

**MALHEUR COUNTY COURT MINUTES**  
**April 30, 2025**

The regularly scheduled meeting of the County Court was called to order by Judge Dan Joyce at 9:00 a.m. with Commissioner Ron Jacobs and Commissioner Jim Mendiola present. Members of the media, public and staff had the opportunity to join the meeting electronically or in-person. Present in the meeting room was Economic and Community Development Coordinator Taylor Rembowski and Building Official Adele Schaffeld. Notice of the meeting was posted on the County website, Courthouse bulletin board and emailed to the Argus Observer, Malheur Enterprise and those persons who have requested notice. The meeting was audio recorded. The agenda is recorded as instrument # 2025-1233

**PROCLAMATION - BUILDING SAFETY MONTH**

Building Official Adele Schaffeld met with the Court and presented a proclamation declaring the month of May as Building Safety Month: also present in support of Building Safety Month were Jim Sayers, ICC (International Code Council) Board of Directors and Oregon City Building Official; David Spencer, ICC Board of Directors President and Washington County Building Official; Alana Cox, State Building Codes Division; Casey Kump, State Fire Marshal's Office; Kylee Ruby, Wasco County Deputy Building Official and Secretary/Treasurer of Eastern Oregon Building Officials Association; Donald Cochran, Wasco County electrical inspector; Rachel D., Wasco County permit technician; and Lisa Osbourn, Wasco County permit technician. The theme for Building Safety Month 2025 is "Game On!" and weekly themes are: The Warm Up; Building Your Offense; Building Your Defense; The Starting Lineup; and Going Into Overtime.

Ms. Schaffeld read the proclamation:

**PROCLAMATION - BUILDING SAFETY MONTH - MAY 2025**

Whereas our County is committed to recognizing that our growth and strength depends on the safety and essential role our homes, buildings and infrastructure play, both in everyday life and when disasters strike, and;

Whereas our confidence in the resilience of these buildings that make up our community is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers, plumbers and others in the construction industry—who work year-round to ensure the safe construction of buildings, and;

Whereas these guardians are dedicated members of the International Code Council, a nonprofit that brings together local, state, territorial, tribal and federal officials who are experts in the built environment to create and implement the highest-quality codes to protect us in the buildings where we live, learn, work and play, and;

Whereas these modern building codes include safeguards to protect the public from hazards such as hurricanes, snowstorms, tornadoes, wildland fires, floods and earthquakes, and;

Whereas Building Safety Month is sponsored by the International Code Council to remind the public about the critical role of our communities' largely unknown protectors of public safety—our local code officials—who assure us of safe, sustainable and affordable buildings that are essential to our prosperity, and;

Whereas "Game On!" the theme for Building Safety Month 2025, encourages us all to get involved and raise awareness about building safety on a personal, local and global scale, and;

Whereas each year, in observance of Building Safety Month, people all over the world are asked to consider the commitment to improve building safety, resilience and economic investment at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments, fire prevention bureaus and federal agencies in protecting lives and property.

NOW, THEREFORE, we, the County Court of Malheur County do hereby proclaim the month of May 2025 as Building Safety Month. Accordingly, we encourage our citizens to join us as we participate in Building Safety Month activities.

Commissioner Jacobs moved to declare May 2025 as Building Safety Month in Malheur County. Commissioner Mendiola seconded and the motion passed unanimously.

Mr. Spencer expressed praise for the dedication and commitment of Ms. Schaffeld to her community and profession; Ms. Cox and Mr. Sayers echoed Mr. Stevenson comments and the Court members thanked Ms. Schaffeld for her dedication to the program and Eastern Oregon. Mr. Sayers announced that Ms. Schaffeld is receiving the W. Scott Copp Chapter Leadership Award from the International Code Council based on her efforts putting together the Eastern Oregon Building Officials Association and her service on the Oregon Building Officials Board of Directors.

Ms. Schaffeld thanked those present for their partnership and participation with Building Safety Month in Malheur County.

Public member Kathy Clarich joined the meeting.

### **CROSSING PERMITS**

Commissioner Jacobs moved to approve the following Crossing Permits to Farmers Mutual Telephone Company (FMTC): Permit 26-25 for Winter Hawk Lane #1535; Permit 27-25 for W Pioneer Road #1527; Permit 28-25 for Vaquero Drive #1532; Permit 29-25 for Tuttle Drive #1534; Permit 30-25 for Stanton Boulevard #762; Permit 31-25 for Snowmoody Way #1504; Permit 32-25 for S Grand View Lane #3013; Permit 33-25 for Rolland Road #965; Permit 34-25 for Riata

Circle #1533; Permit 35-25 for Quail Lane #1502; Permit 36-25 for Outlook Drive #1507; Permit 37-25 for Peterson Road #1070; Permit 38-25 for NW 36th Street #537; Permit 39-25 for Hwy 52; Permit 40-25 for Hopkins Road #1072; Permit 41-25 for Grand View Lane #1566; Permit 42-25 for Forsyth Lane #1518; Permit #43-25 for Eastway Lane #1071; Permit 44-25 for Douglas Road #938; Permit 45-25 for Chester Road #901; Permit 46-25 for Casa Rio Drive #1531; Permit 47-25 for Canyon Two Road #1069; Permit 48-25 for Canyon Three Road #1030; Permit 49-25 for Boat Landing Road #915; Permit 50-25 for Bellows Drive #1565; Permit 51-25 for Stanton Boulevard #762; and Permit 52-25 for Baker Road #897. Commissioner Mendiola seconded and the motion passed unanimously. Original permits will be kept on file at the Road Department.

