

## **MALHEUR COUNTY COURT MINUTES**

**July 28, 2021**

The regularly scheduled meeting of the County Court was called to order by Judge Dan Joyce at 9:00 a.m. in the County Court Office of the Malheur County Courthouse with Commissioner Don Hodge and Commissioner Ron Jacobs present. Staff present was Administrative Officer Lorinda DuBois. Members of the media, public and staff were present electronically. Notice of the meeting was emailed to the Argus Observer, Malheur Enterprise, and those persons who have requested notice and posted on the Courthouse bulletin board. The meeting was audio recorded. The agenda is recorded as instrument #2021-3664

### **EARLY LEARNING HUB BOARD APPOINTMENTS**

Eastern Oregon Early Learning Hub Director Kelly Poe and Tanya Faughn met with the Court. Ms. Poe requested appointment of board members for the July 2021 through June 2023 term of: Suzanne Bolyard, Treasure Valley Community College; Sara Byrne, Malheur Education Service District (Alternate); Angelica Fuentes, Oregon Child Development Coalition; Wendy Hill, Oregon Department of Human Services; and Becky Padilla, Malheur County Child Development Center. The Board is advisory and responsible for the strategic work and investments in early childhood in Baker, Malheur and Wallowa counties. Pursuant to 2012 Early Learning Legislation (HB 4165) the Eastern Oregon Hub will support families to help their children attain positive goals and a successful life, while bringing local communities together to provide a more streamlined, efficient system, to interact and share successful practices and be collectively responsible for the outcomes of Eastern Oregon's children. The Board will be updating its strategic plan in October 2021 and will include a strong focus on early care and education investments in order to support current workforce while building a future workforce. It is anticipated an AmeriCorps RARE member will assist in completing the required data assessment and building of a case for early childhood system investments and development of community presentations for a variety of audiences. Ms. Poe answered various questions from the Court members.

Commissioner Hodge moved to appoint the board members as presented above. Commissioner Jacobs seconded and the motion passed unanimously.

### **PROPOSED LANDFILL GAS EMISSIONS RULES**

Environmental Health Director Craig Geddes met with the Court and presented written comments regarding DEQ's (Department of Environmental Quality) proposed landfill gas emissions rules; the proposed rules will require additional methane mitigation and monitoring at landfills. The cost to the County in permitting and consultant fees will be approximately \$20,000 the first year; and approximately \$16,000 each year after. The County is already required to monitor Methane Gas at Lytle Boulevard Landfill and to date there has never been a detectable level of methane in any monitoring location. Commissioner Jacobs moved to sign and submit the written comments. Commissioner Hodge seconded and the motion passed unanimously. See instrument # 2021-3666

### **COURT MINUTES**

Commissioner Jacobs moved to approve Court Minutes of July 7 and July 21, 2021 as written. Commissioner Hodge seconded and the motion passed unanimously.

### **CROSSING PERMIT**

Commissioner Hodge moved to approve Crossing Permit #24-21 to Track Utilities LLC for a road bore to provide CTL (CenturyLink) service to a customer on Otis Road #651. Commissioner Jacobs seconded and the motion passed unanimously. The original permit will be kept on file at the Road Department.

### **RESOLUTION - OPPOSING RIVER DEMOCRACY ACT**

Commissioner Jacobs moved to approve Resolution No. R21-26: Resolution Opposing the River Democracy Act. Commissioner Hodge seconded and the motion passed unanimously. Commissioner Jacobs explained he had done extensive work on the River Democracy Act and there are a number of objections to the Act, including: a lack of public outreach and consultation with the County; many of the streams are intermittent streams that dry up every year (and more than normal are dried up this year because of the drought); and other streams are small enough that you can step across without getting your feet wet. See instrument # 2021-3680

### **SUB-GRANT WITH MALHEUR DRUG**

Commissioner Jacobs moved to approve Sub-Grant with Malheur Drug Inc. for CARES Act/CoronaVirus Relief Funds Pursuant to State of Oregon Grant Agreement Grant No. 2623. Commissioner Hodge seconded and the motion passed unanimously. Malheur Drug will market, promote and encourage the COVID-19 vaccination and provide a culturally responsive, low-barrier access to COVID-19 vaccination, with a special emphasis on populations experiencing vaccine inequality or reduced vaccination rates; incentives for those receiving the vaccination may be made, such as gift cards with a value of \$25 or less. Financial consideration of the sub-grant is \$5,000 and the agreement expires December 2021. See instrument # 2021-3665

### **IDAHO POWER COMMERCIAL CUSTOMER COVID-19 RELATED ARREARAGES**

County Counsel Stephanie Williams noted she has been in contact with Idaho Power; there are approximately 77 commercial customers who are in arrears due to impacts of the COVID-19 pandemic (approximately \$24,000) and a contract between Idaho Power and the County is being drafted.

