

STAFF REPORT

Planning Department File No. 2021-03-010

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: May 27, 2021

1. **APPLICANT:** Darren Lee
515 Noble Rd
Ontario, OR 97914
2. **OWNER OF RECORD:** Dallas Head
5560 Hwy 201
Ontario, OR 97914
3. **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.
4. **PROPERTY IDENTIFICATION:** Tax Lot 3200, Map 16S47E, Reference No. 15139, Malheur County.
5. **PROPERTY LOCATION AND DIRECTIONS:** West of the intersection of Hwy 201 and Mesquite Road, about 1 mile west on Mesquite Rd. Ontario, Oregon.
6. **ZONING:** C-A1 Exclusive Farm Use
7. **PARCEL SIZE:** The parcel is 308.42 acres. The Application is for 54 acres of the parcel.
8. **PARCEL USE:** Farm/Residential.
9. **SURROUNDING USE:** Existing aggregate mining to the West; Farm/residential use to the South and East and North.
10. **ACCESS:** Via existing road approach on Mesquite Rd.
11. **SANITATION REQUIREMENTS:** No restrooms are proposed on the site.
12. **FIRE PROTECTION:** The parcel is within the Annex Rural Fire District.
13. **NATURAL HAZARDS:** Parcel is not in the 100-year floodplain.

14. WATER RIGHTS: No water rights on property for this use. Well in use for residence

15. 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;”*

PROPOSED FINDINGS: The Applicant has provided analyses on abrasion, soundness, air degradation, and quantity conducted by a licensed geotechnical engineer.

The assessments submitted by the applicant, demonstrate that the quantity of aggregate on the proposed mining area of this site is approximately 3.06 M tons.

The abrasion tests were conducted under the AASHTO T96 standard, and resulted in a maximum 20% loss. ODOT maximum loss specifications are 30% for this test.

Soundness tests were done under the AASHTO T104 standard, and showed a maximum 0.6% loss. ODOT maximum loss specifications for this test are 12%.

Air degradation tests were done under the AASHTO T96 standard, and showed a maximum percent passing of 2.6% and a sediment height of 0.1”. 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 meets or 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:”

PROPOSED 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;”

PROPOSED FINDING: There are six 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. The floor of the pit is gravel covered hardpan minimizing any dust and does not break down in the wet months eliminating muddy

trucks leaving the quarry. 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;”

PROPOSED FINDING: The entrance to the quarry, around the corner on Jasmine Rd is also used as the old State pit. Jasmine Rd is a dead-end road used by 5 households and will be only used for about ¼ of a mile in total. Mesquite Rd is currently used by ongoing gravel operations in the Dehaven pit. Although Jasmine Rd is not a high traffic road, a new approach will need to be established and culverts will be required for this approach as per Malheur County Road Department requirements.

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;”

PROPOSED 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;”

PROPOSED 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;”

PROPOSED 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](#).”

PROPOSED 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.”

PROPOSED 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.”

PROPOSED 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."

PROPOSED 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

PROPOSED 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

PROPOSED FINDING: Met through a) continued use of the property for agricultural uses during and after mining; b) non-interference with surrounding agricultural uses; c) there is a small part of the property that is high value Farm Land Soils (types II and III) that are outside the proposed mining area d) consultation with the applicable Irrigation District.

Goal 4 Forest Lands

PROPOSED FINDING: Does not apply

Goal 5 Protection of Resources

PROPOSED 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

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

Goal 7 Natural Disaster and Hazards

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

Goal 8 Recreation

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

Goal 9 Economy

PROPOSED 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

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

Goal 11 Public Facilities and Resources

PROPOSED FINDING: Met through providing the Malheur County citizens with a reliable, economic, and long-term protected supply of high quality aggregate.

Goal 12 Transportation

PROPOSED FINDING: Met through providing an economic, and long term protected supply of high quality aggregate for road maintenance.

Goal 13 Energy

PROPOSED FINDING: Met through providing 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

PROPOSED FINDING: Does not apply.

B. Specific Plans: Specific plan recommendations.

PROPOSED FINDING: None.

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

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

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

PROPOSED 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.

PROPOSED 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)

PROPOSED 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.

PROPOSED 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.

PROPOSED 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.

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

4. Visual screening of outdoor waste and storage areas.

PROPOSED 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.

PROPOSED 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

PROPOSED 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)

PROPOSED 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.

PROPOSED 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.
3. A new approach must be established and culverts will be required for the Jasmine Rd approach as per Malheur County Road Department requirements.

EXHIBITS

1. Gravel Quality Analysis
2. Letter from Petra Blasting & Drilling
3. Operations Plan
4. Reclamation Plan
5. Traffic Impact Assessment Map
6. Letter from Malheur County Road Master
7. Letter from Payette Rural Fire