

Before Malheur County Planning Commission

Planning Department File No. 2023-08-002

**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: September 28, 2023

- 1. APPLICANT:** Seubert Excavators, Inc.
604 King Street
Cottonwood, Idaho 83522
- 2. PROPOSED ACTION:** Conditional use approval for aggregate mining expansion in the C-A1 zone and designation of the proposed mining area as a Goal 5 significant resource.
- 3. PROPERTY IDENTIFICATION:** Tax Lots 200 and 700, Map 17S4719, Reference No. 6945 and 6946, Malheur County.
- 4. PROPERTY LOCATION AND DIRECTIONS:** From Ontario (near Love's), take I-84 toward Baker City/Portland. Travel approximately 2.5 miles to exit 371 for Stanton Blvd. Turn left on Stanton Blvd. Cross over the freeway. Driveway is the first on the left.
- 5. ZONING:** C-A1 Exclusive Farm Use
- 6. PARCEL SIZE:** The parcels are 19.09 acres.
- 7. PARCEL USE:** Farm/Residential.
- 8. SURROUNDING USE:** Existing aggregate mining to the South; Farm/residential use to the West. Interstate 84 is to the East.
- 9. ACCESS:** Via existing road approach on Ontario Height Road.
- 10. SANITATION REQUIREMENTS:** No restrooms are proposed on the site.
- 11. FIRE PROTECTION:** The parcel is within the Ontario Rural Fire District (see Exhibit 2).
- 12. NATURAL HAZARDS:** Parcel is not in the 100-year floodplain.
- 13. WATER RIGHTS:** The property has water rights. The applicant must beneficially use the irrigation water at least once every five years. Annual O&M charges must also be maintained pursuant to the Irrigation District.

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. Oregon Administrative Rule 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 500,00 tons outside the Willamette Valley;
 - b. The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or
 - c. The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.
 - d. Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:
 - A. More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or
 - B. More than 35 percent of the proposed mining area consists of soil classified as Class II, or a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:
 - i. 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;
 - ii. 25 feet in Polk, Yamhill, and Clackamas counties; or

iii. 17 feet in Linn and Benton counties.

PROPOSED FINDING: Quality of the aggregate materials were conducted by Materials Testing & Inspection, a licensed geotechnical engineer. A report was provided as part of Applicant’s Exhibit C. The laboratory testing program for the report included: Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine Testing – AASHTO T 96, Soundness of Aggregate by Use of Sodium Sulfate – AASHTO T 104, and Oregon Air Aggregate Degradation – ODOT TM 208. The test results indicate that the materials appear to meet the requirements of Oregon Standard Specifications for construction, 2018, Base Aggregate, 02630.1(c) Durability Section.

Also included in Applicant’s Exhibit C is a quality and quantity report from Allwest. Allwest’s sampling also concluded that the aggregate material meets the requirements of Oregon Standard Specifications for construction.

Allwest evaluated tax lots 200, 700 and also 300. It’s important to note the Applicant is seeking approval for only tax lots 200 and 700. A quantity report was not submitted which includes only tax lots 200 and 700. Allwest estimates that all three tax lots contain approximately 1.2 million cubic yards of aggregate. For reference, tax lot 300 is 4.19 acres.

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.
 - 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
 - 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 (see attached map of impact area). The County has identified 6 residences within the 1,500-foot impact area. These residences are as follows:

Map 17S47E19BB

Tax Lot 100

Tax Lot 200

Tax Lot 300

Tax Lot 602

Map 17S47E19

Tax Lot 500

Tax Lot 600

The closest house to the development site (tax lot 500 above) is greater than 600 feet from any portion of the parcel where development is occurring.

In addition to the houses, the only other impact would be to an existing Goal 5 resource in which the Applicant owns and operates. Therefore, there will be no impacts associated with this resource site.

Relevant findings are set forth below under individual headings below.

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: The Applicant will meet this criterion by placing 10-foot high visual and noise barrier berms made of overburden between the operation and neighboring properties. Additionally, excavation will occur approximately 25 to 30 feet below-grade to hardpan. This below-grade placement of operations will create additional visual, noise, and dust. In addition to the measures above, dust abatement will be conducted by using a water truck to wet down the roadways as needed pursuant to Oregon DEQ requirements. The most traveled roads will have magnesium chloride applied for dust abatement.

