

STAFF REPORT
Remand Hearing: April 30, 2025

Post Acknowledgement Plan Amendment (PAPA) To Add 80 Acres to Malheur County's Goal
5 Inventory of Significant Mineral and Aggregate Sites; Planning Department File 2023-12-010;
Ordinance No. 235; Remand of County Decision in LUBA No. 2024-030

I. Introduction

Date: April 21, 2025

Applicant: Darren Lee
515 Noble Road
Ontario, Oregon 97914

Owner: Dallas Head
5560 Hwy 201
Ontario, Oregon 97914

Agent/ Attorney: Brian Sheets
BRS Legal LLC
PO Box 987
Ontario, Oregon 97914

**Subject Property:
the "Property"** Tax lot 3200, Assessor Map 16S47E
Split zoned: ERU 261.42 acres / EFU 47 acres
No water rights / dry land farming
Total Acres: 308.42

II. Proposal

Applicant applied for a Comprehensive Plan Amendment (PAPA) to add an 80-acre portion of the Property to Malheur County's Goal 5 Inventory of Significant Mineral and Aggregate Sites (Goal 5 request). This 80-acre site is identified as Area #1 in the Application. The activity proposed on Area #1 is excavation/ mining, processing and seasonal crushing of aggregate.

Specific equipment used: excavator, crusher, screen plants, elevators, trucks and loaders.

Crushing and screening three (3) weeks in the spring and three (3) weeks in the fall.

Applicant states it will take up to 20 years to fully mine the site.

III. Procedural Status

Concurrent with the Goal 5 request, Applicant requested Conditional Use Permits (CUPs) for: "Area #2" - 60 acres for stockpiling, landscape rock, truck scales, and truck/equipment parking/storage; and "Area #3" - 40 acres for private mine, crushing and asphalt/concrete recycling. The Goal 5 request and CUPs were processed at the same time. This Staff report only addresses the Goal 5 request on 80 acres. The CUPs on 100 acres were denied by the planning and zoning commission; and those decisions were not appealed.

The planning commission held evidentiary hearings on Applicant's requests on January 25, 2024 and February 22, 2024. The planning commission deliberated on March 8, 2024 and entered an unanimous Order dated April 2, 2024. The Order recommended denial of the Goal 5 request to the County Court; concluded that mining not be allowed; and denied the CUPs for Area #2 and Area #3.

The County Court held de novo hearings on March 20, 2024 and April 3, 2024; and deliberated on April 10, 2024. Ordinance No. 235 was adopted on April 17, 2024, which set out findings and approved the Goal 5 request as meeting location, quantity and quality of aggregate set forth in OAR 660-023-0180 (3). The County Court did not address OAR 660-023-0180 (5) and other applicable criteria of OAR 660-023-0180 in Ordinance No. 235 (This was a procedural error by the County).

Opponents appealed Ordinance No. 235 to LUBA. LUBA upheld the findings and conclusions of the County Court with respect to quality, quantity and location of gravel; determined the Court erred when it did not address all applicable criteria of OAR 660-023-0180 (5) as part of the Goal 5 request; and remanded the county's decision. *Final Opinion and Order Hastings v. Malheur County, LUBA No. 2024-030, August 20, 2024.*

On February 14, 2025 Applicant requested a remand hearing. At its meeting of March 19, 2025, the Court determined to conduct the remand hearing based on the record with written and oral argument accepted before or at the remand hearing.

The County Court set April 30, 2025 at 10:00 a.m. for the remand hearing.

Notice of the remand hearing was sent to surrounding landowners and persons and entities participating in previous hearings. Notice was also published in the Argus Observer newspaper and posted on the County website. The notice states the Court's intent to amend Ordinance No. 235 by adding findings and conclusions to address OAR 660-023-0180 (5) – (8). The Court will not reconsider OAR 660-0230-0180 (3). The County's notice specifically stated the remand hearing will be made on the record with oral and written argument. No new evidence is to be presented.

LUBA's determination to uphold the County's findings with respect to quality, quantity and location of aggregate was not appealed to the Oregon Court of Appeals. Since such an appeal was not filed, further opposition to quality, quantity and location is waived and cannot be revisited or raised in the remand proceeding.

