

Before the Malheur County Planning and Zoning Commission

Planning Department File No. 2021-03-010

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

Planning Commission Meeting Dates: May 27, 2021, June 24, 2021, and July 22, 2021

1. **APPLICANT:** Darren Lee
515 Noble Rd
Ontario, OR 97914
2. **OWNER OF RECORD:** Dallas Head
5560 Hwy 201
Ontario, OR 97914
(signed Application but did not appear at hearings)
3. **PROPOSED ACTIONS:** Conditional use approval for aggregate mining in the C-A2 Zone (Exclusive Range Use or ERU Zone) and designation of the proposed mining area as a Goal 5 significant resource within the County’s Comprehensive Plan (PAPA).
4. **PROPERTY IDENTIFICATION:** Tax Lot 3200, Map 16S47E, Reference No. 6207, Malheur County.
5. **PROPERTY LOCATION AND DIRECTIONS:** West of the intersection of Hwy 201 and Mesquite Road; then about 1 mile west on Mesquite Rd. Ontario, Oregon.
6. **ZONING:** C-A2 County Exclusive Range Use. Soils are unclassified on the parcel according to NRCS maps.
7. **PARCEL SIZE:** The parcel is 261.42 acres. The Application is for the entire parcel.
8. **PARCEL USE:** Farm/Residential
9. **SURROUNDING USE:** Existing aggregate mining to the West; farm/rural residential use to the South, East and North.
10. **ACCESS:** Construct a new access road on an old haul road up the draw, turning south to and across Jasmine Rd. then a 90° angle onto Mesquite Rd. (Applicant originally proposed to access the mining operation only from Jasmine Road).
11. **SANITATION REQUIREMENTS:** No restrooms are proposed on the site.
12. **FIRE PROTECTION:** The parcel is within the Payette, Idaho Rural Fire District.

- 13. NATURAL HAZARDS:** Parcel is not in the 100-year floodplain.
- 14. WATER RIGHTS:** No water rights are attached to the property. A domestic well is used for the Dallas Head residence.
- 15. ZONING HISTORY:** The parcel has historically been in residential and agricultural use.

Applicable approval criteria and findings based on the record made at the Malheur County Planning and Zoning Commission (“PZC”) hearings are set forth below.

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

FINDING: The burden of providing the information necessary to place a resource site on Malheur County’s Goal 5 inventory falls on the Applicant, not on the local government. Each criterion must be met by substantial evidence placed in the record.

1. Quantity, Quality and Location 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 significance of an aggregate site is determined based on the product of three elements: location, quality and quantity.

LOCATION

Applicant requests the entire site (approximately 261.42 acres) to be deemed significant and added to the Malheur County Comprehensive Plan as a significant Goal 5 aggregate resource (Exhibit 20 -Amended Operation Plan). This request was unclear from Applicant’s original Operation Plan, which illustrated two phases or mining areas totaling 54 acres (Exhibit 3 – Operation Plan). A legal description of the site or a survey of the boundaries of the aggregate deposit was not submitted with the Application or orally presented to the PZC. Applicant submitted a map with Phase I, Phase 2 and Phase 3 areas for mining (Exhibit 20). Owyhee Irrigation District testified that the boundary

for Phase 3 as depicted on Applicant's map was not accurate and included land of Bureau of Reclamation (Testimony of Clancy Flynn – PZC July 22, 2021).

Also, with respect to location, information and data from the quality (Exhibit 1) and quantity (Exhibit 2) analyses do not enable the PZC to specify the location of the aggregate deposit with a reasonable degree of accuracy as testing or analyses was not done throughout the entire site. The number of test holes or their location for quality testing were not identified or illustrated on any map provided by Atlas or Petra. Quantity data was limited to four defined and small locations identified as- borrow area 1, borrow area 2, misc. gravel and misc. gravel area 2 (See Appendix A of Exhibit 2). The quantity data areas total approximately 42 acres and do not coincide with Phase 1, Phase 2 and Phase 3 of Applicant's mining Operation Plan (Testimony of Tina Cassity and Dinah Lord at the PZC hearing of July 22, 2021). For instance, misc. gravel is almost entirely outside of Phase 3 and not included within any other proposed mining phase and borrow 2 is a small 8-acre section in the southeast corner of Phase 3. This data is not a representative sampling of the total Phase 3 area.

