



# PLANET BLUEGRASS

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March 9<sup>th</sup>, 2022

Town of Lyons Board of Trustees,

After careful reconsideration of our Conditional Use Review Application, taking into account concerns voiced by Board Members and our neighbors at the February 23, 2022 public hearing and after further discussion with Town staff, Planet Bluegrass is pleased to submit a series of amendments to our original application. These amendments significantly reduce the scope of our application and we believe represent a workable good-faith compromise that addresses the concerns raised while allowing Planet Bluegrass flexibility it needs to succeed in 2022 and beyond. The following document summarizes each item of concern and provides our updated position for each.

## ACCESSORY DWELLING UNIT

The residential building proposed in the South Grazing Area was intended to be only a small accessory unit (which are allowed in CE-1 zoning areas), but unfortunately was erroneously referred to as an Accessory Dwelling Unit ("ADU"), which led to confusion regarding the legality of ADUs in CE-1 zoning as well as size restrictions that contradicted our request. In recognition of current challenges with getting utilities to the South Grazing Area and in an attempt to further reduce our impacts in the South Grazing Area, we are removing this item completely from our application. In addition, this change reduces our anticipated water use for the property, further ensuring we are well below the threshold for the existing  $\frac{3}{4}$ " tap.

## STORAGE

We are also proposing significant changes to our storage plan on the Farm property. We are committing to removing the existing storage containers from the South Grazing Area floodway by April 15<sup>th</sup> (the date suggested by Town staff to avoid spring runoff), with the further agreement to move them out of the South Grazing Area entirely to the North side of the river as soon as possible (which requires obtaining equipment to move them across the river). In addition, the attached updated site plan removes the primary storage structure from the South

Grazing Area and instead proposes a new location for the containers and our primary storage structure on the West side of the North property. This is a great location, as the hill there will block visibility of the storage structures from almost all of our neighbors. The only remaining request for improvements on the South Grazing Area would be a small storage facility which will meet all flood plain building requirements. With these changes, we have dramatically reduced the improvements requested in the South Grazing Area.

MID-TIER EVENTS

The Board and a member of the public expressed concerns around the total number of larger scale events we are allowed to do, and how that relates to our new request for Mid-Tier Events. We propose to address these concerns by significantly reducing the number of larger events we are requesting approval for. First, we propose to reduce the number of Major Event days currently allowed (4,500 paid attendee capacity, camping on South Grazing Area (SGA)) from 12 to 10. Second, we propose to reduce our request for Mid-Tier Event days (3,000 paid attendee capacity, no camping on SGA) in half, from 10 to 5. The final outcome of these changes is a **decrease of seven larger event days from our original application, and a net increase from the current status quo of only three larger event days** that utilize the Farm and the Ranch. Note also that this represents a **net decrease from the current number of days that would permit camping on the South Grazing Area**, since only Major Events would do so.

This change provides us the flexibility we need for Mid-Tier Events, while limiting the total number larger event days for our neighbors, which we believe is a reasonable compromise. The following may help illustrate the effects of this change:

**LARGER EVENTS THAT UTILIZE THE FARM WHICH ARE CURRENTLY ALLOWED:**



**LARGER EVENTS THAT UTILIZE THE FARM UNDER AMENDED PROPOSAL:**



## CURFEW

Concerns were also voiced about our requested change to weeknight curfews, from 9pm to 10pm for outdoor Mid-Tier and Minor Events. Since we are currently allowed an unlimited number of outdoor Minor Events, we recognize that this could conceivably impact a large number of weeknights. Therefore, we propose to remove Minor Events from our request, so that the new curfew would apply **ONLY** to Mid-Tier Events. Combined with our reduction in the number of Major Event and Mid-Tier Event days requested above, there is only a net increase of **three additional weeknights per year** in which the curfew would be 10pm, assuming we choose to hold those events on weeknights.