### **FUND TRANSFER RESOLUTION**

Commissioner Hodge moved to approve Resolution No. R21-27: In the Matter of Fund Transfers Under Local Budget Law ORS 294.463. Commissioner Jacobs seconded and the motion passed unanimously. The resolution accounts for end of the 2020-2021 fiscal year necessary budget transfers. See instrument # 2021-3669

### **FUND TRANSFER RESOLUTION - EXTENSION SERVICE DISTRICT**

Acting as the governing body of the Malheur County Agricultural Educational Extension Service District, Commissioner Jacobs moved to approve Resolution No. R21-28: In the Matter of Fund Transfers Under Local Budget Law ORS 294.463. Commissioner Hodge seconded and the motion passed unanimously. The resolution accounts for end of the 2020-2021 fiscal year necessary budget transfers. See instrument # 2021-3668

### **COMMUNITY IN ACTION GRANT APPLICATION**

Commissioner Jacobs moved to support Community in Action's Emergency Solutions Grant (ESC) application. Commissioner Hodge seconded and the motion passed unanimously. Funding will assist with homeless services, day shelter services, rental assistance, domestic violence services and operation of the shelter project for the homeless. See instrument # 2021-3667

### **AMENDMENT TO ROAD IMPROVEMENT AGREEMENT - FROERER**

Commissioner Jacobs moved to approve First Amendment to the Road Improvement Agreement with the Froerer Family Limited Partnership, Recorded by the Malheur County Clerk as Instrument Number 2021-1345. Commissioner Hodge seconded and the motion passed unanimously. Dates in Paragraph 2.1 A, 2.1 B, and 2.2 C are modified. See instrument # 2021-3699

### **PUBLIC HEARING - ORDINANCE NO. 228**

Present for the first public hearing to consider Ordinance No. 228: An Ordinance for a Post Acknowledgement Plan Amendment (PAPA) to include a portion of tax lot 3200 Map 16S47E of the Malheur County Assessor's Office as a significant aggregate site to Malheur County's Comprehensive Plan, Goal 5, Mineral and Aggregate Inventory were Planner Eric Evans, Applicant Darren Lee, Michael Hastings, and Dinah Lord. Present electronically were Mandi Hastings, Patty Dickinson, Bill and Riley Downing, and Jennifer Gerulf. Notice of the hearing was published in the Argus Observer. The applicant is Darren Lee; Property Owner is Dallas Head. Planning Department File No. 2021-03-010. A hearing was held before the Planning Commission on May 27, 2021; continued to June 24, 2021; and again, continued to July 22, 2021 and the Planning Commission recommended that the site not be placed on the Goal 5 Resource Inventory.

Judge Joyce opened the hearing; asked that the sign-in sheet be completed; and announced that testimony from proponents/opponents would be 3 minutes and the applicant would be allotted 10 minutes for his initial presentation and 5 minutes for rebuttal; all testimony and questions should be directed to or through the Judge - not directed to staff or witnesses.

Judge Joyce asked for any abstentions or conflicts of interest from the members of the Court or for any disclosure of bias or ex parte communications or site visits; there was none. Judge Joyce asked for any objections to any members of the County Court hearing the matter; there were none. Judge Joyce asked if there were any challenges to the County Court's jurisdiction to hear the matter; there was none.

Judge Joyce stated: 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 applicant's substantive criteria upon the application will be decided are found in Oregon state laws and rules as well as local code provisions which are specifically set out in the Staff Report and include OAR 660 Division 23 Section 3. Testimony and arguments and evidence presented must be directed toward those approval criteria and other criteria in state law, the Malheur County Comprehensive Plan or the Malheur County Code that the speaker believes to apply to this decision. Failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the decision makers and parties the opportunity to respond to this issue will preclude an appeal to LUBA (Land Use Board of Appeals) on that 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 support and afford the decision makers and the parties an adequate opportunity to respond to each issue. The failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to Circuit Court.

Order of proceedings: The Applicant will be allowed up to 10 minutes for initial applicant presentation; the applicant may also present 5 minutes of final rebuttal. All others wishing to testify will be given 3 minutes each. Staff Report for the County by Eric Evans. Applicant. Testimony in favor. Testimony in opposition. Staff comments. Rebuttal. Close the public hearing. There will be no decisions made at this hearing; a second hearing will be held in August.

Judge Joyce turned the hearing over to Planning Director Eric Evans. Mr. Evans explained that those participating electronically are muted and could be unmuted/muted by pressing \*6 and asked for roll call of who was on the phone.

Mr. Evans presented the Staff Report. Mr. Darren Lee has applied for, it's actually a two-step process for mining in any county, you have the post acknowledge plan amendment, or the PAPA, process - that's determining that a site is adequate to add to our significant inventory, for our Goal 5 Inventory; and then in Malheur county we also have the conditional use side of this. On this last Thursday, and actually starting in May 27, continued to June 24 and again finalized July 22, there was a hearing where the Planning Commission denied the conditional use permit and they also made the motion to recommend to the County Court to deny adding this to the Goal 5 Inventory. We did all of our notifications through the Argus Observer, and to DLCD (Department of Land conservation and Development), and to the adjoining landowners as required. At the Planning Commission hearing we had multiple neighbors that spoke in opposition of the application for the conditional use permit, citing things like impacts to the residences, impacts to the farm practices, and an inadequate application were the things that I felt were the most notable in their testimony. In regards to the PAPA (Post Acknowledgement Plan Amendment), testimony pointed to the inadequate information provided in the application to support the location, quality and quantity for the proposed area. There was no testimony besides the Applicant in favor of the application and we also received testimony from Dave Tiffany, the Road Master, Karl Shrum with Ontario Road District 3, the Payette Rural Fire District, and Owyhee Irrigation District. And again, in the end,

the Planning Commission voted to deny the CUP (Conditional Use Permit) and to recommend the denial of the PAPA to the Malheur County Court, both by a vote of 6 to 1. I sent to you guys, and sorry, the hearing was Thursday and I didn't have time to get it all prepared on Friday and so I sent it to you earlier this week with like 153 pages - I suspect you guys went through every page with a fine-tooth comb, right.

Commissioner Hodge: I looked at everyone.