Location of the parcel is met. Location of the aggregate resources for the entire site is not met.

QUALITY

Applicant provided analyses of aggregate material on the site for air degradation, abrasion and soundness from an Oregon licensed geotechnical engineer with Atlas Technical Consultants, LLC (Exhibit 1). Atlas did not provide a quantity analysis.

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.

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%.

The Gravel Quality Analysis (Exhibit 1) does not illustrate on a map or identify the number of holes used to run a composite sample of the aggregate deposit. The Gravel Quality Analysis does not specify whether the aggregate deposit is homogeneous, thereby running a composite sample taken from a number of different test holes or if the aggregate deposit is not homogeneous thereby running tests on representative number of samples taken from specific core drillings.

For these reasons, the PZC finds that there is not adequate information in the record to support that the quality of gravel on the entire 261.42 acres meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness.

QUANTITY

Applicant submitted a letter from Petra Drilling and Blasting, California (Exhibit 2) which estimates the quantity of aggregate to be 3.06 million tons. The quantity analysis consisted of a field investigation of four (4) excavated or partially exposed areas exposing aggregate depth. These field locations were two (2) borrow areas and two (2) miscellaneous gravel piles described as follows:

“Borrow pit one as depicted in appendix a, extends roughly 1,000’ East to West and 1,500’ North to South, the test pits in the area revealed 20’ of viable borrow material, equating to ~2.4m tons expected borrow using 160 lbs/ft³.

FINDING. This borrow is approximately 34 acres.

Borrow pit two as depicted in appendix a, extends roughly 700’ North to South and 500’ East to West, test pits indicate similar geology as borrow pit 1 including approximately 20’ deep of borrow material, equating to ~560k tons expected borrow also using 160 lbs/ft³.

FINDING. This borrow is approximately 8 acres.

Additionally there are two miscellaneous gravel piles as depicted in appendix a, these two piles are partially exposed and/or mined, due to inconsistent geology the estimates for these areas are ~100k tons.”

FINDING: The dimensions of the piles and depth of the aggregate are not specified when making the estimated quantity of 100,000 tons from the two gravel piles.

The quantity analysis report (Exhibit 2) does not demonstrate that it was based upon a representative number of test holes/areas on the entire site but rather illustrates testing in a limited, small and 4 select areas of the site. Verification of depth of overburden at the site, type of aggregate found, homogeneity and known depth of aggregate resource are factors that should be set forth to adequately demonstrate quantity. Although Applicant met the minimum quantity threshold of 500,000 tons of aggregate material for a significant site determination outside of the Willamette Valley, the PZC finds that a reasonable accurate estimate of the amount of available aggregate for the entire site has not been met.

CONCLUSION

The PZC finds that there is not adequate information in the record regarding the location, quality, and quantity of the aggregate source. The PZC recommends that the Malheur County Court deny the request to add this aggregate site to Malheur County Comprehensive Plan’s Goal 5 Inventory. The Applicant did not submit very specific information that had a high degree of reliability to place the entire site on the Goal 5 inventory.

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.”

FINDING: The Application was accepted by the Malheur County Planning Director on March 23, 2021. Applicant stipulated to waive the requirement for a final decision within 180 days after receipt of his application (September 23, 2021) and voluntarily agreed on the record to have the PZC meetings continued.

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 was determined to be 1,500 feet from the boundaries of the property. No factual information was presented during the hearings to indicate significant potential conflicts beyond this distance.

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: Applicant withdrew from his Application (Exhibit A) the request for a concrete or asphalt plant and processing. The Application is only for mining and stockpiling of aggregate.