The County has until June 13, 2025 to take final action on Applicant's request for remand.

IV. Exhibits

As of the date of this Staff Report, the following exhibits were received for the remand hearing:

1. Request for remand hearing dated February 14, 2025 by Brian Sheets for Applicant.
2. Email from Mike and Mandi Hastings dated February 25, 2025 seeking reversal, adoption of P&Z findings and denial to mine.

V. Criteria, Analysis and Basic Facts

Malheur County applies Division 23 (OAR 660-023) to implement Goal 5.

Under Division 23, the decision-making process when deciding whether or not to add a site to the Goal 5 aggregate inventory and to determine whether mining is permitted is as follows:

A. OAR 660-023-0180 (3). Determine whether the resource is significant.

The County Court determined the aggregate resource is significant based on evidence and findings for location, quantity and quality as set out in Ordinance No. 235.

B. OAR 660-023-0180 (5) (a). Determine an impact area for purposes of identifying conflicts with proposed mining and processing activities.

The planning commission identified an impact area of 1,500 feet from the boundaries of the mining area. There were no challenges to the impact area. *Planning Commission Exhibit 2* The

Property is surrounded by land used for agricultural and residential purposes. Within the impact area uses are described as: residential with both farm and non-farm dwellings; public land and agriculture.

By default the impact area is limited to 1,500 feet from the boundaries of the mining site, except where factual information indicates significant potential conflicts beyond this distance.

Farmland Reserve owns, in fee title, a buried pipeline across the mine Property. The pipeline and OID canal provide water delivery to farming operations of Farmland Reserve located south of the mine and outside the 1500- foot impact area in the application.

C. OAR 660-023-0180 (5)(b)(A-F). Identify conflicts within the impact area.

Conflicts within the impact area are limited to: A. noise, dust and other discharges; B. local roads within one mile of the access and egress to the mine site; C safety with existing public airports; D. other Goal 5 resources; E. agricultural practices; and F. other conflicts with ordinances that supersede DOGAMI regulations.

A. Noise, Dust or other Discharge Conflicts. There will be dust, noise and other discharge conflicts with residential uses within the impact area. Water is not being used in the mining operation; except water spray for dust control.

Dust generating activities of the proposed mine include: equipment/ vehicles/ traffic on haul road, Jasmine Road and Mesquite Road, excavation, rock crushing, constructing berms with overburden, loading and unloading materials and wind. Dust/ particulate matter emissions and air quality standards are to be controlled with operational limits and monitoring below DEQ established limits. (OAR 340-200-0020; OAR Division 340, Division 208).

Noise generating activities of the proposed mine include: crushing, back-up beep when operating equipment, excavation, loading and unloading material, hauling activities and use of heavy equipment. The applicable DEQ noise standard is set out in OAR 340-035-0035 (1)(b)(B)(i).

Applicant proposes to minimize dust and noise conflicts with berms, setbacks, proposed conditions (numbered and listed below) and plans (dust abatement plan, operating plan, and reclamation plan) as set out in his application and within Planning Commission Exhibits 23 and 39.

No discharges into groundwater were identified. There is no evidence mining will expose groundwater. Surface water and drainage are addressed by Applicant in Planning Commission Exhibit 39.

“Minimize a conflict” means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to ‘minimize a conflict’ means to ensure conformance to the applicable standard”. OAR 660-023-0180 (1) (g).

There is no analyses, explanation, description or study in the record to demonstrate that the proposed dust and noise generating activities of the mine will actually conform to the DEQ noise and dust standards.

The planning commission rejected Applicant’s evidence that noise can be controlled to DEQ standards by earth berms because it found the evidence to be irrelevant, not applicable and not substantial. The evidence submitted by Applicant for noise control are:

Are Earth Berms Acoustically Better Than Thin-Wall Barriers?, 60 Transportation Record 896, Hajek (1 page, not dated).

Landscaping, Earth Berms and Sound Barrier Walls, eNoise Control, Noblesville, IN (1 page, no date).

Noise Control Earth Berms: Guidelines for the Use of Earth Berms To Control Highway Noise, British Columbia, Ministry of Transportation and Highways, Highway Engineering Branch, Wakefield (1 page, 1997).

