

Before the Planning Commission

Planning Department File No. 2019-05-010

**CONDITIONAL USE APPLICATION
FOR
Conditional Use Approval for Aggregate Mining Expansion**

Planning Commission Meeting Date: June 27, 2019 and July 25, 2019

- 1. APPLICANT:** Jack B. Parson Companies
2350 S. 1900 W., Ste. 100
Ogden, UT 84401
- 2. PROPOSED ACTION:** Conditional use approval for aggregate mining in the Heavy Industrial zone inside the UGA of Ontario.
- 3. PROPERTY IDENTIFICATION:** Tax Lot 200, T18S, R47E, Sec. 11C; Assessors Map 18S47E11C; Malheur County Reference #7634.
- 4. PROPERTY LOCATION AND DIRECTIONS:** At the south end of SE East Lane.
- 5. ZONING:** O-I2 (Ontario Heavy Industrial)/UGA (Urban Growth Area)
- 6. PARCEL SIZE:** The parcel is 11.96 acres.
- 7. PARCEL USE:** Vacant lot.
- 8. SURROUNDING USE:** I-84 is to the west; Existing aggregate mining is on the East; Farm use to the south (zoned O-I2/UGA); State rest area and storage units to the north.
- 9. ACCESS:** Via SE East Lane or SE 5th Avenue through Idaho Concrete.
- 10. SANITATION REQUIREMENTS:** No restrooms are proposed on the site.
- 11. FIRE PROTECTION:** The parcel is within the Ontario Rural Fire District.
- 12. NATURAL HAZARDS:** Parcel is in the 100 year floodplain.
- 13. WATER RIGHTS:** No water rights on property.
- 14. ZONING HISTORY:** In 1984 this parcel's zoning was changed to O-I2(UGA) through Ordinance #32.

I. OREGON ADMINISTRATIVE RULE 660-023-0180(3)(a)

3. An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:
 - a. A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;

FINDING: The quantity of aggregate proposed on this site is approximately 220,000 tons and is therefore below 500,000 tons.

II. MALHEUR COUNTY CODE 6-3E-5-1(A)(2)

The county shall have lead authority to implement and administer the city plan within the UGA and URA. The county adopts, and incorporates by reference, the current (current as of the date of this agreement) city plan, as it applies to the UGA, and the current urban area land use designations map and implementing development regulations.

III. ONTARIO MUNICIPAL CODE 10A-52-165 – PERFORMANCE STANDARDS

Each structure or use permitted as of right or conditionally in the UGA I-2 Zone shall meet the following performance standards:

1. Conduct of use. No permitted or permissible use shall be conducted in any manner which would render it noxious or offensive by reason of dust, refuse matter, odor, smoke, gas fumes, noise, vibration or glare. Possession of permits from the appropriate State agency shall be considered satisfaction of this criterion.

FINDING: The operation of gravel mining will be conducted without noxious or offensive results through managed dust control and permitting through DOGAMI. No objectionable refuse matter, odor, smoke, gas fumes, noise, vibration or glare will occur during the mining operation.

2. Enclosure. All manufacturing or processing activities shall be completely enclosed in buildings, except as provided by the conditional use section of this Chapter.

FINDING: No manufacturing or processing activities will occur on the mining site. Overburden will be removed and used for berms to enclose the mining area or stock-piled, gravel will be excavated and taken to the existing processing facility on a connected but different parcel.

3. Outdoor storage. Junk, salvage, auto wrecking and similar operations shall be fenced, screened or limited in height so as to block substantially any view of such material from any point located on an abutting street or from any point less than eight feet above grade within any abutting residential or commercial zone. However, this Section shall not be

deemed to require more than an opaque fence or screen not more than ten feet in height and not longer than the full perimeter of the subject development site, and further provided such screening may be reduced in height so as to avoid shading a solar collector on adjoining property when so requested by the adjoining property owner or a government official. No outdoor storage of materials which could be blown into the air or strewn about by wind shall be permitted.

FINDING: No junk, auto wreckage or salvage operations will occur on the property.

4. Loading. Truck loading and unloading operations shall take place entirely within the site and shall not be so located as to interfere with pedestrian routes.

FINDING: No loading or unloading operations will occur off the property owned by the applicant; no pedestrian routes will be interfered with.

