



P.O. Box 40 • 215 NE Main Ave. Irrigon, Oregon 97844  
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## MEMORANDUM

To: Morrow County Planning Commission  
From: Katie Keely, Compliance Planner  
Cc: Tamra Mabbott, Planning Director  
Date: June 16, 2023  
RE: Follow up to April 25, 2023 meeting  
Conditional Use Permit Compliance Review for  
CUP-N-339-19 Cesar Andrade & Victor Nunez

### Summary of Hearing

**Conditional Use Permit CUP-N-339-19 Home Occupation.** Original request was for the “storage of two semi-trucks that would be exiting the property once per week,” and, to allow “several (7) smaller farm trucks that would only operate one month out of the year during harvest.”

Over the past couple years, Planning Department has received numerous complaints in regards to the trucking business, semi-truck traffic and operating a repair shop. The Planning Department has conducted several onsite visits and communicated with the landowner in depth. The Planning Department has determined that this permit is not in compliance with the conditions of approval listed below:

- Condition 1- Operations related to this permit should not interrupt or interfere with surrounding residential use.
- Condition 2- All heavy equipment and truck traffic shall take place between the hours of 7:00am and 11:00pm, consistent with the Morrow County Noise Ordinance.
- Condition 5- Any person employed at this location will be limited to immediate family members.

Staff has amended the findings to show June hearing date.

See attached findings for CUP-N-339-19.

At the April 25, 2023 hearing, Planning Commission asked staff to follow up with the landowner and applicant. The matter before the Planning Commission is to determine whether CUP-N-339-19 is in compliance with the adopted conditions of approval.



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**Below is a summary of interactions with the landowner since the April 25<sup>th</sup> commission meeting.**

- 05/08/23 Letter Sent out about continued compliance review for June 27,2023
- 05/18/23 Established property owner would like correspondence in English & Spanish
- 05/30/23 Contact with Selene Andrade (English speaking daughter) about setting up a meeting at the office.
- 06/02/23 Contact with Selene Andrade to set up meeting for June 6 at 11 am at the Planning Department.
- 06/06/23 Meeting with Selene Andrade and Cesar Andrade to discuss their CUP conditions. They are unsure on how to meet compliance with the original permit without having to stop the repair shop. Cesar was advised that they would need to meet the conditions of original permit. Cesar requested a meeting with a planner to discuss the possibility of applying for a change of his property.
- 06/12/23 Dave Thatcher, BPA Compliance Officer, contacted Planning Department. (Planning had attempted to contact BPA prior to the April commission meeting to discuss restrictions BPA has regarding the BPA easement on Andrade property.) Mr. Thatcher informed that he would be working with the BPA legal team; he believes the shop is too close to the BPA easement. BPA is also concerned with the semi-trailer parked under the transmission tower, various out buildings, fencing and "stuff" stacked up around tower.
- 6/15/23 Cesar Andrade and Selene Andrade met with Planning Director and Planner Wrecsics this day to discuss options to rezone his property. Planners advised that they could file an application to rezone but likely Planning Commission would not approve a spot zone. Planners spent time looking up industrial parcels in the county. Mr. Andrade indicated he would look for a different property would need time. He confirmed he would be at the June 27<sup>th</sup> meeting. Planners offered to meet anytime and look up zoning prior to purchase of a property for the trucking business.

#### **ACTION / OPTIONS FOR PLANNING COMMISSION**

With any of the options below Compliance Planner will work with landowner to bring property into compliance over time.

Option 1. Revoke the permit.

Option 2. Amend and clarify terms and conditions and approve permit.

S:/Planning/Conditional Use Permit/CUP North/2019/CUP-N-339-19 Andrade/Memo/PCMemo

**PRELIMINARY FINDINGS OF FACT  
CONDITIONAL USE REQUEST  
Application Number CUP-N-339-19**

**2023 COMPLIANCE REVIEW**

The purpose of the Planning Commission hearing and these updated Findings is to evaluate the 2019 land use permit and determine if the permittee is in compliance with conditions of approval and then take action on the permit.