“Questions and answers on noise barriers”, Federal Highway Administration, (5 pages, no date).

Applicant’s predicted dust conflicts generated by hauling activities is based on a traffic analysis and number of truck trips extrapolated from Applicant’s previous mining practices and operations on adjacent property; rather than predicted dust conflicts from hauling activities at the proposed mining operation with residential uses occurring within the impact area. Planning Commission Exhibit 23

There are no reports or services from an engineer, environmental, geotechnical consultant and/or any expert on the proposed dewatering plan – drainage plan; preparation of a wetland report; sound study, site development; slope stability; or design of berms.

B. Local roads. The local roads are Mesquite Road and Jasmine Road. These roads are under the jurisdiction of Ontario Rural Road Assessment District No. 3 (Road District). The Road District requires improvements to these roads consisting of a minimum of 2” asphalt apron at each approach/ intersection with the internal haul road – 1 intersection at Mesquite and 2 intersections at Jasmine. *Planning Commission Exhibit 7*.

C. Safety with Public Airports. No safety conflicts with public airports due to bird attractants are raised. Ontario and Payette airports are located several miles away. No open water impoundments as specified under OAR 660 Chapter 600, Division 013; are in the impact area.

D. Other Goal 5 resources. There are two mines within the 1500-foot impact area that are on the County's Goal 5 inventory. The mines are closed.

Wildlife and wetland concerns raised by surrounding landowners, ODFW and US Fish and Wildlife (Planning Commission Exhibits: 5/ Attachment D, 19, 24 – 26, 38 and 40) are not protected under Malheur County's Goal 5 inventory; and are outside the scope of OAR 660-023-00180 (5)(D). Applicant agreed to measures/conditions to mitigate these concerns. *Planning Commission Exhibits 23 and 39.* Staff sets them out here for the Court's convenience:

C1.

Minimize open gravel extraction to two or less acres at a time; and reclaim contemporaneously with mining operations. Reclamation will be a rolling reclamation with the mined area being reclaimed and seeded before new areas are disturbed. Note: This condition is different than Applicant's "Reclamation Plan Dallas Head Quarry" submitted with the application where Applicant states no more than 20 acres of disturbed ground is anticipated at any given time.

C2.

Topsoil removed will be stockpiled for reapplication to the surface of the reclaimed ground and reseeded with native forbs and grasses.

C3.

Limited winter operations of hauling and extraction to a maximum of 10 days per month between November 1 and March 31. Operations from November 1 to March 31 will take place from one hour after sunrise to one hour before sunset.

C4.

Concrete recycling, processing and concrete crushing will not take place between November 1 and March 31. Concrete recycling will take place between April 1 and October 31. Concrete processing and crushing will be limited to 3 days annually. (Note: The application sets out concrete recycling and crushing in Area #3. Area #3 is subject to a conditional use permit and not part of the Goal 5 mining operations.)

C5.

Spot treatment of roadsides, parking and dump sites with non-persistent herbicides for invasive species applied by man-pack dispensers. Reclaimed land will be immediately re-seeded following reclamation to reduce establishment of invasive grass species.

C6.

Petroleum and oil spill kits will be available and on the site at all times for any fuel/oil/hydraulic spills and all potentially contaminated soil will be segregated and disposed of per DEQ regulations and guidelines.

C7.

A delineation of wetlands report will be submitted by a qualified expert to DSL for approval prior to mining, to address wetland mitigation. DSL approval must be filed with planning department prior to mining.

E. Agricultural practices. Conflicts with agricultural practices are measured against the standards in ORS 215.296; and not the Goal 5 standards in OAR 600 Division 23.

The ORS 215.296 standards are – mining may be approved only where the local governing body finds that uses will not: (a) force a significant change in accepted farm practices on surrounding lands devoted to farm use; or (b) significantly increase the costs of accepted farm practices on surrounding lands devoted to farm use.

