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I, Gayle V. Trotter, County Clerk for Malheur County, Oregon certify that the instrument identified herein was recorded in the Clerk records.

Gayle V. Trotter - County Clerk

*Lee*

BEFORE THE COUNTY COURT  
OF MALHEUR COUNTY

In the matter of :	)	ORDER GO-07-21
Application of Darren Lee for Post Acknowledgement	)	
Plan Amendment (PAPA) To Add A Significant Aggregate Site	)	Order Denying PAPA
To the County's Goal 5 Resource Inventory	)	Application;
(Map 16S47E, Tax Lot 3200, Reference No. 6207)	)	Proposed Ordinance
	)	No. 228

**INTRODUCTION**

This matter came before the Malheur County Court ("Court" or "County Court") following de novo quasi-judicial hearings on July 28, 2021 and August 11, 2021. The Malheur County Planning and Zoning Commission ("PZC") recommended denial of Mr. Lee's request for a comprehensive plan amendment to add a new significant aggregate site to the County's Goal 5 resource inventory. The proposed site is commonly identified as Map 16S47E, Tax Lot 3200, Reference No. 6207. The County Court heard testimony and accepted exhibits<sup>1</sup>. The Court also considered the entire record made before the PZC, which is incorporated herein by reference.

The Court deliberated on August 11, 2021. A unanimous County Court voted and determined to follow the recommendation of the PZC to deny Mr. Lee's PAPA application.

**FINDINGS OF FACT**

The recommended findings of facts and conclusions reached by the PZC are satisfactory and supported by substantial evidence in the record. They are adopted with additions and modifications relevant to the hearings and evidence presented before the Malheur County Court. The Court's Findings and Conclusions are attached hereto.

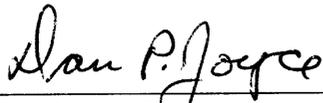
<sup>1</sup> Exhibits include: Memo to Court prepared by Planning Department Staff (with all attachments), Legal Description of the Property, Gravel Quality Analysis, dated 11.20.2020, Map of Test Holes Sites, Map of Past Quarry Activity, Images of Old State Pit, Images of Partially Quarried Exposed Gravel Site, Gravel Quantity and Quality Analysis for the Dehaven Quarry, Email from Mike Hasting, dated 08.09.2021

**ORDER**

NOW THEREFORE the Malheur County Court orders:

1. The PAPA Application of Darren Lee to add property identified as tax lot 3200, Map 16S47E, reference number 6207 as a new significant aggregate site to the County's Goal 5 resource inventory is denied.

Dated this 18th day of August 2021.



\_\_\_\_\_  
Judge Dan P. Joyce



\_\_\_\_\_  
Commissioner Don Hodge



\_\_\_\_\_  
Commissioner Ron Jacobs

## FINDINGS AND CONCLUSIONS OF THE MALHEUR COUNTY COURT

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 ACTION:** Designation of a proposed mining site 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 undeveloped 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:** Septic is not 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.

**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 of PZC -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 of PZC – 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 presented by the Applicant to the PZC. A legal description of the site was provided by Applicant at the July 28, 2021 County Court hearing, but it contained an error and included land outside of the aggregate site. The error was likely a scrivener mistake. However, Applicant was not present at the hearing of August 11, 2021 to clarify or contradict the legal description he provided.**

Applicant submitted a map with Phase I, Phase 2 and Phase 3 areas for mining (Exhibit of PZC - 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 or Land Management (Testimony of Clancy Flynn – PZC July 22, 2021).

Also, with respect to location, information and data from the quality (Exhibit 1 of PZ) and quantity (Exhibit 2 of PZC) analyses do not enable the Court 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 to the PZC. 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 of PZC). 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.

The test hole map provided by Applicant at the July 28, 2021 County Court hearing did not contradict the findings of the PZC. The test holes were illustrated with a black marker on a map. The test holes were not numbered or otherwise identified. The test holes were not a representative sampling of the entire parcel.

Location 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 of PZC). Atlas did not provide a quantity analysis. Atlas did not testify at any hearing, which were conducted at both the PZC and County Court, in part, via electronically/phone/video/computer.

*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 of PZC) does not illustrate on a map or identify the number of holes used to run a composite sample of the aggregate deposit. The test hole map provided by Applicant at the County Court hearing of July 28, 2021 was not adequate in detail or for the entire site. 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, 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 of PZC) 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/ft<sup>3</sup>.*

**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/ft<sup>3</sup>.*

**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 of PZC) 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. At the County Court hearings, Applicant testified that Petra did not visit the site in person due to COVID-19. Rather, the quantity analysis was established through photos, test holes and tape measurements all conducted by Applicant and sent to Petra. Petra did not testify at any of the hearings.

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 Court finds that a reasonable accurate estimate of the amount of available aggregate for the entire site has not been met.

### **CONCLUSION**

The County Court finds that there is not adequate information/substantial evidence in the record regarding the location, quality, and quantity of the aggregate source. The Applicant did not submit thorough information with a high degree of reliability as to location, quality and quantity to place the property on the County’s Goal 5 resource inventory as a significant aggregate site.