Findings for the original request is shown below in standard font. The 2023 compliance review is shown in blue italic font.

**ORIGINAL REQUEST:** To allow a home occupation to support the applicant's trucking business.

*REVIEW REQUEST: To review Conditional Use permit for Home Occupation.*

**APPLICANT:** Cesar Andrade  
81032 Wagon Wheel Loop  
Irrigon, OR 97844

**OWNER:** Victor & Susana Nunez  
30687 Birtrand St.  
Hermiston, OR 97838

**PROPERTY DESCRIPTION:** Tax Lot 1600 of Assessor's Map 5N 26 36BC

**PROPERTY LOCATION:** Located on the South corner of Wagon Wheel Loop approximately one mile southwest of Irrigon.

**FINDINGS OF FACT:**

- I. **BACKGROUND INFORMATION:** The applicant currently owns and operates a trucking company and this proposal is the result of Code Enforcement for operation of a home occupation without first being properly permitted. The applicant wishes to continue to utilize this property for storage of all trucks and move them in and out of the property primarily during harvest season.

*2023 Updated Findings BACKGROUND INFORMATION*

*This operation was originally permitted in 2019 as a "home occupation" that was described as "2 semi-trucks that work nearly all year round and only enter and leave the property once per week. The seven other smaller trucks are only active and moving one month per year. Throughout this month, the smaller trucks enter and leave the property one time each week." Since then, the Planning Department has observed what appears to be a full-time trucking company operated from this residential property. The original proposal, storage of trucks during the harvest season, has grown to a large fleet of continuously circulating trucks, truck storage and truck repair on-site operating under the business name of Andrade Repair. Planning Department has received noise complaints from the*

*residential neighbors of trucks running and being moved during all hours day and night. The Compliance Planner has observed employees working on trucks in the shop. The shop that is being used for service and repair of commercial vehicles was built and started operation without obtaining permits from the Planning Department or the Building Official. Staff have sent 6 letters to the applicant describing the non compliance. Response from applicant has been limited. As documented herein, this full-scale trucking operation dominates the site, does not qualify as a "home occupation," has several nuisance impacts on the surrounding residential neighbors, is in violation of the conditions of the 2019 permit approval and the original approval criteria for "home occupations" in a residential zone.*

**II. COMPLIANCE WITH MORROW COUNTY ZONING ORDINANCE SECTIONS 6.020, 6.030, 6.050.**  
The requirements for approval are listed below in bold type, followed by a response in standard type.

**SECTION 6.020 General Criteria In judging whether or not a conditional use proposal shall be approved or denied, the Commission shall weigh the proposal's appropriateness and desirability, or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met or can be met by observance of conditions.**

**(1) The proposal will be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies and regulations of the County.**

The proposed use is allowed as a Conditional Use Permit in the Rural Residential Use Zone. Staff would find that the proposed use would be consistent with the Comprehensive Plan and Zoning Ordinance once approved with the outlined conditions.

*The traffic from multiple trucks has been shown to not be compatible with the rural residential character of the neighborhood. The scope of the original proposal has evolved to be a full-blown commercial/industrial scale business rather than a use that is compatible in a rural residential area. Given the applicant is not able to comply with the conditions of approval and the trucking business has become a nuisance in the residential neighborhood, county finds the applicant does not comply with this criterion.*

**(2) If located within the Urban Growth Boundary of a city, that said city has had an opportunity to review and comment on the subject proposal.**

This criterion is not applicable as the proposed use is located outside the Urban Growth Boundary.

**(3) The proposal will not exceed carrying capacities of natural resources or public facilities.**

Planning staff have determined that the proposed use will not affect natural resources and public facilities are not needed the applicant states that the trucks travel on gravel roads and public roads, therefore there is no demolishing of natural habitat. See discussion below regarding the public access entrance of Wagon Wheel Loop from the County Road System.