The mining activities predicted to conflict with agricultural practices occurring within the impact area are excavation, heavy equipment and hauling activities over the OID canal at the mine entrance; and the pipeline owned by Farmland Reserve located under the mine Property. This is the water delivery system for surrounding agricultural lands as well the entire operations of Farmland Reserve south of the Property. The mining activities predicted to conflict with agricultural practices occurring within the impact area to Lightbridge Organics LLC (adjacent to Property) are those mining activities that create dust - equipment/ vehicles/ traffic on haul road, Jasmine Road and Mesquite Road, excavation, rock crushing, constructing berms with overburden, loading and unloading materials.

Applicant's predicted conflicts generated by proposed hauling, traffic and heavy equipment activities is based on a traffic analysis, trips, data and practices from Applicant's previous mining practices and operations on adjacent property; rather than predicted conflicts from the proposed mining operation with agricultural practices occurring within the impact area. Planning Commission Exhibit 23.

Pursuant to ORS 215.296 (2), Applicant may demonstrate that the standards of ORS 215.296 (1) can be satisfied with the imposition of clear and objective conditions. Applicant proposed conditions to satisfy ORS 215.296 (1) in Planning Commission Exhibits 23 and 39. Staff sets them out here for the Court's convenience:

C8.

A 200-foot extraction buffer will be applied to open canals. All ditch maintenance roads will be prohibited from this project's use and a buffer of 200 feet from ditch maintenance roads will be maintained. Operations will not be using any irrigation water from the canal or buried pipeline.

C9.

Canal crossings refurbishment/strengthening will be coordinated with the local irrigation district to standards meeting their specifications and the applicant will obtain all approvals necessary for improving crossings that do not meet or exceed the design capacity needed for hauling operations. Development shall not impede, disrupt or destroy irrigation canals, ditches, laterals, drains, and associated irrigations works and rights-of-way. Any alteration of irrigation structures located on the properties shall be conducted with written approval from Owyhee Irrigation District (OID). The alterations shall not impede or affect water delivery to adjacent properties/ water users.

C10.

Underground pipeline delivery system will be marked and a 200-foot buffer for extractive operations will be applied to minimize impacts to the buried pipeline. No equipment will be parked on this pipeline and no equipment will be stationed on top of the pipeline. Where hauling operations will cross the pipeline, these areas will be reinforced through a 15-foot, 4-inch thick asphalt pad sufficient to distribute the load installed over the steel pipe in the area crossed by the improved road. The Applicant will work with engineering staff to design and/or improve pipeline crossing that will support both use of the road and the irrigation pipeline.

C11.

Management will daily inspect the marked pipeline area and open canal for leaks caused by the aggregate extraction and hauling operations or any other cause and report leaks to Agreserves/Treasure Valley Farms (aka Farmland Reserve) and/or the irrigation district. The applicant will coordinate any repairs necessary with Farmland Reserve and/or the irrigation district.

C12.

Relocation of the pipeline is not contemplated at this time; however, any relocation will be by mutual consent and subject to the terms of an easement agreements and/or irrigation district rules and regulations.

C13.

Hours of operation will be daytime only to allow for livestock undisturbed night rest.

C14.

100-foot buffers from any adjacent property lines as well as the installation of dust and visual buffers (berms) to mitigate any escape of dust from the worksite. The operator shall maintain a minimum of 100-foot undisturbed perimeter/buffer along the external property boundaries other than permitted approach to public roads.

C15.

Operations will not utilize prohibited substances or non-synthetic substances prohibited in 7 CFR § 205.602 – organic certification regulations.

C16.

Any petroleum/ fuel spills will be contained on site and disposed of according to DEQ regulations.

C17.

Weed control measures will be spot treatments by man-pack type applicators to minimize volume of herbicide and drift potential. Large spray deliveries to treat weeds will not be made.

C18.

The development shall comply with all applicable federal, state and local laws, ordinances, rules and regulations that pertain to the subject property and proposed use.

C19.

Dust mitigation through: setbacks in C14 above; berms installed gradually - berms will be 12-foot high and 30' wide along a portion of Jasmine Rd. bordering the mine site – approximately 60' from the road right-of-way on the mine site; the pit floor will be graveled; mine operations will take place below ground; traffic speed on internal roads will be reduced to 15 mph. and water spray of roads and excavation area

C20.