NOISE

There are ten (10) home sites with 7 dwellings within the 1,500 feet impact area. There are no schools. The home sites are existing or approved land uses. In the Application (Exhibit A), Application Supplement (Exhibit B) and Applicant’s Operation Plans (Exhibit 3 and Exhibit 20), Applicant states that mining will occur behind 12-foot earth berms naturally created by quarry activity to control noise impacts. The location, length and width of the berms as mining operations occur was not provided. One residence to the southeast of the site (Dickinson residence – testimony of Patty Dickinson at PZC of July 22, 2021) is much higher in elevation and a 12-foot berm coupled with a 350’ setback will not mitigate the noise or dust impact for this residence.

Applicant proposes greater distance buffers between the mining activity and the 5 closest home sites (Gerulf, Lord, Dickinson, Hastings/Lightbridge Organics - 2 sites) to the east and south of the property to mitigate noise. The additional setbacks range from 350’ to 1050’ (Exhibit 20). Applicant states that Phase 1 of the mining operation was moved across Jasmine Rd for additional noise mitigation.

Noise levels expressed in decibels was not addressed by Applicant.

Chad Gerulf testified that a 12-foot berm pushed up with a CAT will not mitigate noise or dust (Minutes of PZC July 22, 2021).

DUST

Applicant states that the floor of the pit is gravel and covered in hardpan which minimizes the creation of dust. Applicant proposes to control dust “if it becomes an issue” (See Exhibit 3) with the availability of a water truck. How and where the water will be obtained for the truck, how often water will be sprayed and the capacity of the truck in order to control dust was not provided by Applicant. (Testimony of Chad Gerulf and Bill and Riley Downing at PZC hearing of July 22, 2021). Applicant testified that it was not anyone’s business where he got water and he recently got 20,000 gallons of water from the City of Weiser. The PZC disagrees. Source of water is a matter for the PZC, especially if a well will be drilled and water will be used as a measure for dust abatement.

CONCLUSION

The PZC finds that the record does not contain adequate information to demonstrate noise and dust from the proposed aggregate mining operation will be mitigated. Applicant does not have a thorough or single comprehensive Operation Plan supported by substantial evidence in the record. The Plan totals 4 pages (Exhibit 3 and Exhibit 20) and is supplemented by little information and conclusory statements in the Application (Exhibit A) and Application Supplement (Exhibit B). In order to mitigate noise, dust and other discharges Applicant needed, at minimum, to present an Operation Plan that provided detailed hours of operation; months of operation; dimension of berms; capacity, source and scheduling of watering; noxious weed control plan; groundwater protection measures, traffic count, intersection design and description of trucks used in operations, etc. Requirements of OAR 660-023-0180 (5)(b)(A) for identifying and mitigating conflicts are not 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: An existing quarry road to Jasmine Road was originally proposed by Applicant for access. Jasmine Road is a steep and narrow county road maintained by the Ontario Rural Road Assessment District No. 3 (Road District No. 3). Jasmine Road leads to the top of a hill. Multiple residents use Jasmine Road to access their homes and children walk up and down Jasmine Road to access the bus

stop. Public agencies (Malheur County Roadmaster- Exhibit 8 and Road District No. 3 -Exhibit 9) and neighbors (Hastings -Exhibit 10A; Lord -Exhibit 10B and Gerulf - Exhibit 16) testified that Jasmine Road would not be safe for ingress and egress to the mining site. The PZC, by consensus, agreed.

Alternatively, Applicant proposes to use an old dirt road, cross Jasmine Road and travel upon Mesquite Road as the access to the site (Exhibit 20). Mesquite Road and Jasmine Road are County Roads, identified as a local access roads in the County Transportation Plan. Mesquite Road is partially paved, partially graveled and maintained by Road District No. 3. No drawings, specifications or plans were submitted by Applicant to ensure this proposed access to Mesquite Road and crossing at Jasmine Road would be developed to meet fire and Road District No. 3 requirements. A letter supporting fire access was not provided by Payette Rural Fire (Payette Fire addressed access as presented in original Application – Exhibit 7). Public agency testimony from Road District No. 3 stated that inadequate information was provided in order for it to determine if the road base of Mesquite is capable to withstand use from the mining operation without accelerated deterioration. Road District No. 3 requested a traffic impact letter showing amount and types of trucks and an engineered or drafted approach showing dimensions and materials that would be used to construct crossing at Jasmine and the access onto Mesquite Rd. (Exhibit 25). Applicant testified that his trucks run between 50,000 and 80,000 pounds (Minutes PZC of July 22, 2021). Number of trucks, types of trucks and number of trips was not provided.