*County finds that the heavy traffic volume exceeds the carrying capacity of the county and public roadways. County also finds that the oil, petroleum products and other waste noted by photo*



*and record by the Compliance Planner is not consistent with this standard. Based on this, staff finds the applicant cannot meet this criterion.*

**SECTION 6.030 General Conditions** In addition to the standards and conditions set forth in a specific zone, this article, and other applicable regulations; in permitting a new conditional use or the alteration of an existing conditional use, the Commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the County as a whole. These conditions may include the following:

- A. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.**

The proposed use shall be conducted in a way that will not disturb neighboring residences. The proposed business shall abide by Section 8 of the Morrow County Code Enforcement Ordinance related to Noise as a Public Nuisance. Section 8 of the Code Enforcement Ordinance establishes that noise made between the hours of 11:00pm and 7:00am is a public nuisance, therefore, all heavy equipment and truck traffic shall take place between the hours of 7:00am and 11:00pm. This is recommended and listed as a condition of approval, any complaints received will result in a review of the activity and potential revocation of the permit.

*County has received complaints as recently as 4/8/2023 of Semi trucks being left running late at night. Compliance Planner has a record of complaints received over the past several years. Truck traffic is constant, coming in and out during the daytime and night, which is in direct violation of the original conditions.*

- B. Establishing a special yard or other open space or lot area or dimension.**

This proposed use will utilize existing structures and lot area, the application states that fencing is already in place and surrounds the entire property. Please see Subsection J for fencing requirements. Planning staff would not recommend any additional requirements for open space.

- c. Limiting the height, size or location of a building or other structure.**

The applicant has not made any requests for changes to the height, size, or location of any buildings or structures.

- D. Designating the size, number, location and nature of vehicle access points.**

- 1** Where access to a county road is needed, a permit from Morrow County Public Works department is required. Where access to a state highway is needed, a permit from ODOT is required\*

Access is from Wagon Wheel Loop, a public right of way from Depot Lane, which is a County Road. Due to the nature of the proposal, the applicant will need to coordinate with Morrow County Public Works to make any necessary improvements to the public access entrance of Wagon Wheel Loop to minimize impact to the County Road System. Planning staff recommend and list as a condition of approval that the applicant obtain approval from Morrow County Public Works for improvements and maintenance of the public access entrance of Wagon Wheel Loop from Depot Lane.

- 2 In addition to the other standards and conditions set forth in this section, a TIA will be required for all projects generating more than 400 passenger car equivalent trips per day. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and mitigation of the impacts. If the corridor is a State Highway, use ODOT standards.

The applicant indicated the total number of trips to be 60 automobile trips per week. The application states, "there are 2 semi-trucks that work nearly all year round and only enter and leave the property once per week. The seven other smaller trucks are only active and moving one month per year. Throughout this month, the smaller trucks enter and leave the property one time each week. The average automobile trips is well below the 400 automobile mark. Should this home occupation generate more than 400 trips per day or should complaints be received additional review may be required up to and including a Traffic Impact Analysis. Should operations outside of those identified in the application, additional review and approval could be warranted.

*Application narrative from the original 2019 application shows the original intent as to permit two semi-trucks that would be working nearly all year round. Those 2 trucks would be entering and leaving property one time per week. Compliance planner has observed and documented 6 to 8 semi-trucks on the property being stored, serviced or operating at any given time.*

- E. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way.  
No increase in street dedication, roadway width, or improvements in the right-of-way are proposed by the applicant. See discussion below regarding the public access entrance of Wagon Wheel Loop from Depot Lane. These preliminary Findings of Fact have been provided to Morrow County Public Works for their review and comment.
1. It is the responsibility of the land owner to provide appropriate access for emergency vehicles at the time of development.  
The existing driveway and parking area provides appropriate access for emergency vehicles. Preliminary Findings of Fact have been provided to the Irrigon Rural Fire Protection District for their review and comment.
- F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or loading area.  
The application states that no portion of the land is subject to flooding. This area is currently used in residential and farming applications. Planning staff would not add any new conditions and would find this criterion met.
- G. Limiting or otherwise designating the number, size, location, height, and lighting of signs.  
No business signs are required or intended to be used according to the application. Should any be installed they need to comply with MCZO Article 4 Section 4.070. This is recommended and listed as a condition of approval.
- H. Limiting the location and intensity of outdoor lighting and requiring its shielding. Home Occupations are secondary to the primary use of a residential dwelling. The application

indicates that no alterations are required or requested, therefore any outdoor lighting should be for residential use.