5. Fire hazard. No operation shall be established which fails to meet the fire code which is adopted into the Ontario City Code and any applicable State or Federal codes.

FINDING: No fire hazard will occur on the mining site, refueling and equipment maintenance will occur at existing facilities off the mining site.

6. Noise. Noise shall be muffled as available technology permits so as to not be objectionable due to intermittence, beat frequency or shrillness and shall meet any State standards.

FINDING: All equipment noise will be muffled to industry standards.

7. Sewage and liquid waste. All operations shall comply with Title 8, Ontario City Code and any applicable regulations of State or Federal agencies responsible for pollution control. No wastes of a chemical, organic or radioactive nature shall be injected or buried in the ground or stored in the open on the surface except in approved containers.

FINDING: No sewage or chemical, organic or radioactive wastes will occur on the site.

8. Odor. The emission of odors that are obnoxious is restricted. Observations shall be made at the property line of the establishment generating the odors by persons designated by the Planning Official; if found objectionable, the operator of the facility must prove that the best available technology has been installed and is working properly, and best management practices are being followed, to control odors from the operation. As a general guide to classification of odor, it is deemed that odors of putrefaction, hydrogen sulfide, fermentation and rendering processes, can be objectionable while odors associated with baking, coffee roasting or nut roasting are normally not considered obnoxious. To reduce odors the open-air cooling of products with aromatic emissions shall be avoided. Floors, machinery storage containers and other surfaces shall be clean of material which is potentially odor causing.

FINDING: No objectionable odor causing activities will occur on the site.

9. Vibrations. All machines shall be mounted so as to minimize vibration. Vibration shall not be so excessive as to interfere with heavy industrial operations on nearby premises, or be deemed significant by the best scientific measurements, on nearby residential or commercial property.

FINDING: No objectionable vibrations are expected from excavation and hauling equipment; no vibratory compactors or drilling equipment will be used on the site and no blasting will occur on the site.

10. Glare and heat. All glare and heat producing operations, such as welding arcs and open furnaces, shall be shielded so that they are not visible from the property line and surfaces near the glare source shall be of a type which will minimize the reflection of such glare beyond the property line. No heat from equipment or furnaces shall raise the temperature of materials or ambient air at the property line more than three degrees Fahrenheit.

FINDING: No glare or heat producing equipment will be used on the site. Earth moving equipment used on site will not raise the temperature of materials or ambient air at any site boundary by more than three (3) degrees Fahrenheit.

11. Interpretation. Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention that a standard is being met. The standards are designed, except where specified or when referring to other codes, to be judged by ordinary human senses and not by the minute detail of scientific quality instruments.

FINDING: The operator will respond to any requests by the City to provide information supporting successful compliance with all standards.

IV. ONTARIO MUNICIPAL CODE 10A-52-170 – SITE STANDARDS

The following site standards shall apply to all uses and developments in the UGA I-2 Zone:

1. Maximum height: None

FINDING: This standard is not applicable to this application.

2. Minimum lot size shall be two acres with the following exception:
 - a. Lots and parcels, or a combination of the same under one ownership, legally existing as of the effective date of this provision that are less than two acres in size may be utilized for any use allowed in the zone; in no case shall a lot or parcel, or combination of the same ownership, be less than the size needed to provide for the use, all required yards and setbacks, off-street parking and loading areas, and for on-site sewage and water facilities.

FINDING: The parcel size is larger than two (2) acres.

3. Yard space requirements:
 - Front yard: 15 feet.
 - Rear yard: 15 feet.
 - Site yard: 15 feet.
 - Maximum lot coverage: not to exceed 90 percent of the total lot area.

FINDING: The toe of the berm surrounding the mining area will be setback from the property boundaries by twenty five (25) feet. No mining or material storage will occur in the setback area.

4. No detached or accessory dwelling structures shall exist in the front yard area.

FINDING: No structures will be placed on the parcel.

V. ONTARIO MUNICIPAL CODE 10A-52-175

The provisions of Sections 10A-01, 10A-05-25 through 10A-05-70, 10A-53, 10A-55, 10A-57, 10B-25 through 10B-56 and 10C shall all apply to UGA I-2 Zone, except where specific standards are set forth herein; all provisions are subject to Title 10-14-06, Urban Growth Joint Management Agreement.