Applicant lists an access gate to mitigate traffic conflicts. No specifications for this mitigation measure were provide.

CONCLUSION

The PZC finds that the record contains inadequate information to determine any potential conflicts to local roads from access and egress to the mining site within one mile of the entrance of the site.

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 airport safety conflicts applicable to this criterion. There are no public airports in the vicinity (Ontario Airport is 10 miles away and Payette Airport is 7 miles away). The proposed mining site has no open water impoundments or other bird attractants that would interfere with airport planning.

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: There are two Goal 5 resource sites within the 1500’ impact area. They are aggregate sites identified on the County’s inventory list as:

	Goal 5			
	Designation	Section	Township	Range
Rural Road Assessment #3	1C	NW1/4SE1/4 18	16S	47E
Rural Road Assessment #3¹	1C	NE1/4 18	16S	47E

These Goal 5 aggregate sites do not have a planning or zoning or DOGAMI permit for mining. There are no conflicts with these sites or other Goal 5 resources. There is wildlife and game as set out by Hastings Exhibit 10 A, however they are not protected as a Goal 5 resource (i.e. big game, sage grouse plans for State of Oregon Fish and Wildlife or Malheur County).

7. Agricultural Practices Conflicts

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

“Conflicts with agricultural practices;”

FINDING: Testimony was received from Tyson Cameron from Treasure Valley Farms (Minutes of PZC July 22, 2021). A buried irrigation pipe, which pipes water from the Snake River to property owned and operated by Treasure Valley Farms is located on the subject parcel. Treasure Valley Farms is over 2000 acres. No information is contained in the record on how the Applicant will ensure that the pipeline/easement will be protected in order to ensure that mining operations will not conflict with Treasure Valley Farms’ agricultural practices. The access road proposed by Applicant goes right over the top of the mainline that feeds the canal ditch.

Additionally, the access road has an inadequate private (Dallas Head is owner) culvert crossing which crosses a canal owned by the Owyhee Irrigation District near Mesquite Road which if collapsed would not only damage personal property but would hinder the ability of the Irrigation District to provide water to their patrons and therefore significantly impact nearby agricultural practices. (Exhibit 12; Testimony of Clancy Flynn – PZC hearing of July 22, 2021). Owyhee Irrigation testified that the crossing needs improved with widening, pipe, and concrete head walls on both sides (Testimony Clancy Flynn – PZC hearing of July 22, 2021). Construction of improvements cannot occur during irrigation season as it would interfere with agricultural irrigation practices.

¹ Tax Lot 5900. Pit referenced by Clancy Flynn in his testimony before PZC of July 22, 2021.

Hastings/Lightbridge Organics LLC own a 30- acre organic farm operation/field *directly* to the east of the proposed mining site. The field is irrigated with waters rights from Owyhee Irrigation and produces a variety of row crops including wheat, barley, oats, alfalfa, and grass. *Directly* to the south of the proposed site is the Lightbridge Organics’ pasture and grazing land. The land is used to raise organic livestock of several varieties (Exhibit 10 A). No mitigating evidence was presented by Applicant (other than a proposed 100’ buffer on Exhibit 20) to demonstrate that the mining operation would not interfere with these farming practices and in particular to the highly sensitive agricultural use of Hastings/Lightbridge Organics LLC to avoid herbicide, pesticide, synthetics, and airborne pollutants.

CONCLUSION

There is not enough evidence on the record to demonstrate that conflicts with agricultural practices will be mitigated by Applicant. This requirement is not 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 ordinance (Malheur Code 6-6-8-4) Applicant must obtain DOGAMI approval for his reclamation plan as a condition of approval. DOGAMI is the final decision on approval of a reclamation plan. This requirement 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 of approval as measures to minimize conflicts could be imposed pursuant to the Malheur County Code for a conditional use application that is approved. The PZC considered multiple conditions (i.e. “any damage to the crossing or the irrigation system at the access road crossing is the responsibility of the Applicant” – Exhibit E) in which the PZC could apply in order to minimize any impacts so as not to force a significant change or costs to agricultural practices. However, ultimately the PZC concludes that Applicant did not meet his burden of proof by substantial evidence in the record in order to properly evaluate conflicts

and impose any such conditions/asures to minimize their impacts. Accordingly, this criterion is not applicable or met as the conditional use permit to mine is denied.