Mr. Evans: This hearing is de novo; it's not based on the record, it's actually all new information that we can obtain. I kind of talked about the conditional use permit and adding to the Goal 5 inventory. It's important to note that this is really only about adding it to the Goal 5 inventory. The part in legislation that talks about that, talks about whether the site is adequate and we're determining whether the information we have is adequate to say that this is a significant site. And adequacy is based on three things - location, quality, and quantity, so in Malheur County's eyes those are the three topics that we're talking about today - or that's the one topic we're talking today is the location, quality, and quantity. Also available on the Staff Report are two options available for the Court; I believe the two options that we have available are to either approve the application or deny the application.

Judge Joyce: But not at this meeting

Commissioner Jacobs: Which will be done in the future

Mr. Evans: Right, like Judge said earlier, today we are more or less listening, getting information on the record, and as we always have in these, we usually have the two hearings for these. Also in your packet, just to know, I think it's the third and fourth page, Tatiana did a really good job of putting together a timeline and putting together all of the exhibits, I want to say there was, up to date of this, there was 26 exhibits. Do you have any questions for me? I think we're going to probably have quite a few people that want to talk today; and the people that are in the audience, you guys can testify just where you're at. And I think that's all I have.

Judge Joyce: I'm going to let you go ahead and start and referee and be the timekeeper.

Mr. Evans: I will help moderate all of this stuff right now as well. The first we will hear from, we will have ten minutes from Mr. Lee.

Darren Lee: Good morning your honor. Thank you for your time. My name is Darren Lee and I am here to present engineered studies and evidence to support a Goal 5 inventory designation be added to the property in question. A little bit about myself - I'm a general contractor in Oregon and a public works contractor in Idaho, been in the gravel business for about 13 years now with the last three years as a fulltime job after retiring out of the military. It's my primary source of an income. I have a Masters in Emergency Preparedness and I'm half way through a second Masters in Engineering. I'd like to present some documents to you if I may. The very top document is a

Goal 5 inventory testing done by Atlas Testing. In that test, it not only meets but exceeds the criteria as part of the Goal 5 designation for quality analysis. The second set of documents is actually my order for a Goal 5 inventory test through Atlas Testing; that was their charge that I gave them and hopefully that's what they carried out. There's a second set of documents in there ... (phone disconnected/ staff made reconnections) .... with that, there's a second analysis there from Materials Testing, who now is Atlas, they did a test on my other pit, about 12 years ago, which is approximately 1.5 mile away or about a mile away, across the draw, similar quality of gravel, pretty much mirrored, except that the gravel on the Powerline Road, or the Dallas Head pit was a little bit cleaner is what they told me. So, gravel is fairly consistent throughout that whole area.

So, one of the complaints of the Commissioner's was that adequate testing hadn't been done throughout the 300-acre parcel. When I ordered that test, I ordered it for the 300-acre parcel. I don't know where Commissioner's feel they are on that because I hire professional engineers and that's supposed to be their job to make sure they adequately test those areas. The second item that they felt was an issue was that they didn't know the test holes and the significance of where they were put. I think there's a map there that shows where the test holes have been...

Commissioner Hodge: This map?

Darren Lee: That's actually the map physically showing the pictures of where the test holes are

Commissioner Hodge: Yeah, it says test hole site and its got exposed gravel, I think that says BLM (Bureau of Land Management) pit...

Darren Lee: Right, there's a BLM pit up there that they've mined out, that's their quarry that's not part of the process, but I was just showing the gravel activity because what it does is basically that top part that shows where it's been partially mined out, it's kind of like a cake, you take a couple of slices out, you don't have to dig a hole to see where the gravel's at because you've got an unbelievably exposed bank to show.

Commissioner Hodge: What are all of these dots?

Darren Lee: Those were the test pits.

Commissioner Hodge: Okay.

Darren Lee: So, if you look at the next page you can actually, I think there, it shows a

Commissioner Hodge: Shows that test pit, I assume, the one with the gravel

Darren Lee: Yeah, and you can actually see all the way up to Powerline Road and you can see the other test pits.

Commissioner Hodge: Oh okay. That's what those are is test pits.

Darren Lee: Right, those are the actual, gravel is stacked along the side there. And then other pictures show, again, where I talked about the exposed gravel

Commissioner Hodge: Yeah, I think this says old gravel pit 30 feet plus deep

Darren Lee: That's actually part of the Head quarry and it was a State pit that the Heads deeded to the State and then it was deeded back to the Heads. So, they mined that out quite a while ago, but they just left the bank there and eventually, for safety sake, we kind of covered some of the gravel over so a kid wouldn't fall off of the bank.

Commissioner Hodge: Yeah, is that what they call overburden?

Darren Lee: Yes

Commissioner Hodge: Okay.

Mr. Evans: Can I ask, is this different than what you actually already have on the record or is some of this new information?

Darren Lee: Yeah.

Mr. Evans: Okay, I'll need to get some of that for my record as well.

Judge Joyce: This will all go into the record.

Mr. Evans: I just need a copy, if he doesn't have another copy for me I need one of your copy's.

Multiple talking

Mr. Evans: It'll be another hearing next week, it'll still be de novo

Commissioner Hodge: So, you can still add some

Mr. Evans: Yeah

Commissioner Hodge: Okay

Darren Lee: Okay, so with that, I found it rather disturbing that we waited until the third hearing for Planning and Zoning to come up with that they didn't feel that the Goal 5 inventory was adequate. I think that that's, I don't know how a guy ever gets through planning and zoning if we have all of these changes that we go through. Initially the first issue was the road, Jasmine Road,