The applicant will conduct up to two 3-month campaigns for crushing per calendar year. These campaigns will be 5 days per week, Monday through Friday, 24 hours per day. All processing will occur 30-40 feet below the top level of the berm, therefore noise should be mitigated.

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: No conflicts to local roads are anticipated. Truck travel already occurs to and from the Applicant’s existing mining and crushing operation via an existing access from Ontario Heights Road. There will be no increase in traffic weight on the road to and from the expanded operation. The proposed use will not create a need to alter the current location and size of driveway access points, nor will it need ROW widening or improvements on Ontario Heights Road.

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: No conflicts with existing public airports are anticipated.

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.

Agricultural Practices Conflicts – OAR 660-023-0180(5)(b) (E)

“Conflicts with agricultural practices;”

FINDING: The Applicant currently operates a mining and crushing operation on surrounding properties bordering agricultural lands and has done so for nearly 20 years without forcing a significant change to accepted farm practices on neighboring lands devoted to farm use. The expansion of the mining operation onto the new lots is expected to follow this pattern.

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: No other conflicts are anticipated.

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.

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.

7. Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site.)

FINDING:

It is important to recognize that, when identifying and evaluating the ESEE consequences at this stage of the local review process for Seubert Excavators, Inc., a decision to allow mining has already been made. Mining is essential to accessing material from this significant aggregate resource and should be considered part of the resource. Impacts of the mining activity on existing uses will be minimized by measures described in response to OAR 660-023-0180(5)(b). These measures will be included in the plan amendments and implementing ordinances adopted to allow the mining, as required by OAR 660-023-0180(5)(e).

The intention behind Statewide Planning Goal 5 and OAR 660-023 is to protect significant resource sites. This analysis informs options for protecting the

authorized mining activity on the significant resource site. “Conflicting uses” are potential new uses, which are allowed outright or conditionally in the impact area (Exhibit 5) and which could be negatively impacted by mining activity. Sensitivity to the allowed mining activity is what can potentially cause a conflict. OAR 660-023-0040(5) includes the possibility of fully allowing new conflicting uses in the impact area, without the application of conditions to protect mining activity. However, the bar for this decision is higher than that for a decision to prohibit or limit new conflicting uses. This is because OAR 660-023-0040(5)(c) requires that, if a local government decides a conflicting use should be allowed fully, “The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided”. OAR 660-023-0040 explains that, “The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected.” Table 1 provides a qualitative analysis of the ESEE consequences that could result from a decision to prohibit, limit or allow new uses near Seubert Excavators, LLC.

<p align="center">Table 1 ESEE consequences related to review criteria for new dwellings and gathering spaces in the 1,500-foot impact area surrounding Seubert Excavating, LLC</p>			
	<i>Prohibit dwellings and gathering spaces</i>	<i>Condition the placement of new dwellings and gathering spaces</i>	<i>No change to review standards for dwellings and gathering spaces</i>
<p>Economic Consequences</p>	<p>Consequences related to new use on neighboring properties There may be some negative economic impact to neighboring property owners if new dwellings were not allowed within 1500 feet of the quarry boundary. Since only a portion of properties, all with an 80-acre minimum lot size, would be affected and some existing limits on dwellings are already in code, the negative impact would be small.</p> <p>Consequences related to loss or interruption of quarry access</p>	<p>Consequences related to new use on neighboring properties The economic impact to neighboring property owners would be neutral. A requirement for a waiver of remonstrance would not restrict the residential use of the property allowed in the underlying zone.</p> <p>Similar waivers are required by counties around the state as a condition of approval for a new residential structure in a farm or forest zone. These wavers, required by ORS 215.213 and 215.282, restrict a land owner’s</p>	<p>Consequences related to new use on neighboring properties The economic consequence for property owners would be neutral. This decision would maintain the current approval criteria for new residences in the impact area.</p> <p>Consequences related to loss or interruption of quarry access The economic impact would be negative. Interruptions in use of a quarry, due to complaints and nuisance lawsuits, have cause delays and</p>