CONCLUSION

The PZC finds that imposition of a condition of approval cannot remedy the incompleteness of information provide by Applicant in his Operation Plans (i.e. road access, pipeline to farming operations, irrigation culvert) and therefore the PZC is not able to determine if there are any reasonable and practical measures that would minimize conflicts and costs to agricultural practices as required by this requirement.

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: The PZC finds that the ESEE consequences of allowing conflicting uses cannot be addressed based on the information provided by Applicant. Applicant did not provide substantial evidence in the record about the mining operation in order for the PZC to properly evaluate the significant conflicts identified to agricultural practices set forth by Owyhee Irrigation, Hastings/Lightbridge Organics LLC and Treasure Valley Farms.

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: Mining is a conditional use in the ERU Zone under the Malheur County Code. Applicant’s application was properly submitted before the PZC. This criterion is met.

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: The Malheur County Planning Commission held a hearing on May 27, 2021. Notice was published in the Argus Observer and mailed to all neighbors within 750 feet of the aggregate site on May 7, 2021. Public notice was also provided on the website of the Malheur County Planning Department. No decision was made at the May 27, 2021 hearing and it was continued to June 24, 2021 at 7:30 p.m. No decision was made on this date and the hearing was again continued to July 22, 2021 at 7:30pm.

At or before the hearings testimony in opposition was received, both in person and in writing, from the following citizens:

**Mike and Dinah Lord
458 Jasmine Road
Ontario, Oregon 97914**

**Michael and Mandi Hastings
464 Jasmine Road
Ontario, Oregon 97914**

**Chad and Jennifer Gerulf
451 Jasmine Road
Ontario, Oregon 97914**

**Patty and Don Dickinson
5120 Power Road
Ontario, Oregon 97914**

**Riley Downing
5151 Power Road
Ontario, Oregon 97914**

**Robert and Tina Cassity
478 Jasmine Road
Ontario, Oregon 97914**

**Tyson Cameron/ Treasure Valley Farms
597 Grove Road
Ontario, Oregon 97914**

Bill Downing

Other than the Applicant, no proponent testimony was received. Public Agency testimony was received from: Road District No. 3, Malheur County Road Department, Owyhee Irrigation District, and Payette Rural Fire.

This criterion is met through the County quasi-judicial hearing process.

Goal 3 Agricultural Lands

FINDING: Not met. The PZC finds that the mining operation as presented by Applicant without a detailed Operation Plan or road access information interferes with surrounding agricultural uses based on the testimony of Hastings/Lightbridge Organics LLC, Treasure Valley Farms and Owyhee Irrigation District.

Findings above to address “7. Agricultural Practices Conflicts” also support that Goal 3 is not met. The conflict analysis in OAR 660-023-0180 (5) requires an analysis of mining conflicts with agricultural and agricultural practices under ORS 215.296. The PZC found the conflicts could not be mitigated.

Goal 4 Forest Lands

FINDING: Goal 4 is not applicable.

Goal 5 Protection of Resources

FINDING: Met. No inventoried Goal 5 resources conflict with proposed use.

Goal 6 Air, Water, and Land Quality

FINDING: Not met. Operation Plan is incomplete and does not propose or address any operational restrictions that eliminate impact on air, water (groundwater) and land quality (irrigated agricultural lands to east and livestock pasture to south).

Goal 7 Natural Disaster and Hazards

FINDING: No special Natural Disaster or Hazards were identified.

Goal 8 Recreation

FINDING: Met. No evidence was presented that recreation would be impacted. No recognized trails or public land hunting opportunities are nearby.