Public member John Messick joined the meeting.

### **COURT MINUTES**

Commissioner Jacobs moved to approve Court Minutes of April 16, 2025 as written. Commissioner Mendiola seconded and the motion passed unanimously.

Administrative Officer Lorinda DuBois joined the meeting.

### **AMENDMENT - BOCCALEONI AGREEMENT**

Commissioner Mendiola moved to approve First Amendment to Temporary Employment Agreement for Part Time Courthouse Security Deputy - Malheur County Sheriff's Office - recorded with Malheur County Clerk on October 16, 2024 as instrument number 2024-2868. Commissioner Jacobs seconded and the motion passed unanimously. See instrument #2025-1234

### **AMENDMENT - CHILD SUPPORT SERVICES AGREEMENT**

Commissioner Jacobs moved to approve Amendment No. 1 to Department of Justice Cooperative Agreement for Child Support Services, Agreement #23502. Commissioner Mendiola seconded and the motion passed unanimously. The agreement is for the District Attorney's child support services program. A copy will be returned for recording.

### **AGRICULTURAL EDUCATIONAL EXTENSION SERVICE DISTRICT ADVISORY BOARD**

Paul Skeen and Larry Kitamura resigned from the Agricultural Educational Extension Service District Advisory Board. Commissioner Jacobs moved to appoint the following to the Agricultural Educational Extension Service District Advisory Board: Jeff Burkhardt as the Malheur Agriculture Extension Coalition representative; Ryan Svaty as the row crop farming representative; and Darci Payne as the livestock industry representative associated with local 4-H programs. Commissioner Mendiola seconded and the motion passed unanimously.

### **FAIR ADVISORY BOARD**

Commissioner Mendiola moved to appoint Dallas Tschida to the Fair Advisory Board. Commissioner Jacobs seconded and the motion passed unanimously.

### **DLCD IGA - NATURAL HAZARDS MITIGATION PLAN**

Commissioner Mendiola moved to approve Intergovernmental Agreement with Department of Land Conservation and Development (DLCD) for update of the Malheur County Multi-Jurisdictional Natural Hazards Mitigation Plan, DLCD IGA (Department of Land Conservation and Development Intergovernmental Agreement) #23156. Commissioner Jacobs seconded and the motion passed unanimously. A copy will be returned for recording.

### **ADDENDUM - LETTER OF INTENT**

Commissioner Jacobs moved to approve Addendum to Binding Letter of Intent between Malheur County, Malheur County Development Corporation (MCDC) and JTH, LLC (Limited Liability Company). Commissioner Mendiola seconded and the motion passed unanimously. A copy will be returned for recording.

Ms. DuBois, Ms. Schaffeld, and Mr. Rembowski left the meeting.

### **PUBLIC HEARING - REMAND HEARING ON LUBA APPEAL; ORDINANCE NO. 235**

Remand from the State of Oregon Land Use Board of Appeals (LUBA) No. 2024-0303 In The Matter of Hastings et al. (Petitioners) vs. Malheur County (Respondent), and Darren Lee (Intervenor-Respondent). This LUBA remand was in response to the appeal of the County Court's approval of Ordinance No. 235, which added 80 acres of tax lot 3200 Assessor's Map 16S47E as a significant aggregate site to Malheur County's Goal 5, Mineral and Aggregate Inventory (Planning Department File 2023-12-010. This hearing is for the consideration of whether to allow mining of a significant aggregate site placed on the County's Goal 5 inventory by Ordinance No. 235.

Present for the hearing were: County Counsel Stephanie Williams, Applicant Darren Lee, Brian Sheets - Counsel for Applicant, Mike and Dinah Lord, Mike and Mandi Hastings; present electronically were: Ty Wyman - Counsel for Neighbors, Patty Dickinson, Bill and Riley Downing, and Robert and Tina Cassity. Notice of the hearing was published in the Argus Observer.

Judge Joyce: Let's open the hearing, quasi-judicial land use hearing, and I'm ordered to read this, read the following statements and items 1-7 below. This is a remand hearing from an appeal to LUBA. No new evidence is permitted at this hearing. This hearing is based on the record with oral and written arguments. When called to speak please state your name, address and title, if any, for the record. Number 1. There is a general time limit for testimony of three minutes. Applicant's and opponent's initial presentation will be ten minutes. Applicant may have a rebuttal of five minutes. All testimony and questions shall be directed to or through the judge. Testimony and questions should not be directed to staff or directly to witnesses.

Do any members of the County Court need to abstain, disclose conflicts, disclose biases, or disclose any ex parte communications or site visits? If so, now would be a good time to state the reason. And I have none.

Commissioner Jacobs: I have none.

Commissioner Mendiola: I have none.

Judge Joyce: Does anyone object to any of the members of the Malheur County Court hearing this application? Does anyone challenge the County Court's jurisdiction to hear this matter?

Land use statements for the record: Oregon land use law requires several items to be read into the record at the beginning of this hearing. I will now read these items: The applicable substantive criteria upon which the application will be decided are found in Oregon State laws and administrative rules as well as local county code provisions, which are specifically set out in the Staff Report and include: OAR (Oregon Administrative Rules) 660, Division 23-0030. Testimony and arguments presented must be directed toward these approval criteria or criteria in state law, the Malheur County Comprehensive Plan, or the Malheur County Code, that the speaker believes to apply to the decision. The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the County Court and the parties the opportunity to respond to the issue will preclude appeal to LUBA on this issue. An issue that may be the basis of an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements or evidence sufficient to afford the County Court and the parties an adequate opportunity to respond to each issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the County Court to respond to the issue precludes an appeal or an action for damages to Circuit Court.