- I. Requiring diking, screening, landscaping or another facility to protect adjacent or nearby property and designating standards for its installation and maintenance. The proposed use would not require diking, screening or landscaping to protect nearby property. Planning staff would not require any of these provisions due to the proposed use.
- J. Designating the size, height, location and materials for a fence. Any fencing over six feet in height will require zoning and building permit approval. Planning staff would not require any actions under this criterion at this time.
- K. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources. The application states that the occupation has the ability to use the existing entries, gravel roads, and public roads for transportation. The business is compatible with surrounding land uses. Planning staff would not place any additional requirements under this criterion.
- L. Other conditions necessary to permit the development of the County in conformity with the intent and purpose of this Ordinance and the policies of the Comprehensive Plan. Home Occupations are secondary to the primary use of a residential dwelling; therefore, the dwelling should be maintained as such. This application would allow the property to be used as part of the semi-trucking business of the applicant. The proposed use is in support of surrounding agricultural operations; however, the operations are in a residential zone and should not interrupt or interfere with surrounding residential uses. This is listed as a condition of approval.

No additional requirements are deemed necessary by Planning staff.

*Since 2019, there have been a number of complaints about the truck traffic and trucking repair business. The business has grown in scope, volume and intensity. See attached photos. The business exceeds what was originally requested and approved for parking trucks on the parcel seasonally. Even if conditions could mitigate the impacts, the record since 2019 is that the applicant is operating a much different business than what was proposed or approved and has not complied with conditions of approval.*

## SECTION 6.050 STANDARDS GOVERNING CONDITIONAL USES

- G. Home Occupations, when permitted as a conditional use and conducted as an accessory use, shall be subject to the following limitations:
1. The home occupation is to be secondary to the main use of the property as a residence and shall be conducted only by the resident of such dwelling within the same dwelling or in an accessory building on the same or adjacent property.  
*The proposed occupation will be a secondary use of the property and will be operated by the residents of the dwelling. This criterion has been met.*



*The trucking business is not being operated in a manner that is secondary to the residential use of the property or the residential nature of the area. The current business operation dwarfs any residential use of the property. Under the Morrow County Development Code, the business operation is supposed to be secondary/accessory to the primary residential use of the property. In this case, however, the business amounts to a full-on commercial trucking business operation, with a large fleet of ever-circulating trucks, truck repair and everything needed to support a full trucking business on-site. The residential use is distinctly secondary to this level of business use.*

2. **No structural alterations shall be allowed to accommodate the home occupation except when otherwise required by law, and then only after the plans for such alteration have been reviewed and approved by the Planning Commission. Such structural alterations shall not detract from the outward appearance of the building as an accessory structure to a residence. No structural alterations are proposed by the applicants or required for the proposed use. This criterion is met.**

*The applicant built a large shop which appears to be intended for truck repair without obtaining Zoning or Building permits for the new shop building. Andrade Repair, registered with the Corporation Division of Oregon Secretary of state on April 1, 2021, Cesar Andrade Morales as the Authorized representative. Compliance Planner has observed employees working on trucks inside the Bay of the truck repair shop. (See attached photos with date stamp.)*

3. **One non-illuminated sign not to exceed 200 square inches and bearing only the name and occupation of the resident shall be permitted. No signs have been proposed by the applicants. See the discussion above in Section 6.030 General Conditions.**
4. **No materials or mechanical equipment shall be used which will be detrimental to the residential use of the property or adjoining residences because of vibration, noise, dust, smoke, odor, interferences with radio or television reception, or other factors. Please see the discussion above in Section 6.030 General Conditions.**