## ENVIRONMENTAL ADVISORY BOARD COMMENTS

We view Planet Bluegrass's role to include being a good steward of its property, and we therefore take the EAB's comments extremely seriously. In response to these comments we have engaged a Wildlife Biologist and a Wetland Ecologist to help ensure that our use of the South Grazing Area is consistent with this stewardship.

Our Wildlife Biologist, Jerry Powell from Wildlife Specialties LLC, has confirmed that the South Grazing Area is not suitable habitat for the Preble's Jumping Mouse for several reasons, including that there is not contiguous habitat along the riparian corridor (properties both above and below the South Grazing Area consist of mowed residential areas that are not suitable for the PJM) and that the vegetation remaining in the South Grazing Area after the 2013 floods is not dense enough to support PJM habitat. Mr. Powell has prepared a letter to the U.S. Fish and Wildlife Service requesting confirmation of this finding – a copy of this letter is included with this summary. (The U.S. Fish and Wildlife Service takes several months to respond, so we will not have their approval before the summer; but Mr. Powell states that based on his experience it would be unusual for them not to concur with his letter.)

In response to additional comments submitted by Mr. Brakenridge of the EAB, Mr. Powell has also provided an additional letter discussing Federal Habitat Designation and how it pertains to our property. Mr. Powell states that, since there is no suitable, occupied, or federally Designated Critical Habitat within Lyons for the PJM, the USFWS does not require habitat assessments for any projects. Mr. Powell further states his professional opinion that that the temporary and limited nature of our use of the South Grazing Area will not result in a deleterious impact on the PJM or any other wildlife.

Our Wetland Ecologist, Heather Houston from Birch Ecology, performed a site walk last week and was able to do a preliminary delineation of the wetland area based upon plant species. The boundaries of this area are close to our original drawings that we used in developing our current camping plans. Notably, her approach of using plant species rather than hydrogeologic analysis tends to result in a larger area delineated as wetland – in other words, we are using an approach that may be overinclusive, just to be sure that we are indeed protecting the entire wetland area. Ms. Houston will return in May to officially mark the boundary (once the snow melts off), which will enable us to erect temporary fencing during each camping event that will

prevent campers from intruding in this protected area. This fence will be temporary (only during a maximum of 10 camping days per year, put up and taken down for each such event) and will be a permeable “snow fence” design that does not affect plant life and allows movement of small animals through it.

#### SOUTH GRAZING AREA CAMPING

Finally, in response to the Board’s concern about the number of campers allowed on the South Grazing Area, we propose to reduce our request for campers in the South Grazing Area down to 600 maximum per day. Our most pressing goal is to re-home the 600 people that normally camp at Riverbend, as we would be hard pressed to put on our festivals without this. Our original request for 1,000 campers was based upon our analysis of the South Grazing Area’s reasonable capacity, in order to give us the flexibility to determine the right number of campers for the space (instead of basing it on Riverbend’s capacity, which is a very different space). However, in the spirit of compromise, we are happy to propose limiting camping on the South Grazing Area to 600 campers for now, with the understanding that we may request an increase in the future in the event that it becomes clear that the area can support more. And of course, this camping is only for the 10 days a year that we are permitted to have Major Events (since, as discussed above, we are proposing to reduce the number of Major Event days from 12 to 10).

(As a reminder – there will be no public access to the South Grazing Area from Apple Valley Road, and the reason we cannot locate more campers on the North side of the Farm is that we desperately need that space for parking. If we were to move campers to the North side, it would reduce our parking capacity which creates a new host of challenges)

#### Reasons for Amending our Annexation Agreement

A concern was voiced that Planet Bluegrass was violating the spirit of the agreements reached in the Annexation Agreement in 2017 by requesting changes that were not provided in that Agreement. It is important to understand that the Annexation Agreement reflected our best predictions of what we would need at that point, but we couldn’t predict then that (a) we would lose access to Riverbend camping, and (b) a global pandemic would reshape how live music events are presented. Since 2017 we’ve had to find a new place for at least 600 more camping spots, and we’ve discovered that Mid-Tier Events of approximately 3,000 people are a key to being able to attract world-class artists who aren’t able to play our festival but would like to play outdoors to our amazing audiences in our amazing town. The Annexation Agreement and other documents recognized that changes would be required in the future and provided for the public process to amend them that we’re currently going through. We absolutely understand the desire not to change things that have worked in the past, but we believe the proposed changes are reasonable and consistent with Planet Bluegrass’s mission and the character of our neighborhood.