Goal 9 Economy

FINDING: Not met as site is not recommended by PZC for approval to County's Goal 5 inventory list. The PZC has found, with past aggregate applications, that aggregate mining can strengthen the economy of Malheur County when the source is placed on the County's inventory as a significant resource under the protections of Goal 5. Aggregate has benefits to the economy as it is a natural and non-renewable resource. Economic benefits are realized locally when high-quality aggregate is used for Malheur County road maintenance or projects in order to improve the County's transportation network. Applicant did not provide any evidence that the aggregate would be used in Malheur County.

Goal 10 Housing

FINDING: Not met. Conflicts were identified with 10 home sites and 7 dwellings in the impact area. Setbacks, insulation, screening and similar measures were not adequately addressed by Applicant to mitigate conflicts.

Goal 11 Public Facilities and Resources

FINDING: Met. No public facilities (water, septic) or resources are at issue.

Goal 12 Transportation

FINDING: Not met. Road District #3 (Exhibit 25) and County could not determine if use of Mesquite Road and crossing at Jasmine will comply with the County's Transportation Plan or objective road standards. Applicant did not submit any plans, construction drawings, traffic or truck information for the increased use of Mesquite Road. It is not clear whether Applicant's mining use will increase traffic beyond the capacity of local roads and the existing road network within one mile of the mining entrance.

Goal 13 Energy

FINDING: Met. Typically, conflicting uses such as residences do not have identifiable energy-related consequences. There are no substantial energy consequences associated with the location of the aggregate site. The location is not remote or far from market or major transportation routes that would raise the end cost of the aggregate product or increase energy consumption.

Goal 14 Urbanization

FINDING: Goal 14 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:

Property owners in the surrounding area are in opposition to the Application. No testimony from the surrounding area was in favor of the Application. The opposition viewpoints are summarized:

**The mine will significantly impact agricultural practices.
Noise, dust, traffic and other impacts cannot be mitigated.
Inadequate information for location, quality, and quantity.
Inadequate information for conditional use permit.
Quality of rural life and property values will decrease.
Use of local roads present safety concerns and not addressed.
Environmental and health concerns.
Domestic well - quality and quantity will decrease.
Groundwater contamination.**

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

FINDING: Not met. Services and utilities are available to the site from law enforcement, ambulance and Payette Fire. Septic is not required. Applicant does not state if he proposes to drill a well. Irrigation is not required. Electricity is at the site. Road services on Mesquite and Jasmine Roads could not be addressed by Rural Road District No. 3 as Applicant did not submit any traffic or intersection specifications. Road construction standards for the access road to ensure that it can be accessed by fire apparatus and trucks was not provided.

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

FINDING: Not met. The PZC does not recommend the site to the County's Goal 5 inventory as a significant site as a economic benefit for the community. The effect of the proposed use will have a negative effect on the stability of the community's social characteristics. Multiple neighbors testified on the negative social consequences such as dust, noise, road safety, and interference with agricultural and irrigation practices produced by the aggregate operation. These are valid social concerns and Applicant did not provide adequate evidence to demonstrate they could be mitigated.

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 Comprehensive Plan. This requirement is 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 other than a scale and scale house, which will not require increasing setbacks to reduce overshadowing adjoining property from noise, odor or night lighting nuisances.

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

FINDING: Landscaping improvements were not proposed for the site.

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: Not met. See above findings for “Traffic Conflicts” and “Goal 12”.

4. Visual screening of outdoor waste and storage areas.

FINDING: There will not be any outdoor waste and storage areas. Visual screening of stockpiling will be achieved by berms and increased setbacks from homes.

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

FINDING: Met. No outdoor lighting will be used.

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

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: Not met. See above finding for “7. Agricultural Practices Conflicts” and Goal 3.

Malheur County Code 6-6-8-4:

FINDING: Applicant addresses the criteria of Malheur County Code 6-6-8-4 in the Application Supplement (Exhibit B). The information contained in Exhibit B is not detailed and was not updated when Applicant changed access to Mesquite Road and proposed a three-phase mining operation in July 2021 (Exhibit 20).