	<p>The economic benefit of preserving Seubert’s ability to access material from sites within the Applicant’s network of material sources is well documented. Increasing the number of privately-owned aggregate sites in an area enables more competition, which results in lower costs. Additionally, an expansion of a quarry is less expensive for maintaining aggregate sources than establishing a new quarry. The Seubert quarry provides material for road maintenance and construction for Northern Malheur County. All commercial users of Malheur County roads will also benefit economically from efficient maintenance of these roads.</p>	<p>ability to pursue a claim for relief or cause of action alleging injury from farming or forest practices.</p> <p>Without evidence that the widespread use of such waivers having negatively impacted property values or development rights, it is reasonable to conclude that the proposed limit on new conflicting uses in the impact area of Seubert Excavator’s will have no negative economic consequence.</p> <p>Consequences related to loss or interruption of quarry access</p> <p>The economic benefit would be the same as that for a decision to prohibit uses since the proposed “limit” is to require that new uses would be permitted on the condition that the applicant except mining activity on this significant aggregate site.</p>	<p>increased costs for road projects across the state. Development of this quarry supports economically efficient staging of road maintenance and construction projects in the region. New noise sensitive uses locating within 1,500 feet of the quarry will bring the possibility that limitations on quarry activity will be sought by people who are bothered by mining activity. The potential negative economic impact ranges from small to very large. All commercial users of state and county roads in the service area may also experience negative economic consequences if maintenance of these roads is compromised due to less efficient access to aggregate material.</p>
<p>Social Consequences</p>	<p>Consequences related to new use on neighboring properties</p> <p>Removing the option to place a dwelling, which otherwise meets all existing review criteria, within 1,500 feet of the quarry boundary, would have a negative social consequence. The social consequences stem from a land owner’s desire to have reasonable options and flexibility when making choices about what they can and cannot</p>	<p>Consequences related to new use on neighboring properties</p> <p>The social impact to neighboring property owners would be neutral if acceptance of the mining activity was added as a condition of approval for new dwellings within 1,500 feet of the quarry boundary. Options available to property-owners would not be reduced. Dwellings that meet existing review criteria would be allowed,</p>	<p>Consequences related to new use on neighboring properties</p> <p>The social impact to neighboring property owners would be neutral if new dwellings within 1,500 feet of the quarry boundary were allowed under the existing review criteria.</p> <p>Consequences related to loss of quarry access</p> <p>Noncommercial users of state and county roads within the region derive</p>

	<p>do on their land.</p> <p>Consequences related to loss of quarry access Noncommercial users of state and county roads within the region derive social benefit from using these roads. Efficient road maintenance will preserve this benefit.</p>	<p>provided the applicant agreed to accept the mining activity approved by the county.</p> <p>Consequences related to loss of quarry access Noncommercial users of state and county roads within the region derive social benefit from using these roads. Efficient road maintenance will preserve this benefit.</p>	<p>social benefit from using these roads. Obstacles to efficient road maintenance, which could result from opposition to mining activity, would have a negative social impact.</p>
Environmental Consequences	<p>Consequences related to new use on neighboring properties There are no environmental consequences identified that stem from prohibiting new dwellings in the impact area.</p> <p>Consequences related to loss of quarry access Efficient road maintenance practices include obtaining aggregate material from a quarry close to the project site. There will be some environmental benefit from fewer vehicle emissions when truck travel is minimized.</p>	<p>Consequences related to new use on neighboring properties There could be a negative environmental consequence from noise if new dwellings were limited in the impact area. However, no neighboring parcels on which a new dwelling is allowed is fully within the impact area. The proposed “limit” is to require that new dwellings in the impact area be authorized on the condition that the applicant except the mining activity approved by this decision. This approach assures that a property owner will make an informed decision when locating a new residence. If they decide to locate within the impact area, they will be exposed to noise impacts when mining activities are conducted on the site.</p> <p>Consequences related to loss of quarry access Efficient road maintenance practices include obtaining</p>	<p>Consequences related to new use on neighboring properties There could be a negative environmental consequence from noise if new dwellings were allowed in the impact area. The negative consequence is similar to that for a limit decision. However, unlike a limit decision, there would be no mechanism in the county’s code to inform property owners of the authorized mining activity. This would result in a higher possibility for a residence to be located in the impact area and a higher potential for a negative consequence.</p> <p>Consequences related to loss of quarry access There may be some negative environmental consequence if new uses in the impact area oppose mining activity and pose an obstacle to the use of this site. Efficient road maintenance practices</p>