Number 7. Order of Proceeding. The applicant will be allocated up to ten minutes for initial applicant presentation. The applicant may also present up to five minutes for final rebuttal. Opponents, a speaker on behalf of a group, may have up to ten minutes for initial presentation. All others wishing to testify will be given three minutes each. We will have: Staff Report; Applicant; Testimony in favor; Opponents; Testimony in opposition; Staff comments, if any; Applicant/Proponent rebuttal; Close the Hearing – no public testimony can be heard after this point; Deliberations and tentative decision vote.

So, at this time, we shall have the Staff Report for the County by Stephanie Williams, County Counsel.

Ms. Williams: This is the Staff Report for our remand hearing today. I think you have a copy. I wasn't really going to read the Staff Report, I was just generally going to discuss it with you. I think you know who the Applicant is. The owner is Mr. Head. The Applicant's attorney is Mr. Sheets. The subject property is tax lot 3200, Assessor's Map 16S47E. There are no water rights on the property. It's dry land farming. The total acres of the property is 308 acres - a little more than that. The Applicant, Mr. Lee, proposed to add a site to the Malheur County's Goal 5 inventory for significant mineral and aggregate sites. He's proposing to add an 80-acre site, which was heard by the County Court earlier and the County Court did add this site to the Goal 5 inventory. We're not here to reverse that or to change that; it is on the Goal 5 inventory. What we're here to decide today is whether or not mining should be allowed and that's why LUBA had remanded it back to the

County, was for us to consider the full Division 23 rule and not just the quality, quantity, and location of the aggregate. So, it was appealed to LUBA and LUBA had remanded it back to us to make sure that we apply the full provisions of Division 23. The exhibits that we've received are four exhibits: the request for remand hearing by Mr. Sheets; an email from Mike and Mandi Hastings; a memorandum to the County Court by Ty Wyman; and then correspondence from Mr. Sheets that came in a couple of days ago on April 28th.

So, the criteria is the Oregon Administrative Rule. A lot of jurisdictions have other rules to apply to Goal 5, to put a site on a Goal 5 inventory. The County does not. We apply the rule straight up. That means that we determine whether the source is significant, which we have, and then we determine whether mining should be allowed. The Oregon Administrative Rule sets out very nicely steps that need to be taken to determine whether mining should be allowed. The steps are limited in nature. The steps say what a default impact area is; the steps say you are to consider dust, noise, discharges, agricultural practices, and other sites on the Goal 5 inventory. You really can't go outside the scope of the limitations that are set in the rules.

So, one of the things that you do is identify whether or not there will be any conflicts with mining. So, the first thing that you do is you determine an impact area, the statute by default, or the rule by default says it's 1,500 feet. I want to note that Farmland Reserve, actually, they had testified that the pipeline that goes across the property would impact their 2,500 acres of farm. That farm is located south of the mining site and is really outside the scope of the initial 1,500-foot impact area. I guess I say that to you because I think you could make the impact area larger if you wanted to and not just keep it at the 1,500 feet. The Planning Commission accepted 1,500 feet, and there was no opposition from anyone at the Planning Commission hearings on that. It's kind of a double-edged sword when you expand the impact area, because when you get to the ESEE (Economic, Social, Environmental and Energy) analysis for future uses, if you have a big impact area, then you have to look at the future use impact for the whole entire impact area and you impose restrictions on those. But I think it is sufficient to note that the pipeline and the irrigation system is, in fact, on the mining site.

So, then you identify the conflicts within the impact area; and those conflicts are really limited to noise, dust, and other discharge conflicts. And I've outlined those for you in the Staff Report, the dust and noise and other discharges are in A; the local roads – impacts to local roads are in B. The Applicant did submit a traffic plan to the Road District No. 3; they approved it. They did ask for some improvements to the local roads. The safety of public airports; there are none. There are other Goal 5 resources in the impact area, but those are two mines that are closed. There were some wildlife and wetland concerns that were raised. They are not protected under Goal 5. They're really not considered, but the Applicant did agree to address those concerns and proposed some conditions.

One of the conflicts that you're to look at is whether or not there is a conflict with agricultural practices. I think that there was testimony from Farmland Reserve about the pipeline and the irrigation system. Also, Lightbridge Organics, LLC (Limited Liability Company), adjacent

property owner that has agricultural practices on the property also testified. What's interesting about the agricultural practices is that you don't really apply the Oregon Administrative Rule, Division 23, you apply the Oregon Revised Statute 215.296, which means that you have to determine that mining will only be approved when it will not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices. Again, the Applicant has proposed several conditions or measures to minimize those conflicts.

So, then that takes us to D, page 10, of the Staff Report. This is the step where after you identify the impact area and you've identified the conflicts, that you consider measures to mitigate the conflicts. I have set out measures that were in the record and are being proposed to mitigate the conflicts. The Planning Commission did not accept Applicant's measures or conditions, and they denied mining of the property. Generally, I think the Planning Commission's decision came down to a burden of proof that was not met and that there was no real analysis of the measures proposed. And then the final step is if there are conflicts that cannot be minimized, the County needs to do an ESEE analysis. The ESEE analysis really kind of comes after the close of the hearing, unless there's some ESEE analysis presented, but really this is determined after, I mean, if you're not going to approve mining, then, - if you're going to approve mining you don't need to do an ESEE. So, we don't really know what the ESEE will look like until after that tentative decision is made. By way of an example, I set out for you what an ESEE might look like addressing economic. But you also would address social, environmental, and energy consequences.