FINDING: All provisions of the above Sections of the Ontario Municipal Code are ministerial actions which will be set during development by the Planning Director.

VI. ONTARIO FRAMEWORK FOR ACTION (see City Staff Report attached)

As is the case of all physical development in the City and its Urban Growth Area, all proposed development uses City streets and facilities. Each new development owes its operation and viability to those developments that preceded it. Each new development is therefore required to do its part to pass-on these City benefits to the next development. The proposed gravel mining development must do its part to perpetuate the “pass-on” benefits of the City. Recognition of that fact is a part of the conditional use permit decision making. The following discussion sets out specific steps that need to be included in the conditional use permit action.

Therefore, it is recommended that a conditional use permit be granted as follows:

1. River Trail: That an easement for City development of a recreational trail be given along the bank of the Snake River for the full length of the Idaho Concrete property river frontage (Tax Lots 18S47 200 and 18S4711C 100). This should be at a width of 100 feet that includes and continues the width of the easement for the City well field recorded under Instrument Number 99-1927. To avoid conflict between citizens and commercial operations Idaho Concrete may stipulate stages of mine operation that must be completed, or the type of security improvements that must be in place before the recreational trail easement may be used. This easement is proposed to be granted as part of a Deferred Improvement Agreement (DIA) between the Jack B Parson Companies and the City of Ontario.
2. Existing East Lane: Dedication of a half street right-of-way of fifty (50) feet shall be

provided for that portion of East Lane running from the north end of tax lot 18S47 200 to the south end of said tax lot owned by Jack B Parson Companies.

3. New East Lane:

- a. Dedication of a full street right-of-way of at least one hundred (100) feet in width (final width will be determined by the final street design) shall be provided for the extension of East Lane crossing Idaho Concrete Company land to the south edge of tax lots 18S4711C 100 and 200. This right-of-way is proposed to be granted as part of a DIA between the Jack B Parson Companies and the City of Ontario.
 - b. It is proposed to allow Idaho Concrete to remove for mining purposes the land below the future right of way of East lane with the understanding that at the complete cost of Idaho Concrete/Jack B Parson Companies this road base shall be replaced to City, County and State road specification and street section constructed as part of the reclamation process of this site. This excavation and reconstruction is proposed to be granted as part of a DIA between the Jack B Parson Companies and the City of Ontario.
4. A ten (10) foot landscape easement shall be provided on Idaho Concrete land immediately adjacent to the half, and the full street right-of-ways of East Lane. This easement is for possible back fill adjacent to the surface street right-of-way for future enhancement of the street's appearance by trees and other plant life. This easement is proposed to be granted as part of a DIA between the Jack B Parson Companies and the City of Ontario.
5. That portion of the proposed expanded mine adjacent to Interstate 84 shall be the manner of a downward one-to-one slope and have a surface separation of at least thirty (30) feet from the east edge of the freeway right-of-way.

CONDITIONS OF APPROVAL

1. The conditional use permit granted by the County is valid for a period of one year from the date the permit becomes effective, which is 10 days after the notice of decision is sent provided there is no appeal.
2. All conditions outlined in section V. ONTARIO FRAMEWORK FOR ACTION be met and agreed upon and supported by bond in the reclamation agreement with DOGAMI.
3. Jack B Parson Companies shall enter into, sign and record with the Malheur County Clerk a Deferred Improvement Agreement (DIA) with the City of Ontario for the conditions outlined in section V. ONTARIO FRAMEWORK FOR ACTION of this report prior to final approval.
4. An Access Management Plan shall be mutually agreed upon by the City of Ontario

Fire Department and the Jack B Parson Companies which outlines how the Department will access this parcel in the case of an emergency.

5. Mining of the approved site will not exceed 500,000 tons of aggregate.

CONCLUSION

Based upon the foregoing findings of fact, the Malheur County Planning Commission makes the following conclusion and decision:

Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for aggregate mining in an exclusive farm use zone.

ORDER

This application for a conditional use permit is approved.

APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a \$200.00 appeal fee with the Planning Department not later than 5:00pm on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by fax or email. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court an adequate opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record of the hearing made before the Commission. Therefore, no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten (10) days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.

Planning Commission Chair
Kathy Clarich

Date