it's not up to code; I agreed it was a safety issue, I wanted an opportunity to see if I could find an alternate route, which I did, we addressed that in the second issue. Some of the neighbors again wanted to throw mud against the fence and say well, the offset is not far enough from their housing area. I agreed to give up another 250 feet more than what the Department of Geology and Minerals requires, which is 100-foot offset, to 350 feet. Most of the houses are over 1000 feet away. Some of them are even built, one of them is even built on a quarry; some of them have other quarries right on their property line, but apparently that's a big issue for them. Again, so I addressed that. And then in the third hearing that we had is again more complaints were made about me contaminating wells that are 450 feet deep and other issues. One of the Commissioner's lives up there, right next to the adjacent property, so he recused himself but he wanted to testify as a citizen. He was at the Planning and Zoning meeting, and I've been to a lot of Planning and Zoning meetings and I've never seen this, so he goes to testify as a citizen and he grabs my application and goes up with the other Commissioners and begins to tear it apart. Now granted, this is the third hearing and he says that it's not adequately described about the berms or the dust abatement, which we adequately discussed in the first meeting. So, he was supposedly in the position of a citizen but he went back up and that's commissioner stuff in my opinion, to go through an application and start to make derogatory statements. So, in my opinion at that point it was kind of a moot point, there was no way that, this guys already said that he was totally against it, he's in the excavation business himself, so, and he went on and on about how it wasn't detailed enough but yet he wouldn't give me specifics. So as part of the denial process with the Commissioners was they said it wasn't detailed enough. Now we had three hearings to be able to work these issues out. And I thought that is that's what I was doing in good faith was trying to work with everybody to be able to mitigate these issues. Well apparently, it was just an exercise in frustration for me because that wasn't the case and when I did my final rebuttal, the final thing I asked the Commissioners, I said, are there any other questions of me? And there wasn't one question asked. So, I don't know how a person can ever get anything through Planning and Zoning where engineer studies are not deemed valid and that my good faith efforts, despite all of them, is then the bland answer that comes for the denial is, you just didn't give enough detailed information. We had three tries at this to get it right. I can't see how you would ever get a commission to be able to approve something like that. I also, I'm a little concerned about ex parte communication because one of the citizens at some point said, well John Faw is a buddy of Darren Lee's and he will vote in the affirmative for him. I don't know John Faw from sic 'em and he is the only one who voted in favor. So, either that person is very lucky and they are a good guesser or there has been some ex parte communication going on there, because I just didn't see how that that could transpire, again me not knowing John Faw and yet he does vote in the affirmative.

The neighbors got all fired up about, there was a couple I think that were thinking that I was going to open up some Knife River facility and I was going to tear up the landscape and blah blah blah blah. That land has been a quarry for the last 70 years. My family has been living right around the corner since 1943. The reason that I went to Planning and Zoning to do the conditional use permit is the laws have changed in Oregon and you almost can't mine gravel off your own property anymore without having a conditional use permit; that is what I was doing. If you will look at this diagram here, this shows all of the areas in that little community there that have been quarry

activity over the last seven years. It's not a little bit. So basically, what they're saying is that Dallas Head and myself have no right to conduct business as usual on our property because now they've moved there and they just don't want any part of it.

Mr. Evans: That is time, a little bit over, but that's time.

Judge Joyce: Okay. Alright.

Mr. Evans: So, we will go ahead and I will request, anybody that's, well I'll go ahead and say anybody that's in favor of this application. And again, I'll remind everybody online, \*6 mutes and unmutes yourself. So, if anybody is in favor of this application. Okay, hearing none, I will, I'm going to go ahead and start probably with the people that are here in person. And again, if you'll state your name and address for the record that would be great. Thank you.

Dinah Lord: 458 Jasmine Road, Ontario. I'm standing over here because I don't think it's appropriate for me to address the Commission without standing and also you were blocked your honor. I apologize for my nervousness; I still suffer from it after years of public speaking when I was in the Army and also as my volunteer job with the Third Judicial District in Idaho. It was our understanding this hearing was supposed to be about Goal 5 and Goal 5 only, so that is what I'll be addressing. Goal 5 was meant to benefit Oregon not Idaho. Oregon implemented the Goal 5 program in order to identify and protect Oregon resources for present and future generations of Oregonians. Throughout the Planning and Zoning meetings this applicant voiced several times that the aggregate would be serving Weiser, Payette and Fruitland, given its location. This is not in line with the intent of the entire Goal 5 program. As described in rules and regulations of the Goal 5 program local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories. I would like to submit for the record that as described per the code local governments are not required to accept or amend the comprehensive plan just because they are petitioned to do so by outside persons or entities. And especially in this case where the resources were meant to be protected by Goal 5 would actually be harvested and taken out of the state to benefit Idaho. Therefore, based on this fact alone, the site should not be considered. The proposed site to be added to the Goal 5 inventory consists of 54 acres, the surrounding acreage of homeowners opposed to this action consists of 7 homeowners, 10 residential addresses of which totals 480 acres. Additionally, there is an easement at this site that supplies valuable water necessary to sustain crops valued in millions of dollars for Ontario Farms. The landowner of the proposed property to be included in Goal 5 inventory has not presented himself in any of the Planning and Zoning Commission meetings or this hearing; it is the applicant. Aggregate is one of several natural resources addressed under statewide planning Goal 5. This area was not identified as a Goal 5 resource in the 1978 comprehensive plan. Thank you for your time.