		aggregate material from a quarry close to the project site. There will be some environmental benefit from fewer vehicle emissions when truck travel is minimized	include obtaining aggregate material from a quarry close to the project site. Vehicle emissions will increase if trucks have to travel further to access material.
Energy Consequences	<p>Consequences related to new use on neighboring properties</p> <p>There are no energy consequences identified that stem from prohibiting new dwellings in the impact area.</p> <p>Consequences related to loss of quarry access</p> <p>Efficient road maintenance practices include obtaining aggregate material from a quarry close to the project site. There will be some energy benefit from reduced use of fuel when truck travel is minimized.</p>	<p>Consequences related to new use on neighboring properties</p> <p>There are no energy consequences identified that stem from limiting new dwellings in the impact area.</p> <p>Consequences related to loss of quarry access</p> <p>Efficient road maintenance practices include obtaining aggregate material from a quarry close to the project site. There will be some energy benefit from reduced use of fuel when truck travel is minimized.</p>	<p>Consequences related to new use on neighboring properties</p> <p>There are no energy consequences identified that stem from allowing new dwellings in the impact area.</p> <p>Consequences related to loss of quarry access</p> <p>Efficient road maintenance practices include obtaining aggregate material from a quarry close to the project site. There will be some negative energy consequences from additional fuel use if truck travel is increased due to loss of access to this quarry.</p>

FINDING: Malheur County has determined, through the ESEE analysis, that the resource site and the conflicting uses (dwellings and public/private gathering spaces) are important compared to each other. Therefore, Malheur County finds that proposed conflicting uses should be limited within the 1,500-foot impact area for the life of the Seubert Excavator’s Quarry in order to achieve Goal 5.

A condition of approval is imposed that any land use application for a proposed conflicting use within the 1,500-foot impact area, and within the zoning jurisdiction of Malheur County, requires a waiver of remonstrance prior to final approval. The waiver shall include language stating that the applicant accepts normal mining activity at this significant aggregate site and restricts a landowner’s ability to pursue a claim for relief or cause of action alleging injury from the aggregate operation.

Malheur County finds that the waiver of remonstrance requirement for proposed

conflicting uses along with the mitigation measures proposed by the applicant are adequate to minimize conflicts for future uses that potentially locate within the mining impact area.

II. **Oregon Revised Statute 215.298 – Mining in Exclusive Farm Use Zone**

2.

- a. Except as provided in subsection (3) of this section, for purposes of ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal land system prior to 1993) (2) and 215.283 (uses permitted in exclusive farm use zones in nonmarginal lands counties) (2), a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A county may set standards for a lower volume or smaller surface area than set forth in this subsection.

FINDING: The project will require mining of more than 1,000 cubic yards of material; therefore, a conditional use permit is being obtained.

- b. A permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan.

FINDING: The project is a conditional use in the Malheur County Comprehensive Plan. Therefore, a Conditional Use Permit is being obtained.

III. **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 Applicant’s 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: Applicant has met this criterion with the County hearings process on this application.

Goal 3 Agricultural Lands

FINDING: This goal is met through:

1. **Continued use of the property for agricultural uses before and after mining.**
2. **Non-interference with surrounding agricultural uses.**
3. **Excellent quality of aggregate material determined through testing by MTI.**
4. **Consultation with the applicable irrigation district.**

Goal 4 Forest Lands

FINDING: Does not apply.