That takes us to page 15 of the Staff Report, Roman numeral VI. Again, the County doesn't have any other code provisions, we just follow the rule straight up. Roman numeral VII is for the ESEE analysis for future uses; it's different than the ESEE analysis previously talked about. Then there is a requirement about the adequacy of the application. I'll submit to you that the adequacy of the application is not really approval criteria but just generally what the application should at very minimum include and then a site plan as well. That's really all I have for a Staff Report.

Judge Joyce: Okay, thank you. Applicant, Mr. Sheets, Mr. Lee.

Brian Sheets: Good morning, Your Honor. Brian Sheets, 93 SW 4th Avenue in Ontario, and I'm the attorney for the Applicant. I just want to thank you for having this hearing and especially the way that you have it set up so that we're looking at the record and to discuss what's on the record and what the appropriate standards for identifying these conflicts and the measures that we can use to minimize those conflicts. We're in general agreement with most of the proposed conditions within the Staff Report. I just wanted to hit on condition number 1 and condition number 23.

Condition 1 talks about disturbed earth versus active mining. There's a two-acre maximum active mining area so that it stays within the bonding area, the bonding requirements for DOGAMI (Department of Geology and Mineral Industries). So that's two acres of active mineral extraction. The no more than 20 acres has to do with the site so that there's areas for stockpiling movement within there, but that's not necessarily active aggregate mining there.

Condition 23 talks about limitation of two acres per year. Demand really drives what is able to be sold, and that drives the need for the mining. I believe that there is discussion in the record about being lucky to do two acres per year. Obviously, if that's what the County Court wants to limit it to, we'll definitely abide by that. But to the extent that that's necessary, we'd hope that there would be findings that would support that.

So, just like with the Staff Report talked about, what is able to be considered, we're talking about noise, dust, or other discharges, local roads conflicts, safety conflicts with airports and other Goal 5 measures, and those agricultural practices. We've identified and we've heard testimony about the pipeline. We've put together a rather comprehensive prohibition basically from activity within a buffer area of that as well as identifying the local irrigation projects also around there to make sure that those places aren't impacted and staying away from those kinds of things will definitely minimize that risk and won't increase any costs or change in the agricultural practices there. We've also identified and analyzed impacts to organic farming and we've looked through what exactly are contaminants that can possibly go over to that area through either drift or other things that could possibly escape the buffer zone. We won't be using any sort of prohibited chemicals or practices that could possibly impact those places.

ODFW (Oregon Department of Fish and Wildlife) recommended that we keep down noxious weeds and we have a plan for that including using man pack sprayers and making sure that there's not any drift outside of the area and that's contained through buffer zones as well as small spot use and not broad usage of those kinds of herbicides.

So, we're keeping the impacts within the site. We have proposed buffers, and we believe that the conditions proposed by staff will adequately prevent the impacts and minimize them from a substantial level to below that threshold. There can be impacts allowed, but the question is whether they're substantial. And based on the record, I don't think that we have any evidence that these impacts have risen to a substantial level. We haven't had impacts of or evidence of significant cost increases to agricultural production or significant changes to agricultural practices. There's potential for them, there's potential. But as it stands now, and if the mining is allowed, that those won't reach a threshold of substantial, that the use of a mine there will not necessarily change any agricultural practices in the area. If there's a catastrophic injury to the pipeline, the Applicant's going to be responsible for that. Just as they would be if they injured it now, if they did something on the property without mining, they'd still be responsible in the same way.

So, what we're doing is actually protecting it more by implementing these standards to ensure that those practices won't be impacted. So, I believe that taking a look at this and having this properly before you based on the record with the proposed conditions will satisfy Goal 5. And I would ask that the Court apply the same sort of scrutiny to this application that it has to other aggregate applications that it has in the past. I know this went to LUBA and came back and says it was inadequate. I just hope that the County Court would apply the same standards to this application as it has to other aggregate applications. With that, I'll defer to anything, okay, so I want to thank

you very much, I'll answer any questions or possibly Mr. Lee can answer any questions the Court has.

Commissioner Jacobs: I don't think I have any additional questions.

Commissioner Mendiola: I've got nothing.

Brian Sheets: All right, thank you very much.

Judge Joyce: Okay, any other testimony in favor? Proponent, three minutes each. Anybody online? Okay, we'll move to opponents. Mr. Wyman.