Michael Hastings: Thank you your honor for allowing me to speak. I live at 464 and 470 Jasmine Road, where I share a fence line with this proposed aggregate pit. The inadequacies of the location, quality and quantity analysis is only one of many issues contained within the application that are

in direct conflict with the rules that govern Goal 5. As per the rules and regulations that govern Goal 5, it states that local government shall also follow the standard ESEE (Economic, Social, Environmental and Energy) process, which is established to identify conflicts. Ironically the Goal 5 program was developed to avoid the situation that we find ourselves discussing today. Forty-three years ago, Oregon instituted Goal 5 in order to identify, list and protect key natural resources for present and future generations; aggregate was one of those resources. As stated, they did this so that they could protect and most importantly prevent future land use decisions from being made on or around the identified sites that would conflict with the ability to utilize the resource. Per the definitions that govern Goal 5, protect means, and I quote, prohibit new conflicting uses within the impact area, in this case the impact area is 1500 feet, of the site, unquote. It goes on to specifically list the words houses and schools as examples of conflicts in regards to aggregate sites. So, Malheur County followed this mandate 43 years ago and surveyed the county and built a list of over 200 aggregate sites containing thousands of acres of land contained in this report here. At that time, this site in question was not added to the list and furthermore the site was deemed important as exclusive agricultural land and was zoned as such. Since then several land use decisions that don't conflict with exclusive agricultural land were approved and allowed to be built on and around the site. Approximately 10 households have relied on these decisions of the County to invest life savings into their properties knowing that farmland would be their forever neighbor and not an aggregate pit. Before the Court today is one man's desire to have the County change their mind and allow this exclusive agricultural land to be converted into an aggregate pit. If this were to happen, 10 peaceful homesteads would instantly be considered and labeled conflicts. These instant conflicts, formerly known as peaceful houses, families, and farms, cannot be mitigated out of existence at this point. This is at the very heart of the problem. But again, the houses and the quality and quantity and location are only a few of several non-mitigatable conflicts as per the rules that govern Goal 5. I plead with the Court and the County to take responsibility and honor your past decisions by denying this petition and not allowing this site to be added to the Goal 5 inventory and not allowing a change in land use at this site now or at any time in the future.

Judge Joyce asked Mr. Evans if new information could be presented. Mr. Evans explained that yes, the hearing was de novo so new information could be presented; however, testimony should be based on location, quality and quantity.

Mr. Evans proceeded to call for opponent testimony.

Jennifer Gerulf did not have any testimony to present at this time.

Mandi Hastings: I live at 464 and 470 Jasmine Road. I also share a property line with Dallas Head's property, which is cultivated farmland and currently in practice organic standards on that farmland. I just want to talk today about the non-mitigatable conflicts concerning the destruction of farmland. In addition to the inadequacy of the quality and quantity analysis, the Darren Lee proposal would destroy valuable farmland that is specifically prohibited in the rules and regulations of Goal 5. Class I and II soils are described as those quotes, suited to a wide range of plants and may be used safely for cultivated crops, pasture, range, woodland, and wildfire, end quote. This is the perfect

description of nearly 100% of Dallas Head's land in which Darren Lee is attempting to mine. The site is zoned as exclusive farm ground and has been farmed for more than 100 years, producing crops such as crusted rye, alfalfa, oat, and wheat. As such, the site is specifically prohibited from being classified as a significant aggregate source because doing so would result in the potential destruction of more than 35% valuable farm ground. This is prohibited in the rules and regulations that govern Goal 5. I also just want to add to this that this will have a direct effect on our farming practices as well and will prohibit us from being able to get organic certification or continue to grow our crops the way that we want. Not only does the water that will run off from this aggregate pit come into our farm ground but it's also the dust and air pollution will directly affect us in numerous ways that include our farming as well as our living quality. Thank you for hearing us today.

Patty Dickinson: I'm Patty Dickinson, 5120 Power Road and a long-time resident in this area. I also have a fence line bordering Dallas Head's property. In addition to the inadequacy of the quality and quantity analysis, inspections of every test hole Mr. Lee has dug on the property reveals the following: there was 12 feet of overburden soil throughout the test area. Mr. Lee's own report stated that there will be 20 feet of gravel. Therefore, removal of the gravel will require 32 foot of material to be removed. The Hastings property immediately adjacent to the proposed gravel area had a professional analysis prepared at the time of their purchase. The analysis showed groundwater coming into the property at a depth of 15 feet. Bottomline – if the property is listed as a gravel resource and ever mined it is not a question of whether the water feed to the adjacent homeowners' wells will be destroyed, it is not hypothetical, it is a mathematical fact that will happen. This is a conflict and cannot be mitigated. Thank you.

Riley Downing: Bill and Riley Downing, 5151 Power Road. Judge and Commissioners, we just thank you so much this morning for taking the time to let us present our case. In addition to the inadequacy of the quality and quantity analysis, the Darren Lee proposal failed to demonstrate a clear and nondamaging way to ingress and egress the property in question. The property has no means of access suitable for an aggregate mining operation. It has been determined by multiple sources, including the Malheur County Road Department and the Planning and Zoning Commission that Jasmine Road could not be crossed or used in any way by this applicant due to the many unmitigable conflicts. As such, Darren Lee attempted to amend his plan and build a new road that would access Mesquite; this too is inadequate and would result in a dangerous situation for local residents. Imagine if you will, a large heavily loaded belly dump coming down a steep hill and then having to negotiate a 90 degree turn onto a narrow 21-foot-wide road, all the while crossing an agricultural irrigation ditch that carries water to thousands of acres of prime farmland. An underground pipeline with an easement runs the entire length of the proposed mining operation from the east to the west. This underground pipe carries water from the Snake River to 2000 plus acres farmed to the south. An agreement to mine around this pipe, to even consider driving over this pipe with huge loads of aggregate, the permission has not been obtained from this farm. The farm was only notified of this a day before our last Planning and Zoning meeting. I'm not sure if they're here today, if they are I'm sure they will have more to add to this. Because of this, this

location should not qualify for the Goal 5 inventory and we are asking this group to deny this petition. Thank you so much.

Mr. Evans asked for further opponent testimony; there was none.

Mr. Evans asked for rebuttal from the applicant.

