

Before the Planning Commission

Planning Department File No. 2019-12-010

**APPLICATION FOR
Conditional Use Approval for Aggregate Mining in EFU Zone
And Addition of Mining Site to Malheur County Inventory of Significant Goal 5 resources.**

Planning Commission Meeting Date: February 27, 2020

1. **APPLICANT:** Rural Road Assessment District # 3
230 N Oregon Street
Ontario, OR 97914
2. **PROPOSED ACTION:** Conditional use approval for aggregate mining in the C-A1 zone and designation of the proposed mining area as a Goal 5 significant resource.
3. **PROPERTY IDENTIFICATION:** Tax Lot 1500, Map 17S47E19, Reference No. 6954, Malheur County.
4. **PROPERTY LOCATION AND DIRECTIONS:** At the northeast corner of Community Road and Ontario Heights Road in Ontario, Oregon.
5. **ZONING:** C-A1 Exclusive Farm Use
6. **PARCEL SIZE:** The parcel is 77.9 acres. The Application is for 13.4 Acres of the parcel.
7. **PARCEL USE:** Farm/Residential.
8. **SURROUNDING USE:** Existing aggregate mining to the East and North; Farm/residential use to the South and West.
9. **ACCESS:** Via existing road approach on Community Rd.
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 not in the 100-year floodplain.
13. **WATER RIGHTS:** No water rights on property for this use. Well in use for residence
14. **ZONING HISTORY:** This parcel has historically been in residential and agricultural use.

Applicable Approval criteria and proposed findings based on evidence presented by the applicant in the application and at the Planning Commission hearing.

I. DLCD criteria for designation as a Significant Goal 5 Resource are in OREGON ADMINISTRATIVE RULES -- OAR 660-023-0180.

I. Quantity and Quality of Aggregate

-- *OAR 660-023-0180(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 Applicant has provided analyses on abrasion, soundness, air degradation, and quantity conducted by licensed geotechnical engineers.

The assessments submitted by the applicant, demonstrate that the quantity of aggregate on the proposed mining area of this site is approximately 638,000 tons.

The abrasion tests were conducted under the AASHTO T96 standard, and resulted in a maximum 24% loss. ODOT maximum loss specifications are 35% for this test.

Soundness tests were done under the AASHTO T104 standard, and showed a maximum 2.9% loss. ODOT maximum loss specifications for this test are 12%.

Air degradation tests were done under the AASHTO T87 standard, and showed a maximum percent passing of 2.9% and a sediment height of .2”. The ODOT maximum passing percentage is 30% and 3” sediment height.

The quality assessment submitted by the applicant shows that the air degradation, abrasion, and soundness of the rock on the site exceeds all applicable ODOT standards. This site is outside of the Willamette Valley. This site therefore meets the quantity and quality requirements of OAR 660-023-0180(3)(a).

2. Local Government Procedure

OAR 660-023-0180(5):

“For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.”

OAR 660-023-0180(5)(a):

“The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.”

OAR 660-023-0180(5)(b)

“The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:”

FINDING: The impact area is determined to be 1,500 feet from the boundaries of the mining area. Relevant findings are set forth below under individual headings below.

3. Noise and Dust Conflicts

OAR 660-023-0180(5)(b) (A)

“Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;”

FINDING: There are three homes within 750 to 1,500 feet of the proposed aggregate mine. There are no schools within 1,500 feet. In its operation plan applicant provides that mining of gravel will take place within the mine and below grade, or behind berms built from overburden to control noise impacts; and all processing operations will be set back more than the 200 ft. from the property line as required

by Malheur County Code 6-6-8-4 (6)(B). Operations will be limited to weekdays and daytime hours. Trucks will water down work areas as necessary to mitigate dust. Requirements of OAR 660-023-0180(5)(b)(A) for identifying conflicts are met.