Ty Wyman: Thanks so much, members of the Court. Ty Wyman, I am an attorney for a number of neighbors. Those neighbors have been identified in a memorandum that I sent to you last week. I extend my appreciation also to your staff and your legal counsel for their considerable work on this matter. With reference to my memorandum of last week, certainly I'm happy to take any questions that you might have. I certainly recognize that this is relatively legalistic and it's thorny, but it's what the state has given us vis-à-vis Goal 5. My initial comment really is to stress that I do not read the Staff Report as recommending approval. Certainly, the Planning Commission did not recommend approval. The Staff Report refers, and just looking here, I'm looking at page 5, it refers to a lack of evidence. Lack of evidence, specifically says, no reports or services from an engineer, et cetera, on any dewatering plan, drainage plan, wetland study, sound study, slope, design of berms, et cetera. And that's not an isolated observation by the Staff Report or by the Planning Commission. Repeatedly, we simply see a lack of evidence and as I listen to Applicant's counsel, I have a sense of why that evidence is lacking. The question posed here before the Court is whether there, is whether offsite impacts within this impact area can be, quote-unquote, minimized, there has to be evidence regarding minimization. I think that to say, well, yeah, there could be a catastrophic impact to the pipeline that apparently everyone recognizes as extraordinarily valuable to agricultural practices within the county, you know, we would simply repair that. Goal 5 does not operate in a, well, you know, if impacts occur, then they will be repaired or somehow mitigated after the fact. We have to have evidence of the ability to minimize those conflicts and I believe also in the Staff Report, it addresses the fact that there are no analyses of the impact that this mining would have on the pipeline. I believe that my clients will speak to that in a bit.

Other errors by the Applicant. The Applicant describes this as a legislative, in his memorandum of the 28th, describes it as a legislative amendment. It is not, as the Judge read in the initial statement here, this is a quasi-judicial matter. In any quasi-judicial matter, the Applicant has the burden of proof, which is the burden of providing evidence regarding compliance with every criterion. And I would note, vis-à-vis that burden of proof, and I appreciate that your legal counsel highlighted the burden of providing evidence that Applicant's counsel did not, in his April 28th memorandum, distinguish my citation to the Eugene Sand and Gravel versus Lane County case, which I think lays that out fairly clearly. I also agree, your counsel cited the Weiss case, I believe Weiss versus Linn County as informative on the depth of evidence that is required to evaluate impacts of this

mining. The Applicant attempts to distinguish that case; I think that that attempt fails. The case goes directly to the depth of an evaluation, so the potential impacts to the pipeline, to all of these other, dust on neighbors, et cetera, is very deep and very rigorous and is, in my view and the view of the Planning Commission, not met here.

And I found that that Applicant's characterization of the Planning Commission's consideration, you know, frankly, a bit dismissive. I disagree. I think the Planning Commission undertook a relatively rigorous and detailed look at this and came to the conclusion that it did. Applicant characterizes this as a disagreement about source of information; really, it's not, it's the depth of expert reports that are expected to determine whether these conflicts have been minimized. So, on that measure, the Applicant has still not submitted any engineering analysis of the impact on the pipeline, DEQ (Department of Environmental Quality) standard noise or dust modeling, traffic impact study for the roads -Mesquite and Jasmine, hydrology or aquifer impact report, or professional habitat or wetland survey. Applicant instead relies on experience and best practices, whatever those might be, again, the case is simply, make those insufficient evidence as to this minimization of conflicts that we're all trying to evaluate.

My final comment is that the, you know, it's always difficult in a record that is this long to sort of highlight something but to the extent that I can, I would highlight for you that impact, and I was kind of glad that the Applicant's counsel brought up the impact on the pipeline to Treasure Valley Farms and that it crosses the haul road, and I just want to emphasize for you, Applicant, as I understand it, proposes to run fully loaded trucks over that road. There's no engineering report showing that it can handle, that the pipeline can handle those loads. Certainly, no agreement with the property owner. We have no contact with OID, no design modifications, no evidence of safety or reinforcement beyond sort of these general statements. And I think that's why the Planning Commission, in part, that's why the Planning Commission came to the conclusion that it did. I apologize, I certainly respect your time. I'm not sure where I am on my time, but I'm at about the end of my remarks, as I said, I believe that some of my clients will testify individually, but I would happily take any questions that you might have.

Judge Joyce: Questions?

Commissioner Mendiola: I have none.

Commissioner Jacobs: I don't have any questions for you Mr. Wyman.

Ty Wyman: Well, I appreciate that, and the last thing I'm going to say is, sitting here in Portland, I am just sorry, candidly, that I can't be there with you now. I did make it to Pendleton yesterday, but was not able to make it the rest of the way down there, so I appreciate your attention.

Judge Joyce: Thank you. Okay, other opponent testimony?

Mike Hastings: My name is Mike Hastings and I live at 464 Jasmine Road. So basically, I think that I'm kind of going to, what I'd like to do is re-summarize basically what our position has been from the very beginning and this has been going on like four, we're going into five years now. I just want to kind of summarize it because our position really hasn't changed from day one and that is this question of substantial evidence and the Goal 5 process as a whole. So, in doing that, I would just say, you know, that twice now the Planning Commission, which is made up of men and women of different backgrounds and experiences, and really are the true representation of Malheur county, have listened with open minds and without prejudice. And twice they've reached the same conclusion that the application falls short. And though it was not our burden to do so, and at no fault of our own, we've had to put our lives on hold and spend money that we didn't have and even endure harassment and intimidation outside of the halls of these hearings on the hill. It's all aimed at silencing us, but despite it all, you know, this question of substantial evidence, we feel solidly that we went out and went to work and brought real evidence to the table. And that evidence required thousands of hours of research, tens of thousands of dollars now in legal bills. But we followed the rules and we followed the law and we believed that if we stuck with it, even with three-minute sound bites, you know, that it would work. That it would work.

