historic Preservation (DAHP) and the Indian Tribes for review and comment. Project permit conditions could include an archaeological site investigation cultural resource survey and that an Inadvertent Discovery Plan be in place prior to ground disturbance.

Local and state agency comments:

At the time of development permitting, the following requirements will need to be met (this is not an exhaustive list):

- Future surface mining activities may impact level of service (LOS) of Highway 12 and a traffic impact study will be required by WSDOT.
- Access may be incomplete from Brim Rd and easements may be needed.
- Any new or modification of existing approaches will need a road approach permit from Lewis County Public Works. Actual construction of mining facilities may require improvements to the structural capacity of the County Roads depending on traffic volume and size of trucks.
- Extended mining and personnel on the site will require a permanent approved potable water supply as well as permanent septic treatment facilities.

Staff response to agency comments:

All applicable local and state regulatory requirements will be addressed at the time of project permitting and development.

Part 2 – Approval Criteria 17.30.720

LCC 17.30.720 state the requirements for classifying mineral resource lands. These criteria must be met along with LCC 17.12.100 criteria for approving a comprehensive plan map amendment. The first LCC 17.30.720 criterion relates to existing permitted surface mining operations and therefore does not apply to this proposal. After each criterion below, staff have provided a finding based on information in the record to date.

- (a) Areas where a qualified geologist can demonstrate a high likelihood for occurrence of mineral deposits. A qualified geologist shall provide adequate evidence, for the above, in the form of a report and any associated maps that would provide evidence of mineral resources sufficient to meet the following criteria:

- (i) The site has extractive materials having a probable value in excess of \$500,000 for valuable metallic substances and \$1,000,000 for gravel, sand, coal, and other minerals; and
- (ii) The site has the potential for economically viable production of extractive materials for the foreseeable future;

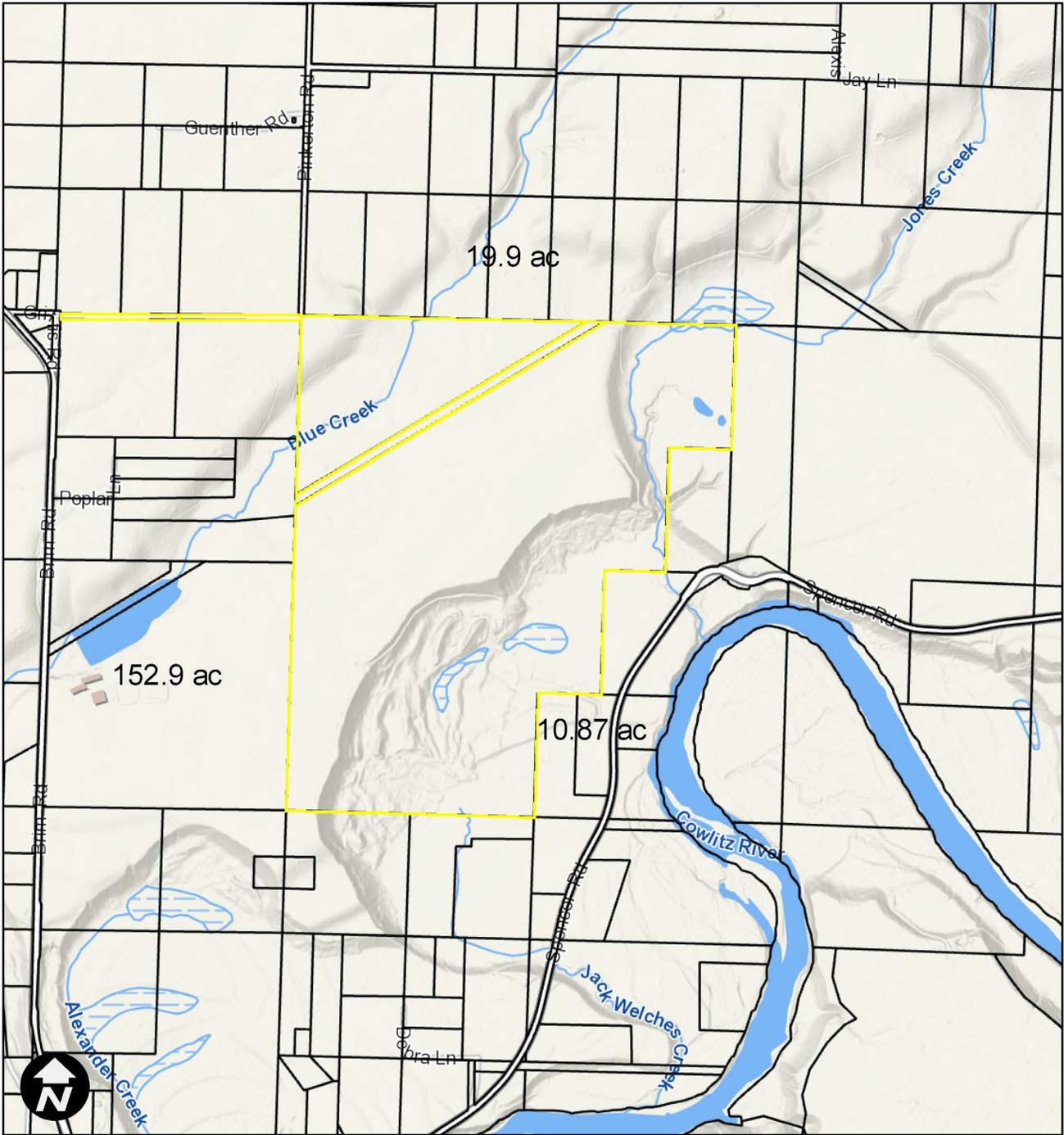
Staff findings: A Mine Resource Evaluation Report was completed by Erick Staley, L.G., L.E.G, Principal Engineering Geologist of NV5 (Attachment C, Supporting Materials). According to the report, the aggregate resource at the site consists mostly of gravel, sand, and cobbles with some fines representing glacial outwash deposits. Based on the results of the testing, and with crushing and washing to remove weak material and fines from the product, the crushed outwash material would meet typical WSDOT specifications for use. The report concludes that the site has potential value as a commercial fill or gravel and sand source for local developments for the foreseeable future. The resulting estimated value for the potential mineable resource is \$267,570,476. Therefore, this criterion is met.