## WATER DEDICATION

Finally, it's necessary that we address the water dedication issue (which was raised at the last meeting but not addressed in substance). Our use of the Farm property is very different than the typical subdivision which is contemplated in the municipal code's water dedication requirement; rather than building homes and businesses that will significantly increase water usage, we propose no additional water use except for a bathhouse that will be used a maximum of 15 days per year (in conjunction with major or mid-tier events). Even using the most conservative estimates, our use will never come close to the 270,000 gallons allowed through our existing  $\frac{3}{4}$ " tap.

The issue is that the cost of dedicating additional water would be a deal-breaker for our proposal. Our requests relating to the Farm do not create additional profits (as a subdivision would), they simply allow us to re-home campers displaced from Riverbend and make more efficient use of the property. Having to pay to dedicate additional water would make this proposal cost-prohibitive without reflecting any actual increase in the usage of water on the property beyond what we are already permitted to use.

We're therefore asking the Board to exercise its discretion to determine that there is good reason to waive the water dedication requirement at present and to defer it until we request permission to build more water-using improvements, or otherwise update the Conceptual Plan in a way that is likely to exceed the current  $\frac{3}{4}$ " tap capacity. We believe this reflects the original intent of the Annexation Agreement (which deferred water dedication to future amendments to the Conceptual Plan, though it failed to specify what kind of amendments), as well as the intent of the municipal code.

We have attached a memorandum explaining our understanding that the Board has the legal right to grant this waiver through the resolution process (rather than requiring further amendments to the documents). However, we are also adding a small amendment to the Annexation Agreement to change the trigger for water dedication to be a subdivision or a change to the conceptual plan "in a way that is likely to cause the usage of water on the Property to exceed the 270,000 gallon per year allowance currently permitted". This helps clarify the issue for the future, so that we are able to bring forward small updates that have no impact on water use (for example, a new fence) without needing to repeat this request. We hope you agree, as once again this is a critical issue for the feasibility of our proposal.

Based on our discussions with Town staff, we believe this addresses all of the material concerns voiced at the previous meeting. Thank you for taking the time to understand the detail of these issues and our requests, and we look forward to discussing and hopefully resolving these matters at the March 15 meeting.

Respectfully,

Zach Tucker

Director of Operations  
Planet Bluegrass



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**To: Board of Trustees for the Town of Lyons**

**From: Planet Bluegrass Farm, LLC**

**Item: Legal Requirements for Water Dedication in Connection with Amendments to Annexation Agreement**

Dear Board of Trustees,

As you know, Planet Bluegrass Farm, LLC (“**Planet Bluegrass**”) is the owner of the Planet Bluegrass Farm property (the “**Farm Property**”) which was annexed to the Town of Lyons (the “**Town**”) pursuant to Ordinance 1015 under an Annexation Agreement dated June 8, 2017 (the “**Annexation Agreement**”). Planet Bluegrass has proposed amending the current Site Plan, Keynotes, and Annexation Agreement with respect to its Ranch Property and Farm Property, which amendments are currently under consideration for approval by the Board of Trustees (the “**Board**”) at its February 23, 2022 session.

Section 19 of the Annexation Agreement addresses water dedication requirements for the Property, and provides that these requirements are to be calculated “in accordance with Sections 17-14-10 and 17-14-20” of the Lyons Municipal Code (“**LMC**”). At the time of the annexation, the water rights dedication was postponed until future subdivision of the Property or amendment of the Conceptual Plan. The current proposed amendments to the Site Plan, Key Notes, and Annexation Agreement for the Farm Property are considered an amendment to the Conceptual Plan, and therefore may trigger the LMC water dedication requirements. The purpose of this letter is to explain Planet Bluegrass’s view of the best way to address these requirements consistent with the Annexation Agreement, the LMC, and common sense.