*Planning Department has received complaints of improper disposal of Solid waste (garbage) and hazardous waste (oil and petroleum products). Decomposing agricultural waste has been observed dumped in piles on the property. Noise complaints pertaining to the trucks being left running at all hours and truck movement have been reported. The operation is not in compliance with this standard.*

5. **No materials or commodities shall be delivered to or from the property which are of such bulk or quantity as to require delivery by a commercial vehicle or a trailer or the parking of customer's vehicles in a manner or frequency as to cause disturbance or inconvenience to nearby residents or so as to necessitate off-street parking. Parking facilities are adequate as to not require off-street parking. See above discussion and Conditions of Approval relating to uses in the residential area.**



*Given the number of trucks being stored on the property there does not appear to be adequate parking on the subject parcel, even if that level of truck/vehicle use could be allowed as a "home occupation."*

**6. Retail sales shall be limited or accessory to a service.**

No retail sales are proposed. This criterion is met.

**7. No persons shall be employed except members of the immediate family. The applicants are the owners/operators of the business and should employees be needed in the future; the applicant has stated this standard would be applied. This is a requirement under this section and is listed as a condition of approval.**

*Planning Department staff have researched and obtained information on several businesses registered and operated from this location with the Secretary of State and USDOT. Gilberto C Chapa is registered with 7 employees; Cesarin Trucking LLC registered with 5 employees; Monarch Transport LLC registered with 4 employees. Andrade Repair number of employees unknown. A condition of the 2019 permit limited employees at the site to family members only.*

**8. The permit allowing a home occupation shall be reviewed every 12 months following the date the permit was issued and may continue the permit if the home occupation continues to comply with the requirements of this section.**

This permit shall be reviewed annually by Planning Department staff with other home occupation permits as long as the proposed use continues. This is listed as a Condition of Approval.

*This permit has been reviewed annually and has been found to not be in compliance with the conditions of approval.*

**III.LEGAL NOTICE PUBLISHED:**

April 5 & 6<sup>th</sup>, 2023

Heppner Gazette and East Oregonian

**IV.PROPERTY OWNERS NOTIFIED:**

April 7, 2023

**V.AGENCIES NOTIFIED:** Mike Gorman, Morrow County Assessor; Eric Imes, Morrow County Public Works Director; Irrigon Rural Fire Protection District; Morrow County Land Use Counsel; Morrow County Sheriff's Office.

**VI.HEARING DATE:**

April 25, 2023

North Morrow Annex Building, Irrigon, Oregon

**VII. DECISION OF PLANNING COMMISSION:** The Planning Director recommends approval of the application subject to the following **CONDITIONS OF APPROVAL:**

1. Operations related to this permit should not interrupt or interfere with surrounding residential uses. *The business is a nuisance and disruptive to adjoining residential properties. The applicant has not operated the business in compliance with this condition.*
2. All heavy equipment and truck traffic shall take place between the hours of 7:00am and 1:00pm, consistent with the Morrow County Noise Ordinance. *Truck traffic has operated outside the bounds of this condition.*
3. The applicant must obtain approval from Morrow County Public Works for improvements and maintenance of the public access entrance of Wagon Wheel Loop from Depot Lane.
4. Should any signs be installed in the future they would need to comply with the regulations in place at that time.
5. Any persons employed at this location will be limited to immediate family members. *Based on evidence attached, there are at least 16+ employees at this location.*
6. This permit shall be reviewed annually by Planning Department staff with other home occupation permits as long as the proposed use continues.

*2023 Updated DECISION OF THE PLANNING COMMISSION: Based on the above Findings, Planning staff provides the Planning Commission with three options:*

1. *Find that the applicant is not in compliance with the original permit and the conditions of approval and revoke the permit, or,*
2. *Find the applicant can come into compliance with the underlying home occupation approval criteria and the conditions of 2019 approval and allow the operator a set period of time to achieve/demonstrate compliance, not to exceed one year, or*
3. *Continue the hearing to the May meeting, allowing the applicant time to make changes to the business operation and prove that the business can be operated in compliance with the permit.*

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Chair, Morrow County Planning Commission

**Attachments:**

Vicinity Map

Documents from Compliance Planner