Goal 5 Protection of Resources

FINDING: Criteria are met through the identification of a high-quality aggregate site and protection of that site for use. The potential aggregate quantity extractable from each tax lot is more than 500,000 tons, the minimum requirement to qualify as a Goal 5 Aggregate Resource. Additionally, the quality of the aggregate within each tax lot qualifies the properties as a Goal 5 Aggregate Resource. See Exhibit C, Quality and Quantity Reports. The tax lots are not identified as sage grouse habitat. According to the site plan, no wetlands will be filled or developed as part of this permit. A thirty-foot setback has been designated for all wetlands.

Goal 6 Air, Water, and Land Quality

FINDING: Criteria met through operational restrictions that eliminate impacts to air, water, and land quality.

Goal 7 Natural Disaster and Hazards

FINDING: Criteria met. No special natural disaster or hazards identified.

Goal 8 Recreation

FINDING: Criteria met. No recreational opportunities on site. No existing sites are impacted negatively.

Goal 9 Economy

FINDING: Criteria met through the development of natural resource and the availability of the aggregate to ODOT and other customers, which will assist in the maintenance of the transportation network.

Goal 10 Housing

FINDING: Housing does not apply as the application will not affect the opportunity for citizens to obtain adequate housing.

Goal 11 Public Facilities and Resources

FINDING: Criteria met by providing local and regional customers, including ODOT, with a reliable, economic, local, and long-term protected supply of aggregate for road maintenance and construction.

Goal 12 Transportation

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

Goal 13 Energy

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

FINDING: Does not apply.

B. Specific Plans: Specific plan recommendations.

FINDING: No specific plans.

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

FINDING: Neighbors adjacent to the Applicant's existing mining and crushing operation have previously expressed concern about odor associated with the Applicant's asphalt plant. The use of this land will solely be for mining and crushing, and will not include asphalt plant operation.

No comments were received and no testimony was submitted.

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

FINDING: The proposed expansion will require installation of a power box on the Applicant's existing property, Tax Lot 800 (see Exhibit B, Site Plan). No other services or utilities will be needed.

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

FINDING: The proposed use will contribute to the community's economy by providing jobs and needed local materials for construction and roadways.

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: The Applicant meets this criterion. The tax lots are currently farmed, and the land is not identified as sage grouse habitat according to the Oregon Department of Fish and Wildlife. Irrigation ditches border the properties on the east, north, and west sides. A 30-foot setback from the center of the ditch will be adhered to by the Applicant. A DSL Off-Site Wetlands and Waters Determination Request was submitted; the determination is forthcoming. If an on-site wetland delineation is required, and wetlands are determined to exist on the site, the Applicant will either avoid or mitigate wetland impacts.

G. General Criteria:

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

FINDING: The Applicant will meet this criterion by placing 10-foot high visual and noise barrier berms made of overburden between the operation and neighboring properties. Additionally, excavation will occur approximately 25 to 30 feet below ground surface (BGS) to hardpan. This below-grade placement of operations will create additional visual, noise, and dust barriers (dust abatement procedures will also be in effect). Lighting for nighttime operating will be pointed at the ground and general ground surface, reducing glare and night lighting nuisance for the neighbors.

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

FINDING: The Applicant will meet this criterion by providing a 10-foot visual berm made of overburden that will be placed between the operation and neighboring properties. Once excavation has occurred, the land will be backfilled with the stockpiled overburden, slopes will be contoured, and ground will be reseeded with native grasses, according to Oregon Department of Geology and Mineral Industries (DOGAMI) regulations. Weeds will be monitored, and the site will be returned to agricultural use as pastureland.

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 Applicant will meet this criterion as the proposed use will not create a need to alter the current location and size of driveway access points, nor will it need right-of-way (ROW) widening or improvements on Ontario Heights Road.

4. Visual screening of outdoor waste and storage areas.

FINDING: The Applicant will meet this criterion as there will be no outdoor waste and storage areas. Overburden material will be stockpiled 10 feet high along the excavation areas, providing a visual screen for mining activities.

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

FINDING: The Applicant will meet this criterion by using portable industrial LED lighting for nighttime excavation activity. Lights will be pointed inward and downward to the ground surface area. Lighting on equipment will also be directed at the activity on or near the ground surface. Since mining and crushing work will occur below the ground surface, it is unlikely that glare from lighting will reach outside of the mining pit area.