4. Traffic Conflicts

OAR 660-023-0180(5)(b)(B)

“Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;”

FINDING: There are potential minor conflicts to local roads within one mile of the mining site. Community Road and Ontario Heights Road are the roads used for access to the mining site and both are in good and serviceable condition. The entrances to the mine site off Community Road and Ontario Heights Roads have clear sight distances for over 200 feet in each direction. These roads have some pre-existing light traffic from residences and agricultural operations and additional traffic from the aggregate mining operation to the north. But based upon the evidence submitted by the applicant, the roads are not over capacity from the existing uses, and the added traffic from applicant’s mine use will not increase traffic in the area beyond the capacity of the existing road network.

5. Safety Conflicts

OAR 660-023-0180(5)(b) (C)

“Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;”

FINDING: There are no conflicts because there are no public airports in the vicinity and there will be no open water or other bird attractants on site.

6. Other Goal 5 Resource Conflicts.

OAR 660-023-0180(5)(b) (D)

“Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;”

FINDING: The only other Goal 5 resource site within the impact area is another aggregate mine. There are no conflicts with Goal 5 resources. This requirement is met.

7. Agricultural Practices Conflicts

OAR 660-023-0180(5)(b) (E)

“Conflicts with agricultural practices;”

FINDING: Based upon the noise and dust control provisions in the applicant’s operation plan, the hours of operation, and the light traffic on access roads there will be no conflicts with agricultural practices. This requirement is met.

8. Other Conflicts

OAR 660-023-0180(5)(b)(F)

“Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to [ORS 517.780](#).”

FINDING: The County’s ordinances do not supersede the Oregon Department of Geology and Mineral Industries (DOGAMI) regulations. Pursuant to County ordinances, Applicant must obtain DOGAMI approval of a reclamation plan as a condition of approval of a conditional use permit for the mine, so this section does not apply.

9. Measures to Mitigate Conflicts

OAR 660-023-0180(5)(c)

“The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of [ORS 215.296](#) shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.”

FINDING: Conditions to minimize any potential conflicts are being imposed pursuant to the Malheur County Code Conditional Use requirements.

10. Conflicts that Cannot be Minimized.

OAR 660-023-0180(5)(d)

“The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized.”

FINDING: There are no significant conflicts under the requirements of *OAR 660-023-0180(5)(c)* that cannot be minimized. This requirement is met.

II. MALHEUR COUNTY CODE

Malheur County Development Code Provisions with approval Criteria.

1. **Allowed as a Conditional Use.** Section 6-3A-3 of the Code specifies conditional uses allowed in the County's EFU zones including:

"E. Operations conducted for:

3. Mining of aggregate and other mineral resources or other subsurface resources subject to section 6-4-7 of this title.

4. Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement.

5. Processing of other mineral resources and other subsurface resources."

FINDING: The Applicants Mine as described in its operations plan and application is allowed as a conditional use in the applicable zone.

2. **Conditional Use Criteria.** Malheur County Code Chapter 6 governs conditional uses.

Section 6-6-7 specifies general approval criteria:

Section 6-6-7:

In considering the suitability of proposed conditional uses, the planning commission shall base its decision upon the following criteria:

"A. Comprehensive Plan Goals: Comprehensive plan goals and policies, as applicable."

Goal 1- Citizen Involvement and Goal 2 Land Use Planning

FINDING: Met by the County hearings process on this application and prior hearings on the adoption of the County Plan and Zoning Ordinance.

Goal 3 Agricultural Lands

FINDING: Met through a) continued use of the property for agricultural uses during and after mining; b) non-interference with surrounding agricultural uses; c) No part of the property is high value Farm Land Soils (types I through III) d) consultation with the applicable Irrigation District.

Goal 4 Forest Lands

FINDING: Does not apply

Goal 5 Protection of Resources

FINDING: Met through identification of high-quality aggregate site and protection of that site for use. No inventoried Goal 5 resources conflict. Conflicts with other uses limited through means described in application.

Goal 6 Air, Water, and Land Quality

FINDING: Met through operational restrictions that eliminate impact on air, water and land quality.