Darren Lee: I don't know where this 54-acre deal came from. If you look at that map that's 300 acres. I think it came from part of the legal description

Commissioner Hodge: Is this 300?

Darren Lee: Is the actual, pretty much all the way around minus a 40 that's the government, the BLM pit

Commissioner Hodge: The BLM pit

Darren Lee: Right. So, I think what it was, was when the description was made, the legal description, there's 54 that's outside

Mr. Evans: I can shine light on that. I think it came from my office. I think Tatiana looked at, you submitted with your operations plan a map and think she just gave Don what you had submitted

Multiple talking

Commissioner Hodge: And Darren, that's 300 acres is this

Darren Lee: Correct

Commissioner Hodge: Not any of this

Darren Lee: No none of that. Basically, that map is just to show the aggregate activity that's occurred in that area.

Commissioner Hodge: Up above that

Darren Lee: Yeah

Mr. Evans: You can see it right there as well, so, it's a big parcel. It's all of this, it includes this old pit here and all of this here

Commissioner Hodge: What's that line right in the middle, to the left

Commissioner Jacobs: The double line

Commissioner Hodge: The double line. Is that a road?

Mr. Evans: That's the canal, this is the canal and it dead ends here and this is where the irrigation pipe comes

Judge Joyce: That's where the pipeline is?

Darren Lee: Yeah, Skyline Farms

Commissioner Hodge: Darren is there, how much of that land is yours?

Darren Lee: Minus the 40, it would be all of this ground here.

Commissioner Hodge: Okay, now is there any water rights to that at all?

Darren Lee: There is zero and it's considered rangeland and has not been farmed in a long time because it's not productive

Commissioner Hodge: Well I was going to say, are they calling that Class I and II ag land?

Mr. Evans: It's not actually Class; it's unclassified rangeland

Commissioner Hodge: Because of what, in these pictures, what the test pits look like, I mean that's not going to be considered Class I or II

Mr. Lee: Exactly, that's what it's not been farmed. I mean Dallas Head owns 1200 acres around there and he's not farmed that because it's not productive ground and it doesn't have any water right.

Commissioner Jacobs: Well if there was 12 feet of overburden of topsoil on it though it could be Class

Mr. Lee: There's not. If you look at those pictures

Commissioner Hodge: If you look at this picture Ron it shows

Darren Lee: And the tops of those hills are basically gravel right on top

Commissioner Hodge: It shows old state pit gravel 30 plus foot deep, well there might be a little, there isn't very much Class I soil on that, that I can see. But my question originally to you was, and Eric took that photo down, but we're talking this area right here, none of this

Darren Lee: It would be this area right here

Commissioner Hodge: And it looks like there's a residence right there

Darren Lee: There is a residence right there

Commissioner Hodge: And then one right there

Darren Lee: And one right there, and I agreed to a 350-foot offset from my property line to any housing area

Commissioner Hodge: Okay

Mr. Evans: You'll be able to see it outlined in green here in a second; the only thing it excludes is that tax lot 500 that you'll see, that tax lot 500 I think that's a nonfarm partition maybe

Darren Lee: It's that 40 acres they carved out for a government and I think it was used as a BLM pit

Mr. Evans: Okay, that's right, that's what it is

Darren Lee: That's why it's mined out up there

Commissioner Hodge: It's called mined out, so they haven't been in there getting anything out of there?

Darren Lee: They dump their garbage in there, they're concrete waste

Commissioner Jacobs: The federal government does?

Darren Lee: I don't know, somebody's dumped stuff in there

Commissioner Hodge: Really. Have you

Darren Lee: I don't, it's not our property so it is what it is, I'm not going to chase the federal government around

Commissioner Hodge: But they haven't been taking any gravel out of it?

Darren Lee: Not that I'm aware of, I think they've mined pretty much all this, because all of that area on the top is gravel right at the surface, so

Commissioner Hodge: Have you got any idea when the last time they took any gravel out of there?

Darren Lee: When they did? No, not a clue.

Commissioner Hodge: None that you've seen lately?

Darren Lee: No. I think one of the local's testimony said that they did see they were going up there the last year but I don't know whether they were mining anything or not.

Commissioner Hodge: Okay, to get to that pit there must be some type of bridge over that canal?

Darren Lee: Yes, there is and then it goes down to Jasmine

Commissioner Hodge: Okay

Darren Lee: So, they've been utilizing Jasmine to haul gravel out of there as well as the State pit

Commissioner Hodge: The State pit?

Darren Lee: So, there's this weird looking

Commissioner Hodge: The old State pit, is that what it's called?

Darren Lee: Right. So, what happened was, the Heads deeded that to the State for a use and if they didn't use it within a certain allotted time period, I think it was 10 years, that it went back to the Heads and it reverted back to the Heads.

Commissioner Hodge: So, it's reverted back to the Heads?

Darren Lee: At this present time yes. So, part of that Goal 5 inventory was at least 500,000 tons of material and I had Petra Drilling and Blasting do an analysis on that and they came up with at a minimum 2.5 million cubic yards. They are probably the premier I would say quantity take off people in the west, I was very fortunate to get them. I originally had Atlas to do that and they had told me where to dig the test pits and then Petra became available and I would rather use them because I really do want to know how much is there, so I used them. They do everything in California and up the coast for big concrete plants and stuff that have sharp pencils and they need to know (inaudible)

Commissioner Hodge: So, did they come out and look at the property?