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 Applicant will meet this criterion as they currently operate a mining and crushing operation on surrounding properties bordering agricultural lands and has done so for nearly 20 years without forcing a significant change to accepted farm practices on neighboring lands devoted to farm use. The expansion of the mining operation onto the new lots is expected to follow this pattern.

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 Applicant will meet this criterion as they currently operate a mining and crushing operation on surrounding properties bordering agricultural lands and has done so for nearly 20 years without significantly increasing cost of accepted farm practices on neighboring lands devoted to farm use. The expansion of the mining operation onto the new lots is expected to follow this pattern.

Section 6-6-8-4 specifies specific approval criteria:

6-6-8-4: Mineral, Aggregate, or Geothermal Resource Exploration, Mining and Processing:

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.

FINDING: The Applicant will meet these criteria through the following mitigation measures:

Noise Screening: Noise screening will be conducted using 10-foot high overburden berms along the excavation areas. The subsequent excavation work will occur 10 to 30 feet BGS, also acting as a noise screen from neighboring properties. Additionally, the operation will not include blasting as the excavated material is alluvial in nature, meaning it can be excavated without needing to be broken apart.

Dust Screening: The Applicant's current dust screening procedures include utilizing a 10,000-gallon water tank equipped with dust suppression equipment. As the mining and crushing equipment are working, water will be sprayed onto the aggregate material to keep dust particles from entering the air. Dust suppression activity is currently monitored on site by the Oregon Department of Environmental Quality.

Traffic Screening: Truck travel already occurs to and from the Applicant's existing mining and crushing operation via an existing access from Ontario Heights Road. There will be no increase in traffic to and from the expanded operation.

Visual screening: When excavation begins, overburden will be scraped from the land and placed between the excavation area and neighbors. These overburden piles will be approximately 10 feet high and will extend the length of the excavation area.

Additionally, excavation work will occur below the ground surface, up to 30 feet BGS and visually screening the equipment from neighbors. ODOT does not have a visual screening requirement for this conditional use between Tax Lots 200 and 700 and Interstate 84 (I-84).

2. Setbacks from property lines.

FINDING: The Applicant will meet this criterion by locating the expansion of its operation more than 500 feet from neighboring residential use. Additionally, no commercial uses are within 200 feet of the operation. The Owyhee Irrigation Ditch Company owns and operates an irrigation ditch system that borders the properties on the east and west sides, respectively. Malheur County does not require setbacks from irrigation ditches. The Applicant has historically used a 30-foot setback from the center of irrigation ditches, as required by DOGAMI, and will adhere to this setback for the expanded operation.

3. Location of vehicular access points.

FINDING: The location of the vehicle access point to the tax lots will be from the south through Tax Lot 800, which is part of the existing mining operation. The access road will be approximately 50 feet wide, and its location is shown on Exhibit B, Site Plan. The public access road already utilized by the Applicant's mining and crushing operation is Ontario Heights Road. There will be no increase in traffic or weight on the road with the expansion of the operation.

4. Fencing needs.

FINDING: The Applicant will meet this criterion as there are no fencing requirements for this conditional use from either Malheur County Code or ODOT. ODOT currently has a fence that controls access between Tax Lots 200 and 700 and their ROW line along I-84.

5. Prevention of the collection and stagnation of water at all stages of the operation.

FINDING: The excavation work will occur above the water table. The resulting pits from excavation may collect natural rainwater. Any resulting ponds will be ditched for the release of water into the nearby irrigation ditches and pumped as needed into these outlets. However, given the unconsolidated, alluvial nature of the substrate, water retention in the ponds has proven to be minimal and is expected to be the same on the expanded properties based on the Quality Report.

As an added measure, the Applicant currently monitors the water retained in the ponds at the outlet points to ensure no contaminants are being released.