So here we are today and heading into the fifth year. Mr. Lee and Mr. Sheets continually try and label those that are opposing their ideas as biased, anecdotal, adversarial, unsupported by evidence, and really full of drama. And I would just want to tell you that nothing could be further from the truth. What we went and did, and when I say we, I'm talking everybody that lives up there, and that consists of widows, grandparents, parents, children, and now even grandchildren; my daughter and her husband and my newly born granddaughter live and work on our farm. So we all went out and we brought evidence that looks like this: ODFW confirming the winter mule deer habitat; five different agencies confirming mapped wetlands on the site; Department of State Lands recommending a wetland delineation; DLCD (Department of Land Conservation and Development) citing flaws in the permitting process; Peter Finley Fry, a certified land use planner and PhD, stating that the Applicant failed the Goal 5 process; DOGAMI confirming illegal mining and suspension orders that still stand today; Owyhee Irrigation District raising concerns about the canal crossing that they built without authorization and the potential impacts of that; and Treasure Valley Farms, of course, confirming that multiple conflicts and serious concerns remain unresolved; and then finally, LUBA now has ruled that our arguments are correct and they agree with us. And what I want to just say to everyone here is, in my opinion, that is real evidence. That's what real evidence looks like. And it is not advocacy opinion. And so, the conflicts are real. All of this evidence that we brought point to the same thing; the conflicts are real; the impacts are unaddressed and the legal standards have not been met in the Goal 5 process. And that's really at the heart of what we're talking about. Despite how it's been treated in the past, what is the true measure of the law? And what is the process that Goal 5 says we should go through? And LUBA, I feel, has made it very clear in this situation that the Goal 5 process demands real evidence, real engineering, real minimization, up front and paid for, by the Applicant. Because that is the burden that an applicant must bear, and in exchange for that, he gets lifelong protection and profiting off the land of Malheur county and the state of Oregon. So that's the big message. The Goal 5 process is the highest standard of the land use process, and it was not met.

So, by contrast, the application that's before us today is almost entirely based on the opinion of Mr. Lee and Mr. Sheets. So, in conclusion, we feel that, you know, we've been tirelessly painted as outsiders standing in the way of the norm, and I would say to you that the opposite, the exact opposite is true. We, that live up there and reside up there, are the ones that are fighting to preserve the heritage, the farming, and the way of life that built Malheur county. And yes, that includes gravel, and we understand that. That is not in question. But this location is not the right place. And the requirements and the responsibilities of holding stewardship and profiting off of that land has not been met by a long shot. And it comes down to the evidence that's brought. Is it substantial? Is it even evidence? Or is it just advocacy?

So, the Planning Commission agreed, and by extension the citizens of Malheur county agreed, and now LUBA agrees that the application should be denied and I hope that's so.

Judge Joyce: Thank you, sir. Other?

Dinah Lord: Dinah Lord, 458 Jasmine Road, Ontario, Oregon. Thank you for your time. In Mr. Sheet's letter dated the 28th of April of this year to the Court, on page 3 paragraph 1, he writes, the Applicant is a veteran aggregate operator with years of experience running similar aggregate operations in Oregon and Idaho and using his best management practices. There was a BLM (Bureau of Land Management) violation in 2012, failure to implement best management practices. These are all a list of violations that are a matter of public record. You might want to consider those. Our argument from the start of this multiple-year debacle is that per OAR 660-023-0180 paragraph 5, requires a conflicting use analysis, and if specified impacts to a conflicting use cannot be minimized, then the rule requires a county ESEE determination. That has not been done, and the conflicts have not been minimized. As I said before, I have been able to obtain via public record all the violations, these should also be considered when you're trying to determine whether or not the Applicant has met a burden of proof. Thank you.

Judge Joyce: Thank you. Other opponent testimony?

Mandi Hastings: My name is Mandi Hastings, I live at 464 Jasmine. I'd just like to thank you guys for listening today and to say that, you know, we're here to discuss an application for a 180-acre full scale gravel operation proposed to be placed in the middle of ten existing homes, homesteads, farms, and agricultural practices. So, this is not the mainstream gravel pit that tends to be put in in Malheur county. Hence, why there is so many conflicts to minimize and so much to take into account. We're here to discuss the Goal 5 process that governs this application. And the Goal 5 process is not based on opinion or bias towards any individual. It's based on law, law that takes into account all natural resources and existing assets within an area and asks the question, can these current assets and resources coexist with the proposed aggregate operation. We have been arguing the implementation of this aggregate operation in the area for nearly five years now. And we the people, the landowners with existing assets and natural resources, have been pleading with Malheur County to acknowledge and help protect what currently exists on Jasmine hill. Time and time again, we've been told that our expectations were misguided and excessive. That we have no

grounds to question to what is going on, that our efforts were futile and that what we value pales in comparison to the need for Goal 5 aggregate resources. That this project is an inevitability regardless of what it does to our homes, our lives, our family, our incomes, and the natural environment up there, which is of huge concern to us. And finally, after five years and tens of thousands of dollars, the clarification has come from LUBA that this is indeed part of the Goal 5 process, that the Goal 5 designation cannot be granted unless these criteria have been met. This is the law. Goal 5 requires meeting the highest of standards. All existing conflicts must be addressed and based on substantial evidence. All conflicts must be minimized and if conflicts cannot be minimized an ESEE based on substantial evidence is required so that it can be evaluated by the County. This ESEE looks at economic, social, environmental, and energy consequences of the aggregate operation. These responsibilities and burdens of proof rest solely with the Applicant, Darren Lee. This application lacks any of these required steps to the point of where the County cannot even do an evaluation of the measures that have been taken because none have. Simply words put on a piece of paper saying, yeah this will be done, yeah that'll be done. There are equations, measurements, all types of things that will put in to place protections for what already exists up there and this is the law. Therefore, this application is insufficient and must be denied. And I believe that this law is put into place to protect what is already in existence, both man-made and natural. And it deserves consideration in this situation, that the highest of standards are looked at because we are placing it, choosing to place it, in the area that we are, that is a highly sensitive area. Thank you so much.