- (b) Greater than 50 percent of the linear frontage of the perimeter of any proposed designated lands shall abut parcels that are equal to or greater than two and one-half acres in size. Abutting parcels with industrial or wholesale uses are exempt from this parcel size calculation but shall be included in the calculation of total linear frontage; and

Staff findings: Map 3 includes all of the parcels abutting the proposed site. All abutting properties are zoned Agricultural Resource Land. There are no abutting properties less than 2.5 acres. The smallest size parcel is 10.87 acres and the largest size parcel is 152.9 acres; the average size is 19.9 acres in size. Therefore, this criterion is met.

- (c) The site is outside any designated urban growth area at the time of application for redesignation.

Staff findings: The site is not located within an urban growth area. Therefore, this criterion is met.



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Map 3: Abutting Parcel Sizes

Part 3 – Approval Criteria 17.12.100(1)

The approval criteria that Planning Commission and BOCC are required to use to determine if a comprehensive plan map amendment can be approved are listed below. After each criterion, staff have provided a finding based on the information in the record to date.

- (a) The amendment conforms to the requirements of the Growth Management Act, is consistent with the county-wide planning policies and the comprehensive plan, including any interlocal planning agreements, if applicable.

Staff findings: Attachment E includes staff findings against LCC 17.12.100(1)(a). Based the findings in Attachment E, the proposed amendment conforms to the requirements of the Growth Management Act and is consistent with county-wide planning policies and the Lewis County Comprehensive Plan. There are no interlocal planning agreements related to the property or the proposed amendments. Therefore, this criterion is met.

- (b) The application and any studies submitted to the department, the planning commission, and the board of commissioners demonstrates a need for the amendment.

Staff findings: The 2015, the Washington Department of Natural Resources (DNR) Rock Aggregate Inventory Map of Lewis County, WA was used as a basis of the 2017 Comprehensive Plan periodic review (Attachment C, Supporting Materials). Based on the map and periodic review analysis, Lewis County has sufficient aggregate reserves to last through 2060. That is based on an assumption that all mineral reserves would be accessed during that period.

Mineral resource use is an allowed use in MRL as well as FRL, RDD-5, RDD-10 and RDD-20 zones. However, in reality mineral extraction within areas of existing aggregate rock doesn't frequently occur. Mineral resource use is not allowed in the ARL zone and, per the DNR map, there are aggregate resources in ARL zoned areas that will not be accessed unless the area is rezoned. The proposal is to rezone ARL to MRL to allow for mineral extraction, which aides in Lewis County meeting the need of providing rock aggregate by accessing existing reserves. Therefore, this criterion is met.

- (c) The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - (i) The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan; and

Staff findings: The designation of the site as MRL will have no impact on the rate or distribution of population growth or development to the surrounding area. The applicant states that a future mining operation may employ 10 people. Because surface mining is considered a temporary activity and requires a reclamation plan overseen by DNR, there is no permanent conversion of the land and it would be restored back to agricultural use, or the use listed in the DNR approved restoration plan. Therefore, this criterion is met.

(ii) The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

Staff findings: The designation of the site as MRL will have no anticipated impact on service providers because there is no development associated with a change to zoning. Impacts from future development may have impact on transportation facilities, as identified through the SEPA DNS comments from WSDOT and Lewis County Public Works. Those impacts will be addressed during project permitting when local and state regulatory requirements must be met. Therefore, this criterion is met.

(iii) The anticipated impact upon designated agricultural, forest and mineral resource lands.

Staff findings: Because surface mining is considered a temporary activity and requires a reclamation plan overseen by the DNR, there is no permanent conversion of the land and it will be restored back to agricultural use, or the use listed in the DNR approved restoration plan. Therefore, this criterion is met.

(d) The amendment does not include or facilitate spot zoning.

Staff findings: The RCW and WAC provide for the designation of mineral resource lands, which would otherwise be inconsistent with the surrounding zoning. Please see Attachment E, Additional Findings, relate the Growth Management Act. In addition, the site is 443 acres in size and would be designated from one resource use to another resource use. Upon completion of mining operations, the site would be restored to agricultural use, or the use listed in the DNR approved restoration plan. Therefore, this criterion is met.

FINDINGS

Based on the information in the record to date and the conditions of the SEPA DNS, staff finds that the Good-Avapollo Mining Opt-in Rezone application to amend the comprehensive plan map from Resource Lands – Agricultural to Resource Lands – Mineral and rezone the site from ARL to MRL meets the approval criteria of LCC 17.30.720 and 17.12.100.

NEXT STEPS

Staff recommend that the Planning Commission hold a workshop to evaluate the application and ask questions of staff and the applicant. The workshop will take place on July 12, 2022 at 6:00pm. The public is invited to attend the workshop. Reminder, no public comments on the rezone application will be taken during the workshop.

At the July 12 workshop, the Planning Commission will decide if they are ready to proceed with a public hearing. A public hearing is tentatively scheduled for August 9, 2022 at 6:00pm, although that date may change at the Planning Commission's discretion. If August 9 is set as the hearing date, the record will be opened on July 21, 2022 to begin receiving written testimony. The public may also provide oral testimony at the hearing.