6. Rehabilitation of the land upon termination of the operation.

FINDING: The Applicant will meet this criterion by following best management practices outlined by DOGAMI in “Best Management Practices for Reclaiming Surface Mines in Washington and Oregon” for rehabilitating the land post-operation. The following objectives help guide the process overseen by DOGAMI inspectors:

- **Minimize erosion**
- **Reduce slope angles for soil stability**
- **Shape the land into aesthetically pleasing landforms that adhere to the surrounding landscape**
- **Replace stockpiled overburden**
- **Revegetate and monitor for success**
- **Provide diverse wildlife habitat**

The Applicant will return the reclaimed land agricultural production once rehabilitated.

CONDITIONS OF APPROVAL

1. Conform to the requirements of DOGAMI or its successor, or the applicable state statutes. Provide copies of these permit approvals to the County Planning Department.
 - a. Obtain all applicable permits for the mining operations from DOGAMI before these activities begin. Applicant will obtain approval from DOGAMI for the reclamation plan and submit a copy of the reclamation plan to the Planning Department.
 - b. Obtain all applicable permits for the mining operation from DEQ (air, noise, and water quality issues) before these activities begin.
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. These proposed parcels contain wetlands which are designated on the Statewide Wetland Inventory. No development or fill is proposed for these wetlands. A permit by the Oregon Department of State Lands is required if any development occurs within the designated wetlands.
4. Adequate emergency ingress/egress routes should be provided to the work site. A copy of the routes must be provided to Malheur County Dispatch and the Ontario Rural Fire Protection District.
5. Any hazardous materials storage and use must be permitted through the Oregon State Fire Marshall's Office Community Right-to-Know program.
6. On-site fuel/oil storage shall meet the Oregon Fire Code and be located on a site plan. A copy of the fuel/oil storage plans must be submitted to the Ontario Fire and Rescue for use in the Emergency Response Plan for the site.
7. Any land use application for a proposed conflicting use within the 1,500-foot impact area, and within the zoning jurisdiction of Malheur County, requires a waiver of remonstrance prior to final approval. The waiver shall include language stating that the applicant accepts normal mining activity at this significant aggregate site and restricts a landowner's ability to pursue a claim for relief or cause of action alleging injury from the aggregate operation.
8. Applicant must conform to all mitigation measures as described in the application and below:
 - a. Noise, dust, or other discharges: The Applicant must place 10-foot high visual and noise barrier berms made of overburden between the operation and neighboring properties. Additionally, excavation must occur approximately 25 to 30 feet below-grade to hardpan. This below-grade placement of operations will create additional visual, noise, and dust mitigation. In addition, dust abatement must be conducted by using a water truck to wet down the roadways as needed pursuant to Oregon DEQ requirements. The applicant will limit crushing to two 3-month campaigns for crushing per calendar year. These campaigns must be limited to 5 days per week, Monday through Friday, 24 hours per day. All processing must occur 30-40 feet below the top level of the berm to limit any noise impact to surrounding areas. The most traveled roads must have magnesium chloride applied for dust abatement.
9. Truck travel must occur to and from the Applicant's existing mining and crushing operation via the existing access from Ontario Heights Road.
10. Mining and all other developments shall occur within the proposed area as shown on the site plan and according to the operations plan. Any deviations from this plan must be

approved by the Planning Commission.

CONCLUSION

Based upon the foregoing finding 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 operation in an exclusive farm use zone.

ORDER

This application for a conditional use permit for an aggregate mining expansion is approved.

RECOMMENDATION

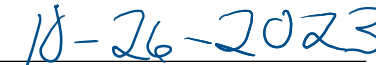
Further, the Malheur County Planning Commission makes a recommendation to the Malheur County Court to approve the addition of the above referenced property to the Malheur County Comprehensive Plan Goal 5 Resource Inventory.

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 5:00 pm 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



Date

EXHIBITS

1. Application with Exhibits

- A. Location and Vicinity Maps
 - B. Site Plan
 - C. Quality and Quantity Reports
 - D. Operations Plan
2. Email from Clint Benson, Ontario Rural Fire Protection District.
 3. Letter from David Tiffany, Malheur County Road Supervisor
 4. Letter from Clancy Flynn, Owyhee Irrigation District
 5. Email from John Eden, ODOT
 6. Letter from Amanda Punten, Oregon DLCDC
 7. 1,500-foot Impact Area Map