Judge Joyce: Thank you.

The document from Dinah Lord was marked as Exhibit 5. Mr. Sheets noted his objection.

Judge Joyce: Any other opponent testimony? Online? Before we go to rebuttal? Hearing none. Mr. Sheets.

Brian Sheets: Thank you, Your Honor. Brian Sheets, 93 SW 4th Avenue, attorney for the Applicant. So, we did hear some really interesting stuff today. And I just want to make sure that we understand the rules that were laid out by the County Court for this hearing, that we're hearing things that are based upon the record, and the record closed in April of 2024. So, to the extent that we're talking about increasing impact areas or considering things that are outside of the record, the County put those rules together for this hearing and to the extent that any additional evidence, factual evidence, was put before you, I'd ask that you ignore that based upon your own rules. Considering a 2500-foot impact area would be those things because it wasn't considered at the Planning Commission and hasn't been considered before us here last year. And to do that would be to fundamentally deprive Mr. Lee of his ability to address those concerns. So, we would ask that the Court abide by its own rules today. What we've heard from the opponents today was talking about a lack of evidence, right, and the way that they've characterized that today and in the past is needing substantive expertise and, in the past, they've done that through putting together what I would consider arbitrary standards for who is an authoritative on what can be entered. They say that it doesn't even meet a legal threshold because it's not from a professional. The Planning

Commission said that an Idaho engineer was less qualified than an Oregon engineer. We've had what has come down to is a disagreement upon the reliability of the evidence that's been presented. And if you're going to consider the credibility of that, that is completely up to you. That is within your scope and to figure out exactly what's going on. We would offer that what we've put together to identify and analyze these impacts falls within what we would consider substantial evidence. We put together an analysis of impacts, how they would be applied, and to also address how those will be minimized. If the Court or the opponents think that only certain credentialed people can offer that, that's not the case. LUBA rejected that; and in its opinion, I believe, at pages 9 through 10 of LUBA's opinion, it says that evidence is evidence and it's up to the Court to determine the credibility of it and how it's put together. Saying that only certain people can do that, that's not within the County rules, and that's not within Goal 5. And so just to reiterate, the Court has already decided that this meets the quantity, quality, and location of the aggregate. So, we're there. We just need to figure out what the impacts are and how to minimize those. And we put together our plans based on our evidence to minimize those impacts. And we believe that mining can be allowed there. There's enough consideration and enough mitigation measures proposed that we can minimize those impacts. I think that the County Court has done a good job of analyzing those issues in the past. And just like you came to the conclusion, based on our evidence last time, that there was quantity, quality, and location, I think that you can identify that there are conflicts that can be minimized. And we would respectfully request that the Court either allow or limit mining of this site. So, thank you very much, appreciate your time.

Judge Joyce: Thank you. We're down to staff comments – if any.

Ms. Williams: I don't have any, Judge.

Judge Joyce: Okay. That's rebuttal. Are we ready to close the public hearing?

Commissioner Jacobs: I guess I would like to make a statement, and that is, just as Mr. Sheets stated, when we initially reviewed this and went through this, we were just looking at location, quantity, and quality. We were not looking at whether or not there would be potential mining would take place there. So, I feel like that we need maybe some additional direction from legal counsel and in findings, additional findings to make this determination at this time.

Ms. Williams: I would, depending on what direction you want to go, I would help you draft findings for the criteria. The Planning Commission has findings, they adopted findings. So, we do need to draft findings. I don't have any proposed findings for you, I was trying to see which way you wanted to go and...

Commissioner Jacobs: I think that's what we need to do, I think...

Ms. Williams: Right, we have to do findings. So, do you have any kind of direction for me, or what kind of findings?

Commissioner Jacobs: Well, I think we need to address the agriculture issue and all the other dust abatement and noise and all of that. We need to address those things.

Ms. Williams: Right. Did you look at the Planning Commission address those?

Commissioner Jacobs: Yes, I did look at some of those. And I agree with many of the Planning Commission's findings. I do feel like they were looking at the mining issue more than we were because

Ms. Williams: That's true

Commissioner Jacobs: We felt like we were just looking at the location, quantity

Ms. Williams: You were because the way that staff presented it to you.

Judge Joyce: That's the way it was set up.

Ms. Williams: I think County staff takes responsibility for what was presented to you, and it was just the quality, quantity, and location. And now we're looking at whether mining should be allowed and applying that criteria. The Planning Commission did apply that criteria and made a decision. To the extent that you want to modify, change, or go a different direction, I just need to know. And then we can start developing in deliberations some findings and conclusions.

Commissioner Jacobs: Well, and I think that's what we need to do, is determine, make that determination with additional findings.

Ms. Williams: Okay, what are you leaning toward?

Commissioner Jacobs: We have to lean towards one more than another?

Ms. Williams: Well, either allowing mining or not allowing mining. Because I don't know how else to draft the findings.

Commissioner Jacobs: Well, I'm leaning towards not allowing mining.

Ms. Williams: Not allowing mining.

Commissioner Jacobs: Yes.

Ms. Williams: Okay.

Commissioner Mendiola: I'm with Ron.

Ms. Williams: Okay.

Judge Joyce: I have a question. If all the things that you brought up today were corrected, where would you stand?