Compliance with MSHA and OSHA pollutant control.

C21.

Mine access point is Mesquite Road. Approach aprons will be installed at Mesquite Road pursuant to Rural Road Assessment District No. 3 standards. Where Jasmine Road and the internal haul road intersect will be asphalted with a minimum of a 2-inch compacted asphalt apron.

C22.

Applicant will not drive his 100-ton wheel loader across the pipeline at the canal.

The planning commission concluded the standards under ORS 215.296 are not met.

If conflicts with agricultural practices do not meet the standards of ORS 215.296 (1), mining is denied. An ESEE is not required to address conflicts with agricultural practices that cannot be minimized because only the standards of ORS 215.296 apply; and not the additional ESEE analysis of Goal 5 with respect to agricultural conflicts.

F. DOGAMI. Malheur County does not have any ordinances that supersede DOGAMI regulations.

D. OAR 660-023-0180 (5) (c). Measures to mitigate conflicts. Applicant proposes several measures/conditions to mitigate conflicts. They are in Applicant's application and within Planning Commission Exhibits 23 and 39. Staff lists them here for the Court's convenience:

General conditions/ measures:

C23.

The duration of the proposed operation shall be 20 years and operated with conditions. No more than 2 acres will be mined each year. Reclamation will be rolling or ongoing and occur simultaneous at the conclusion of mining an area.

C24.

Normal business hours of operation shall be Monday through Saturday 7:00 a.m. to 5:00 p.m. Operation at night is prohibited. In the months of November through March, maximum number of workdays shall be 10 days per month and shall take place from one hour after sunrise to one hour before sunset to mitigate Mule Deer Winter Habitat disturbance.

Conditions/ measures specific to dust. A "Fugitive Dust Mitigation Plan" was submitted with the application:

C25.

Exposed quarry floors will be graveled.

C26.

Haul roads onsite will be graveled and vehicular speeds will not exceed 15 mph.

C27.

Spray bars on screen plants and elevators will be utilized if dust is produced during processing operations.

C28.

Water is the primary solution for dust mitigation. A 5000-gallon water truck will be stationed onsite for roadway watering and site maintenance as necessary. The graveled quarry road is 2,800 feet from the hardball onto Mesquite Road to the intersection at Jasmine. This would allow for the potential application of 1.78 gallons of water per linear foot of roadway. During dusty conditions one to two truckload of water will be sprayed to control dust on roadways and have capacity for additional dust suppression for other operations that may require water. Planning Commission Exhibit 23.

C29.

Operations will be suspended during high wind periods that would generate excessive dust.

C30.

The exit apron to Mesquite Rd. will be paved to limit dust.

C31.

Earth berms and stockpiles constructed by Applicant/operator will limit wind and air movement. Processing will not occur near berms; but in middle of quarry. The quarry is below-ground level, allowing wind to move over top of quarry, which results in lower dust movement from processing and excavation.

C32.

A sign at the entrance to the quarry will have contact information for local residents concerns and complaints in regards to dust or other discharges, eliminating the need to contact authorities.

C33.

Prior to arrival at the site, management will review the weather report for past recent precipitation. Management will also note the prior days' road conditions for evaluation of dryness of the roadway. If there has not been recent precipitation, and prior conditions have indicated potential dust issues, management will have water ordered/ prepared prior to initiating hauling operations at the site. This may include having a truck obtaining water from Weiser municipal sources, or using the staged water truck already laden with water at the site available to apply water prior to initiating hauling operations. Water will be applied at a rate that adequately abates dust while avoiding erosions and runoff. The roadway will be evaluated throughout the day to determine if additional application is necessary to abate dust.

Conditions / measures specific to noise. “Sound Abatement and Visual Screening” plan submitted with application:

C34.

A berm 12’ in height will be constructed along Jasmine Road and around perimeter of the mine site on the east and south.

C35.

The quarry floor will be below-ground; and 40’ from the top of the berm.

C36.

No aggregate production will take place closer than 500’ from any dwelling.

C37.

No aggregate removal will take place closer than 100 feet from the boundary line of the mine.

C38.

Noise emissions shall follow the regulations and standards of OSHA and MSHA.