- A. *Submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to:*
1. *Noise, dust, traffic and visual screening.* **Not met. A specific and detailed operation plan with dimensions, diagrams, drawings, noise decibels, traffic trips and local road use and dust control measures was not provided by Applicant. Earth berms without seedling or other landscape does not provide visual screening.**
 2. *Setbacks from property lines.* **Met with Exhibit 20.**
 3. *Location of vehicular access points.* **Not met. Vehicular access points at Jasmine and Mesquite Roads were identified. How these access point will be developed or constructed to satisfy local road and fire standards was not met by Applicant.**
 4. *Fencing needs.* **Met. The property is enclosed by a 5-strand barb wire fence. The North and West side are protected by the Owyhee Irrigation canal with a steep bank making access from these sides difficult.**
 5. *Prevention of the collection and stagnation of water at all states of the operation.* **Applicant states property is well drained and there should be no collection of stagnation of water during the mining operation. The north and west side of the Property collect water from the hill naturally into the Owyhee Irrigation District canal and the East and South sides of the Property are somewhat flat and sloping to the neighbors. DOGAMI standards for water were not addressed.**
 6. *Rehabilitation of the land upon the termination of the operation.* **Met. This requirement will be met with an approved DOGAMI reclamation plan. This criterion is not in addition to such reclamation plan.**
- B. *In zones where processing is permitted, it shall be located no closer than two hundred feet (200') from residential or commercial uses.*

FINDING: Not applicable. Applicant withdrew processing as part of his application.

- C. *Equipment and access roads shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noise, vibration or dust that is injurious or substantially annoying to livestock being raised in the vicinity.*

FINDING: Not met. Applicant states (Exhibit B) that open space and rolling hills will eliminate noise, vibration and dust for DeHaven livestock below the steep side of

the Property. Organic livestock of Hastings/Lightbridge Organics LLC directly to the south was not addressed.

DECISION AND ORDER

Based on the above findings, the Malheur County Planning and Zoning Commission recommends to the Malheur County Court that it not add this site to the Malheur County Comprehensive Plan Goal 5 Inventory as a significant aggregate resource site.

Based on the above findings, the Malheur County Planning and Zoning Commission denies the application of Darren Lee for a conditional use permit for aggregate mining. The Planning Commission finds that the Applicant did not satisfy by substantial evidence in the record one or more applicable criterion. A denial may be based on the failure of the Applicant to meet *a single* or any one (1) applicable requirement.

DATED this 13th day of August 2021.



Chair, Kathy Clarich
Malheur County Planning and Zoning Commission

INDEX OF EXHIBITS

- A Conditional Use Application
- B. Application Supplement
- C. Map of the proposed site
- D. Staff Report
- E. Supplemental Staff Report

- 1.Gravel Quality Analysis
- 2. Letter from Petra Blasting and Drilling
- 3. Applicant's Operations Plan
- 4. Reclamation Plan
- 5. Traffic Impact Assessment Map
- 6. Letter from Malheur County Road Master
- 7. Letter from Payette Rural Fire
- 8. Letter from Malheur County Roadmaster
- 9. Letter from Ontario Rural Road District
- 10 A. Letter of Opposition from Mike Hastings dated 5/27/2021
- 10 B. Letter of Opposition from Dinah Lord, dated 5/27/2021
- 11. Email from Mike Hastings, dated 5/28/2021
- 12. Email from Owyhee Irrigation District
- 13. Email from Mike Hastings, dated 6/22/2021
- 14. Email from Mike Hastings, dated 6/23/2021
- 15. Email from Robert Cassity, dated 6/24/2021
- 16. Email from Jennifer Gerulf w/ 3 videos
- 17. Email from Robert Cassity, dated 6/24/2021 (with pictures)
- 18. Email from Dinah Lord, dated 6/24/2021
- 19. Email from Bill Downing, dated 7/01/2021
- 20. Amended Plan Head Quarry from Darren Lee
- 21. Email form Patty Dickinson, dated 7/21/2021
- 22. Email and Letter from Mike Hastings, dated 7/20/2021
- 23. Email from Mike Hastings, dated 7/21/2021
- 24. Email from Dinah Lord, dated 7/22/2021
- 25. Letter from Rural Road District
- 26. Email from Robert and Tina Cassity, dated 7/22/2021