Darren Lee: No, this is COVID times, so what I did was I dropped tapes down into the holes and sent it to them, that's how everything's done in 2021 now, nobody shows up for anything. Now Atlas did go out and actually take their own samples for the quality analysis, which is in the

Commissioner Hodge: So, they did the test holes

Darren Lee: No. They told me where to dig the test holes

Commissioner Hodge: Okay and you dug

Darren Lee: And then I was able to procure Petra to be able to get the quantity takeoffs

Commissioner Hodge: Okay.

Darren Lee: Which far exceeds the requirement for Goal 5, I think they are close to 2.5 million yards and I think that's conservative with what gravels up there

Commissioner Hodge: They considering that on the 300 acres?

Darren Lee: Yes. If you look at those test holes it's kind of random, they're kind of all over the place

Commissioner Hodge: Yeah

Darren Lee: And then again on the top, like I said there's no reason to dig a test hole in a cake, you can see the gravel on the top of the hills

Commissioner Hodge: So, you mentioned the top several times, so what kind of elevation difference from the top to down near the farm ground?

Darren Lee: That's a good question, I would say

Commissioner Hodge: Couple of hundred of feet?

Darren Lee: No, it's probably only 150 to the top of the hill from down in the valley

Commissioner Hodge: Okay, elevation wise

Darren Lee: Yeah. Maybe 75 feet, 100 feet, I'd guess at the very most.

Mr. Evans: I'd say that's probably pretty close.

Darren Lee: Talking about not having this as a pit, then I'm kind of disturbed that the government can mine the heck out of that area and I'm not allowed to. You've got a BLM organization up there that mines gravel out of there and has mined gravel in the past as well as used Jasmine Road, which I agreed not to use for hauling purposes. And then you've got a State pit that is allowed to mine

gravel out of there, and over time the Heads and ourselves have mined a lot of gravel out of there for, everything that's under Jasmine, the Powerline Road, all of Annex, all the area, all that subbase was brought out of that pit. And now all of a sudden, it's not acceptable to the neighbors around there. And you see the gravel activity around there. The Hastings complain about losing their access to their organic farms, they literally have a pit that's active about 100 feet from their property line. And I am way far away from

Commissioner Hodge: Okay I want to make sure I'm hearing this right. The old State pit has reverted back so there's nobody bring gravel out of that old State pit?

Darren Lee: Not now, but they did.

Commissioner Hodge: But they did.

Darren Lee: Correct.

Commissioner Hodge: But it's reverted back to the owner.

Darren Lee: Correct, but it was gravel activity and there had to be some permitting process to make that happen, you would assume.

Commissioner Hodge: I was going to say, you don't know

Mr. Evans: For a minimal, a lot of the times with, if the homeowners using it they don't necessarily have to get all the permits

Commissioner Hodge: Did they clean it up at all when they left it

Multiple talking

Darren Lee: No, they left the bank there, actually Dallas had the overburden pushed over so that it avoided safety issues

Commissioner Hodge: Okay

Darren Lee: So, I mean, and that's why I'm here is to keep with the times as Oregon, like I said, they've updated their laws and I want to make sure that I go through conditional use to be able to continue what we've been doing for the past 70 years up there.

Commissioner Hodge: Okay, thank you for the explanation.

Mr. Evans: So, I do want to take a second and kind of talk a little bit about, so I don't have any findings done yet, they'll be done for this next hearing for this action but I will talk about what my

findings will say, at least in regards to the PAPA (Post Acknowledgement Plan Amendment). And I'll talk a little bit about that 54 acres. So, this is actually Mr. Lee's operation plan he submitted. In it he drew this Phase I, Phase II and I think this is probably where our confusion came in in our office, I think we probably measured that and guessed that it was about 54 acres. So, I think that's probably where, probably a mistake out of my office.

Commissioner Hodge: On Phase I or Phase II

Mr. Evans: Yeah, I think we just kind of guessed that it was 54 acres just based on their phases, it's going to change here in a second too

Commissioner Hodge: So, what's this say

Mr. Evans: Operations and reclamation plan.

Multiple talking

Commissioner Hodge: In this Phase I, 12-foot berm, what does these three things say - future area I can see but I can't

Commissioner Jacobs: It says 12-foot berm

Mr. Evans: It says mined area, scale house, and stockpiles

Commissioner Hodge: Okay thank you

Commissioner Jacobs: I have a question for Mr. Lee. The 12-foot berm, isn't that top soil?

Darren Lee: It would be overburden material, yeah

Mr. Evans: So as part of the hearing and all the information that was presented, this is a letter that was provided from Petra Drilling and although he's requesting that, the Planning Commission came to the conclusion that he's requesting for the whole 300 acres, this letter from Petra actually talks about borrow pit one, starts here, borrow pit one as detected, appendix a, 1000 feet, 1500 feet, is about 2.4 million tons, borrow pit two is also, I don't know where it went, but borrow pit two it actually talks about that and so it was their determination that, and this is a

Commissioner Hodge: So, Darren all this stuff is going to be pit run?

Darren Lee: No. I have a crusher and a screen plant.

Commissioner Hodge: Oh, you do

Darren Lee: Yeah. As a matter of fact, my number product is probably road mix. We have nothing. Payette is shut down. We've got nothing for gravel in our area.

Commissioner Hodge: And where's your plant at? Is it on the property?

Darren Lee: It's on the adjacent pit over on DeHaven's property and I opened that one up about 12 years ago. And I'm getting to the point where I'm about 35 feet of overburden; it's just not cost productive anymore and I don't want to tear up the whole neighborhood.

Commissioner Hodge: So, would you move that, would you move your plant out there?

Darren Lee: Move the operation over there, yes

Judge Joyce: When you say DeHaven, is that Claire?

Darren Lee: Doug DeHaven now. It used to be Dick. He's literally right across the draw.