Conditions / measures specific to discharge:

C37.

Surface and groundwater shall be discharged in accordance with state, federal, and local standards and/or regulations.

See conditions/ measures for wetlands above – C6 and C7 .

See “Reclamation Plan Dallas Head Quarry” in application.

A drainage plan is set out in Planning Commission Exhibit 39. Excess water will be absorbed into exposed ground and gravel on-site. If for some reason, gravel is unable to be absorbed back into the ground, a catchment basin can be constructed at the Eastern center of the quarry to capture excess water, which then can be utilized as dust abatement within the quarry itself.

(Note: if a catchment basin is used a permit or approval may need to be obtained from Watermaster/ Water Resource Department).

Conditions / measures specific to local roads:

C38.

Egress and ingress into the mine site will be by Mesquite Road; and not Jasmine Road.

C39.

Applicant will make all improvements to Mesquite Road and Jasmine Road as required by the Road District. Improvements will meet the standards of the Road District. Applicant will construct a 30 ft. asphalt apron on the Mesquite Road approach with a minimum of 2-inch compacted asphalt; and asphalt the two intersections/approaches where Jasmine Road and the internal haul intersect with a minimum of a 2- inch compacted asphalt apron. Applicant will place stop signs at the site egress onto Mesquite Rd, as well as in both directions where Jasmine Rd and the main onsite haul road intersect (“Traffic Plan Dallas Head Quarry” in application).

The Road District accepts Applicant’s traffic plan (Planning Commission Exhibit 7).

Planning Commission did not accept Applicant’s measures/ conditions.

The planning commission rejected a majority of Applicant’s conditions/measures to minimize conflicts because they were not supported by substantial evidence; there was no analysis of the impacts. It is not enough to rely on permits and concepts to minimize conflicts. Weiss v. Linn County, LUBA No. 2021-033 (2021). Some analysis of impacts/conflicts measured against standards for conformance and the definition of minimize (to a level that is no longer significant) that are supported by substantial evidence, is required. The planning commission and County Court may be able to grasp concepts, but data and conclusions from that data are needed for decision makers to determine whether measures are practical and reasonable. The planning commission determined there was not substantial evidence, data, analyses, or conclusions drawn from data/evidence to determine whether the measures proposed by Applicant were reasonable and practical. Measures that are clear and objective are also necessary because it will be up to the County to determine enforcement of them.

The Applicant has the burden of providing evidence to satisfy Goal 5.

If reasonable, practical, clear and objective measures are identified to minimize conflicts of dust and noise, other discharges and local roads; and the standards of ORS 215.296 are met, then mining is allowed. If the standards of ORS 215.296 are met; and the conflicts of dust, noise, local traffic and discharges cannot be minimized, then an ESEE analysis is required.

E. OAR 660-023-0180 (5) (d). Analyze Economic, Social, Environmental and Energy (ESEE) consequences if conflicts cannot be minimized.

Neither Applicant nor opponents provided an ESEE analysis or information for the Court to include in an ESEE. The planning commission did not adopt an ESEE.

An ESEE analysis is a function for the County Court to perform. An ESEE analysis will need to be developed and adopted by the County Court if the Court finds: the standards of ORS 215.296 are met; and the conflicts of dust, noise, local traffic and discharges cannot be minimized.

By way of example, an ESEE analysis for economic benefits could be stated as follows:

Based solely on the identified conflicts that cannot be minimized (Exhibit D), OAR 660-023-0180 (5)(d) requires the county to analyze the ESEE positive and negative consequences of allowing, limiting or not allowing mining.

Identification of ESEE Consequences

Economic:

Allowing Mine: The economic consequences of allowing the mine include creation of jobs, increased real property taxes, and payment of fees to operate the aggregate (i.e. fees to DOGAMI). Applicant states up to three (3) employees will be at the mine – over the lifespan of the mine of 20 years. The mine will be removed from special farm assessment purposes – ORS 308A.113, resulting in slightly higher ad valorem taxes to Malheur County and special taxing districts. The mine will diversify the economy of Malheur County through the development of a natural resource; several mines operate and currently exist in Malheur County that diversity the economy. Malheur County Road Department may indirectly benefit from the availability of reasonably priced rock. Allowing mining adds to the available aggregate supply or resource.