Goal 7 Natural Disaster and Hazards

FINDING: Met. No special Natural Disaster or Hazards identified.

Goal 8 Recreation

FINDING: Met. No recreational opportunities on site and none significantly negatively impacted.

Goal 9 Economy

FINDING: Met through development of natural resources, and the availability of the aggregate for road maintenance will assist in the maintenance of the transportation network.

Goal 10 Housing

FINDING: Met through maintaining existing housing, and keeping road costs as low as is practical.

Goal 11 Public Facilities and Resources

FINDING: Met through providing the Road District #3 with a reliable, economic, and long-term protected supply of high-quality aggregate for road maintenance.

Goal 12 Transportation

FINDING: Met through providing the Road District with a reliable economic, and long term protected supply of high-quality aggregate for road maintenance.

Goal 13 Energy

FINDING: Met through providing the Road District with a local reliable, economic, and long term protected supply of high-quality aggregate for road maintenance without the energy impact of hauling for longer distances.

Goal 14 Urbanization

FINDING: Does not apply.

B. Specific Plans: Specific plan recommendations.

FINDING:None.

C. Developments And Viewpoints: Existing development and viewpoints of property owners in the surrounding area.

FINDING: There are no identified viewpoints of surrounding property owners, so the criteria are met.

D. Services And Utilities: Availability of services and utilities.

FINDING: Services and Utilities are available as needed, so the criteria are met.

E. Effect: The effect of the proposed use on the stability of the community's social and economic characteristics.

FINDING: There will be no effect on the stability of the community's social and economic characteristics, so the criteria are met.

F. Fish And Wildlife: It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the fish and wildlife habitat protection plan for Malheur County. (Ord. 86, 12-7-1993)

FINDING: There are no identified critical or sensitive fish or wildlife habitat protection areas on or near the site identified in the Malheur County Plan, so the criteria are met.

G. General Criteria:

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

FINDING: There are no structures proposed, so the criteria are met.

2. Landscaping improvements for the visual benefit of the subject site and for the improved appearance of the neighborhood and county.

FINDING: The berms proposed with seeding will protect the appearance of the neighborhood and County, so the criteria are met.

3. Location and size of driveway access points and right of way widening and improvement for present and future traffic circulation consistent with the adopted county road standards or the standards of the appropriate road district and the access management standards of the Malheur County transportation system plan.

FINDING: The site plans submitted by the applicant and letter from Road District #3 show compliance with the County standards, so the criteria are met.

4. Visual screening of outdoor waste and storage areas.

FINDING: Visual screening will be achieved by the berms to be constructed, so the criteria are met.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

FINDING: No special outdoor lighting will be used, so the criteria are met.

6. Special criteria listed below, as applicable. (Ord. 125, 6-20-2000)

H. Allowance Of Certain Uses: A use allowed under section 6-3A-3 of this title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

FINDING: The proposed mine's operating hours, along with noise and dust control measures identified by the applicant will result in there being no significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, so the criteria are met.

2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

FINDING: The proposed mine's operating hours, along with noise and dust control measures identified by the applicant will result in there being no increase in the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use, so the criteria are met.

CONDITIONS OF APPROVAL

1. Final approval of the Conditional Use Permit is subject to approval of a reclamation plan by the Oregon Department of Geology and Mineral Industries
2. The post acknowledgement plan amendment including the subject site identified as a significant aggregate site in the Goal 5 resource inventory must be approved by the Malheur County Court and take effect prior to any mining on the property.

CONCLUSION

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

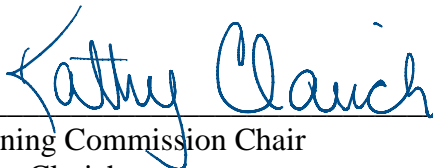
Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for an aggregate mining site in an exclusive farm use zone.

ORDER


This application for a conditional use permit is approved and the Planning Commission recommends approval of the post-acknowledgement plan amendment to the Malheur County Court.

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