Mr. Evans: So as you can see, this is, according to that letter from Petra and the way that the Planning Commission decided, the letter from Petra is the green and red areas, and they believe that, according to how this reads that there's information about the quantity of gravel in the green and red areas but there's not adequate information for quantity on the entire 300 acres, therefore, they felt that they didn't have enough information to approve the application, because there's not quality and quantity. We also had discussions about location, and I'll give you guys and maybe Mr. Lee's gave this to you too, this an email that Mr. Lee submitted, he submitted this to me in an email, and that's the description, and that describes, that's just on his deed, Dallas Head's deed, that describes the entire 300 acres, right?

Darren Lee: The 300 in question, yes, not the farm ground.

Mr. Evans: Okay.

Darren Lee: Because the other deed includes the farm ground because it's the 640

Mr. Evans: Okay. Do you guys have any questions for staff or anybody else?

Commissioner Hodge: Well my question I asked a while ago – there's no water rights on any of this?

Darren Lee: No.

Commissioner Hodge: The elevation you explained, maybe a 100-foot drop if that much.

Mr. Evans: And again, remember you guys can go and come up with new questions, because

Judge Joyce: We're having another hearing

Mr. Evans: We're having another hearing, we're not making a decision today

Judge Joyce: Right, obviously

Commissioner Hodge: In your current

Darren Lee: Operation is there

Commissioner Hodge: And its set, your crusher's set up there and everything

Darren Lee: Correct

Commissioner Hodge: And so where would you put the crusher, do you know, if you move it from there over to, have you got an idea where you'd put it?

Darren Lee: There actually was a change because there were legitimate questions about safety, using Jasmine Road, it's not a road that's up to code

Commissioner Hodge: And you said you wouldn't use it

Darren Lee: And I said I would not use that for my haul trucks. Now they've got it set up to where I'm a leper and I can't even use it as a citizen and I don't agree with that. If I want to drive my truck, my pickup truck up to Jasmine Road I think I should have the right to do that, I pay taxes on the roads, but as far as haul trucks, I agreed that I would be able to put, in what used to be the old haul road, right off of here, I'm able to put a new road in that will be adequate for trucks.

Commissioner Hodge: So how far, what would be the distance of the haul road? Approximately.

Darren Lee: I haven't measured it.

Commissioner Hodge: I mean

Darren Lee: It would come up the draw and then come across and I planned on then utilizing this area over here as my Phase I area because originally, I was going to come out of the old pit and onto Jasmine

Commissioner Hodge: Out of the old State pit you mean

Darren Lee: Right, because it's already been mined out, it gives me a flat area to set up scales and work

## Multiple talking

Mr. Evans: One thing that I'll interject a little bit is that really today we're talking about just location, quality and quantity, so access and all those things are part of the conditional use permit that the Planning Commission denied. So, if we stay on just location, quality and quantity it just makes it a little easier for us.

Commissioner Jacobs: Well, I had a couple of questions

Mr. Evans: And it's fine, I mean you guys are the ones that dictate what the questions are but I just want to remind you guys that

Commissioner Hodge: Well I'd still like to kind of have an idea how far that road, you know, if that road's five miles, three miles, it must be

Darren Lee: The haul road?

Commissioner Hodge: Yeah

Darren Lee: We're talking in feet. I think it's only like 1500 feet from there to there

Commissioner Hodge: Okay

Darren Lee: So not excessive at all

Commissioner Jacobs: Have you had any correspondence with Ontario Farms and crossing their pipeline?

Darren Lee: No, I haven't. I mean it's an easement just like the powerlines, you've got to stay out of them.

Mr. Evans: They did testify at the last hearing.

Commissioner Jacobs: The other thing is, there was mention of groundwater, there was some groundwater that was

Commissioner Hodge: Like 12 foot or 15 foot

Commissioner Jacobs: Did you find any groundwater in your test holes?

Darren Lee: In one test hole at the very bottom, but I also did this in the early Spring, is I got about a foot of water after about two days I came back and there was about a foot of water in there. But

that was at the very bottom of the draw on this area right over here; that was the only water that I got on that. Its' got that hard caliche overburden and then if it doesn't all of the water runs into the gravel anyways, so you'd have to have 50-acre feet of water to make that wet.

Commissioner Jacobs: Okay.

Mr. Evans: Nothing else? It's up to you to close the hearing then Judge.

Judge Joyce: Well if there's no more comments or questions, we'll actually close it until the next one.

Mr. Evans: Right, close it until the next one, August 11th at 10:00.

Judge Joyce: Okay, that's it.

#### **AMENDMENT TO SUB-AGREEMENT WITH MCOA**

Commissioner Jacobs moved to approve First Amendment to Sub-Agreement with Malheur Council on Aging and Community Services (MCOA&CS) for General Public Transit Service Pursuant to State Agreement Number 33428, 5311 – Capital, Operating, Planning Recorded with the Malheur County Clerk as Instrument Number 2019-2101. Commissioner Hodge seconded and the motion passed unanimously.

The meeting recessed for lunch.

#### **EXECUTIVE SESSION**

Executive Session was called in accordance with ORS 192.660(2)(a) - Employment of Public Officers, Employees and Agents, with Judge Joyce presiding and Commissioner Hodge and Commissioner Jacobs present. Also present was Road Supervisor Dave Tiffany, Administrative Officer Lorinda DuBois and Amanda Zander. No decisions were made during the session.

#### **WEED INSPECTOR**

Commissioner Jacobs moved to authorize Ms. DuBois to make an employment offer for the Weed Inspector position to the number one candidate. Commissioner Hodge seconded and the motion passed unanimously.

#### **COURT ADJOURNMENT**

Judge Joyce adjourned the meeting.