Not Allowing Mine: If the mine is not allowed, the County will not reap economic consequences referenced above. The site is located for northern Malheur County toward Weiser and moving material greater distances for these areas increase road development costs, wear on the road system and consumption of fuel. The availability of aggregate from multiple sources promotes competitive bidding on road projects – mostly private projects as the County Road Department and Rural Road Assessment District No. 3 own pits. The Road District pit is nearby. If the mine is not allowed, potential damage to irrigated agricultural lands and crops will be completely eliminated. Not allowing mining will preserve and maintain valuable agricultural lands and practices to the south.

Limiting Mine: The negative economic consequences of limiting the mine are the loss of a portion of the positive consequences (jobs, revenue) of allowing the mine

fully. Limiting the mine will not diminish the negative economic impact to agriculture lands and operations identified above.

On balance, the negative economic consequences to irrigated agricultural lands by allowing the mine (outweigh/ do not outweigh) the positive economic consequences related to job creation, tax revenue and a diversified economy that is created by the mine.

The Court shall determine the EESE consequences of either allowing, limiting or not allowing mining at the site. The Court shall reach this decision by weighing these EESE consequences, with consideration of the following: (A) the degree of adverse effect on existing land uses within the impact area; (B) reasonable and practicable measures that could be taken to reduce the adverse effects; and (C) the probable duration of the mining operation and the proposed post-mining use of the site.

VI. Finding and Conclusions for OAR 660-023-0180 (5)(e),(f) and (g) will made if mining is allowed. Malheur County does not have any additional land use reviews for mining a significant aggregate site within its code or comprehensive plan. OAR 660 Division 23 is followed in Malheur County.

VII. Findings and Conclusions for OAR 660-023-0180 (6) – an ESEE for future uses in the impact area will need to be made if mining is allowed. If mining is not authorized, this requirement does not apply.

VIII. OAR 660-023-0180 (8)- Adequacy of application. An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule shall be adequate if it includes: **The requirements of this section are application submission requirements. Application submission requirements are not approval criteria, unless the failure to provide relevant material or information results in non-compliance with at least mandatory approval criterion. Le Roux v. Malheur County, 32 Or LUBA 124 (1996).**

The County Planning Department deemed the application complete on December 20, 2023.

(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied; **Found to be adequate with Court's adoption of Ordinance No. 235.**

(b) A conceptual site reclamation plan; NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780 (Effect on county

zoning laws or ordinances) **Included in the application: “Reclamation Plan Dallas Head Quarry”, and map showing direction of reclamation to be from east to west.**

(c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule; **A “Traffic Plan” was included in the application. The Road District approved the traffic plan, subject to Applicant making improvements to Mesquite and Jasmine road – Planning Commission Exhibit 7. No conflicts are identified to these local roads based on sight distances, road capacity, cross section elements, horizontal and vertical alignment or similar items in the County’s Transportation System Plan.**

The planning commission found the traffic plan to be inadequate because it included trip and truck information based on Applicant’s operations at the nearby DeHaven quarry; and not based on trip counts and operations at this site. This finding and conclusion by the planning commission seems to address dust more than a traffic impact assessment under section (5)(b)(B).

Traffic impacts with the Farmland Reserve pipeline, OID canal crossing and water delivery/ irrigation system at Mesquite are addressed in agricultural practices conflicts.

(d) proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; **The default impact area is shown in Planning Commission Exhibit 2. Conditions/ measures proposed by Applicant to minimize conflicts are set out above, which are in the application and planning commission Exhibits 23 and 39.**

(e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses. **Applicant provided google earth maps and photos generally illustrating boundaries of mine site, location and photo of berms, location of internal haul road, photo of mine entrance at Mesquite Road and reclamation plan showing east to west direction. The application also included narratives/plans entitled: “Operations Plan”, “Quarry Boundary and Activity Map”.**

A detailed site plan was not included in the application. A detailed site plan, drawn to scale, would include, but not limited to such uses as: location of crusher, all internal roads, setback distances, berm location and measurements, and location of water trucks.