Dinah Lord: Opposition.

Judge Joyce: Still opposition, no matter what?

Dinah Lord: Yes. You want to know why?

Judge Joyce: Sure.

Dinah Lord: Because since this stated with him filing, he has been up there driving his semis, disturbing the land, and just last week he put up small berms and paper targets on that property. So, there's a pattern of him trying to intimidate the neighbors with his behaviors. My husband has a picture of it on his phone if you'd like to see it. So, we have had to be the enforcement arm of Malheur County because we were told by the sheriff that his hands were tied; he couldn't do anything. So, it's up to all the neighbors around this property where his proposed mining site is to watch what he does. The majority of us are retired or they farm there, to watch what goes on up on our hill, to our detriment. So, no, I am in total opposition based on his pattern of behavior.

Judge Joyce: Thank you.

Mike Hastings: Can we answer that question as well?

Ms. Williams: I think that our testimony should be limited to the criteria.

Commissioner Jacobs: Yeah, I think we need to limit it, I'm sorry.

Judge Joyce: Well, I really wondered whether I could even ask the question, but I had to, so.

Mandi Hastings: I have a question as far as procedurally what's going on here, specifically, whether or not this has to do with Goal 5 specifically, or we're looking at allowing or disallowing mining. My understanding of the situation was that these mitigation and minimization efforts directly affected the outcome of the Goal 5 status. That that was what was missing when Goal 5 was only reduced down to quantity, quality, and location, when the minimization efforts are actually a part of the Goal 5 process, not just quantity, quality, and location. So that's what I'm struggling to understand.

Ms. Williams: I did ask DLCD this great question. You can have a site on the Goal 5 inventory that is not allowed mining. We have determined that it can be on the Goal 5 inventory, and now

you need to determine whether or not you allow mining based on the criteria, the remaining portions of Division 23.

Mike Hastings: So only quantity, quality, and location, you're saying qualifies it for Goal 5 status, but yet

Ms. Williams: To put it on the Goal 5 inventory as a significant site. Whether he can mine or not is

Commissioner Mendiola: That's two different deals, right

Ms. Williams: Well, it's under the same rule

Multiple talking

Ms. Williams: I did ask DLCD this very question, and I think we are getting

Commissioner Mendiola: Two different limbs on one tree.

Mandi Hastings: And my understanding is that Goal 5, it could not be designated Goal 5 unless it had also minimized and addressed all conflicts.

Ms. Williams: No. Like I said, I did ask the DLCD representative, and so we're not going to reverse what's already been determined for quality, quantity and location and have it on the Goal 5.

Darren Lee: All is what I ask is to be held to the same standard that other aggregate producers are held to in this community. I have used all of the planning and zoning previous applications and I have tripled my efforts because of the adversarial behavior that no matter what I try to do to mitigate these efforts it's just not acceptable. I just expect to be treated like every other citizen in this community who's a business person and be held at the same standard as other aggregate producers in this community. And that is all I'm asking for. I have historical evidence. I had a quarry right next door. I don't know how any more accurate you can get from previous experience right next door doing the same thing. That community there is disenfranchised from gravel now because of all of the opposition and the continual, whether it's animal activism or whatever the case may be, to try to throw a wrench in this. This is our local resource. It has been for 95 years. Aggregate activity has happened up there. It's nothing new. I just expect to be held to the same standard as my neighbors.

Mike Hastings: Can I say something in rebuttal to that? I don't think that the same standard is, I mean nothing contains the same standard even if you apply a rule that rule might be applied more stringently or less stringently depending on the location. If I were to build a school next to a prison there's going to be different standards that you have to enact to protect the school from the prison. And so that's, I guess that's really what we're looking at and we're really trying to dig down

through the Goal 5 process as a whole. And to the extent that we're talking about findings, really that's it, that is exactly what the Planning Commission did, they looked at the process as a whole, the quantity, quality, location and all the conflicts and can they be minimized. And yes, there is a higher standard when you are dropping 180 acres into this community, this rural community that has existed, people have lived up there for 50, 60 years. We're not disenfranchised from gravel. We're just, it's just not a plan that's conducive to the environment. There are so many better locations, so many other opportunities. That's all I would say.

Judge Joyce: Thank you. Well, I think we've probably exhausted about everything we can do for now.

Commissioner Jacobs: I don't have anything.

Judge Joyce: I don't either.

Commissioner Mendiola: I've got nothing.

Ms. Williams: So, you're asking County staff to develop findings for not mining?

Commissioner Jacobs: Yeah, well, that's my request.

Ms. Williams: Okay. And, can we have by consensus or a tentative decision that that's where we're going so I can start working on it?

Commissioner Mendiola: I'd say no mining. I'm worried about the agriculture. I'm worried about the silica sand if they're crushing. I'm worried about the lime dust if they're crushing concrete. There's a lot of stuff there that makes me scratch my head a little bit. I'd say no.

Judge Joyce: What's the next step?

Ms. Williams: Okay, well, I will work on the findings. I'll put it on the County Court's agenda for deliberations to work through those findings. We need to have something formal and in place, you know, no later than June 13th, but I want it done well before then, in the next couple of weeks, okay?

Commissioner Jacobs: That's good.

Judge Joyce: Okay. So, we shall close this public hearing. Appreciate you all for coming and testifying, and giving us a new look on life.

### **COURT ADJOURNMENT**

Commissioner Jacobs moved to adjourn the meeting. Commissioner Mendiola seconded and the motion passed unanimously.