The Annexation Agreement itself does not specify any terms for the water dedication requirement. Instead, it only states that the requirements of the LMC must be met. These

requirements are found in LMC Section 17-14-10.<sup>1</sup> This Section includes formulas for water dedication, but it also directs the Board of Trustees to increase, decrease, or waive those requirements as appropriate given the circumstances.

Per LMC Section 17-14-10(d), **“the Board of Trustees may, for good cause shown, increase, reduce or waive the amount of water rights required to be dedicated to the Town as a result of annexation.”** The Board is also directed in Section 17-14-10(a) to consider **“the type of land use proposed, the potential amount of water to be consumed and the area of land to be annexed”** in determining whether to require a water dedication and if so, how much to require. Further, Section 17-14-10(b) requires the Board to exempt “parcels, tracts or portion of tracts that are not considered by the Town to be suitable for development because of ...unstable geological conditions, waterways or other environmental concerns” from the water dedication requirements.

Based on these LMC provision, Planet Bluegrass respectfully submits that the amendments to the Conceptual Plan it is currently seeking should not reasonably trigger a requirement for additional water rights dedication. Planet Bluegrass therefore requests that the Board exercise its authority per LMC Sections 17-14-10(d), 17-14-10(a) and 17-14(b) to postpone any such requirement to such later time as the Farm Property is subdivided or the Conceptual Plan otherwise amended in a manner that would be likely to increase its water use beyond what is currently permitted. As good cause in support of this request, Planet Bluegrass notes the following:

- The currently proposed additional uses for the Farm Property do not involve uses that would result in water needs beyond what can be serviced by the existing ¾” water tap on the Property. The attached report outlines anticipated annual water use of additional structures on the Farm Property. The proposed bathhouse is likely to be the largest user of water, but its use is limited to use during events on the Farm, which will only occur for a few months in the summer. Based on existing and planned potential use, the maximum water quantity needed would be 248,000 gallons per year, which is well within the Farm Property’s present tap capacity. There is no reason to require additional water dedication when the additional uses will not exceed the amount of water already allocated to the Farm Property.
- The Property is not being subdivided and will not put any additional burdens on the Town’s utilities. The provisions of the LMC regarding additional dedications of water in connection with annexation clearly contemplate situations where the annexation would result in subdivision, business industrial, or other uses that increase water usage, which is not the present situation.
- A portion of the Farm Property (the southwest area near the river) is a wetlands area that cannot be developed or irrigated. Independent of any other considerations, this area should not be included in any water dedication calculations.

If the Board concurs that an additional dedication of water rights is not necessary or appropriate at this time, further amendment to the Annexation Agreement is thankfully not necessary. The Annexation Agreement merely provides that the water dedication requirements found in the

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<sup>1</sup> Section 17-14-20 provides requirements if the Property is being subdivided. That is not presently the case; no subdivision is currently proposed, and given the approved uses, any subdivision of the Property would require major changes and a full amendment process. Section 17-14-20 is therefore not relevant to the current question.

LMC must be followed, and the LMC in Section 17-14-10 allows for the determination that no water dedication may be required. The LMC does not specify any particular procedural requirements for this determination; therefore, this action appears to require only a standard resolution of the Board for approval. Planet Bluegrass suggests the following conditions for inclusion in such a resolution:

- a. Planet Bluegrass will provide a full water use report to the Town with any building permit application for proposed structures on the Property; and
- b. Any additional structures or subdivision of the Property, and any further amendments to the Conceptual Plan, will be subject to further consideration and possible reinstatement of the water dedication requirement per LMC Section 17-14-10.

If you have any questions prior to Wednesday's session, please feel free to reach out to me and I will be happy to assist.

Sincerely,

A handwritten signature in cursive script that reads "Zachary Tucker".

Zach Tucker, Authorized Representative of  
Planet Bluegrass Farm, LLC