

January 25th 2024, the Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, and in person, at 316 Goodfellow Street, Ontario, OR.

Commissioner Kathy Clarich called the meeting to order at 7:30 p.m.

PLANNING COMMISSIONERS PRESENT

Kathy Clarich
Clark Forsyth
Teresa Ballard
Chad Gerulf
Ed Anthony
Linda Simmons
Bob Quick

Commissioners Attending via video conference

Carol Skerjanec
John Few

PLANNING DEPARTMENT STAFF MEMBERS:

Tatiana Burgess, Interim Planning Director
Marc Berg, Planning Clerk
Stephanie Williams, County Counsel

NEW BUSINESS

Applicant: Chris and Allison Paulsen
26511 Peckham Rd
Wilder, ID 83676

Owner: Bruce & Patricia Sexton
1247 Cow Hollow Rd
Nyssa, OR 97913

Requesting approval on a Conditional Use Permit for a non-farm dwelling and a non-farm partition in an Exclusive Farm Use zone pursuant to MCC Title 6, Conditional Uses 6-6-7, 6-6-8-1, 6-6-8-2 and OAR 660, Division 33, Agricultural Lands, for tax lot 1700, Section 14, T.20S, R.45E, W.M. Planning Department File #2023-12-008; Malheur County Reference #10116. The property is located about 14 miles southeast of Nyssa, on Mitchell Butte Road, Nyssa, OR.

Kathy Clarich – Okay. I am going to call the January 25th, 2024 Malheur County Planning and Zoning meeting to order. The first thing on our agenda tonight is Chris and Allison Paulsen. I'm going to read this into the minutes first, and then we will go from there.

Now is the time to hear the request for a conditional use permit for one non-farm dwelling and one non-farm partition in Exclusive Farm Use zone for applicants Chris & Allison Paulsen. Planning department file 2023-12-008. Please sign in at the podium, fill out a testimony and question sheet if you have not done so already and when called to speak please state your name, address and title (if any) for the record.

1. There is a general time limit for testimony of 5 minutes. The applicant's initial presentation will be 20 minutes; with a rebuttal of 10 minutes.
2. All testimony and questions shall be directed to or through the chair. Testimony and questions should not be directed to staff or directly to witnesses.
3. Do any members of the County Planning Commission need to abstain? If so, state the reason.
No abstentions given.
4. Do any members of the County Planning Commission need to disclose any conflicts? If so, state the conflict. *No conflicts given.*
5. Do any members of the County Planning Commission need to disclose any biases? If so, state the bias. *No bias disclosed.*
6. Do any members of the County Planning Commission need to disclose any ex parte communications, including any site visits?
Both Kathy Clarich and Bob Quick have visited the site in question.
7. Does anyone object to any of the members of the Malheur County Planning Commission hearing this application? *No objections made.*
8. Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?
No challenges made.

9. Land use statements for the record: Oregon land use law requires several items be read into the record at the beginning of this hearing. I will now read these items. The applicable substantive criteria upon which the application will be decided are found in Oregon State laws and rules as well as local code provisions, which are specifically set out in the Staff Report and include:

The Malheur County Code

MCC 6-6-7: General Criteria to Evaluate Suitability

MCC 6-6-8-1: Specific Conditional Use Criteria Non-Resource Dwellings in EFU, ERU or EFFU Zones

MCC 6-6-8-2: Specific Conditional Use Criteria Non-Resource Partitions in EFU, ERU or EFFU Zones

MCC 6-3A-3: Allowance of Certain Uses

Oregon Administrative Rules: OAR 660-033-130(4)(a)(D) - Agricultural Lands

Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in state law, the Malheur County Comprehensive Plan, or the Malheur County Code, that the speaker believes to apply to the decision.

The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the decision makers and the parties the opportunity to respond to the issue will preclude appeal on that issue. An issue that may be the basis of an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements or evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue.

The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to circuit court.

Kathy Clarich – So, we’re going to start out with the staff report for the county. The applicant will have twenty minutes, then testimony in favor or proponents, will be five minutes each. Opposition, five minutes each. Staff comments, if any. Then, we will go on to the decision-making process.

Preliminary Staff Report: Read by Interim Planning Director, Tatiana Burgess.

Tatiana Burgess – Okay, so this is the conditional use application for a non-farm dwelling and a non-farm partition. Planning Department File #2023-12-008. The property is owned by Bruce and Patricia Sexton at 1247 Cow Hollow Road, in Nyssa. They are the parents of Allison Paulsen. The applicant is Chris and Allison Paulsen at 26511 Peckham Road, in Wilder, Idaho. They are proposing to partition approximately 9.5 acres, for a non-farm dwelling. The property is identified as tax lot 1700, on Assessor’s map 20 South, 45 East, Malheur County Reference number 10116.

The property is located off of Mitchell Butte Road, which is approximately 14 miles southeast of Nyssa. The property is in a split zone, split by the Exclusive Farm Use and Exclusive Range Use. It is a total of 97.65 acres. It is currently being farmed, with the exception of the proposed partition site, which is separated from the farm ground by the North Canal. The surrounding use, everything around there is being farmed. There are two farm dwellings on the adjacent properties. The access would be, for the non-farm partition, would be directly off of Mitchell Butte Road. There will be a DEQ-approved sanitation system that will be required. The property is within Nyssa Rural Fire Protection District. One note I want to make, is that they were not able to reach anybody at the Nyssa Fire Department. So, we did not have a letter included in there.

There are no identified natural hazards on the property. Water right-related: there are 63 acres of water rights. Again, there are no water rights for the site of the proposed partition and there is a letter and a map attached, which is identified as Exhibit #2. The soils on the property are predominantly Class III and there is a small portion of soils of Class IV on the proposed non-farm partition site. Everything west of the North Canal has not been surveyed by NRCS. I don’t have any other known zoning history. It looks as if both Chris and Allison are actually here.

Kathy Clarich – If you would like to step up to the podium and state your name and your address, please.

Applicant’s Testimony:

Applicant Chris Paulsen – Yes. Good evening.

Kathy Clarich – And then tell us your plans.

Chris Paulsen – My name is Chris Paulsen. My address is 26511 Peckham Road, Wilder, Idaho. My wife Allison is here with me tonight. I think I will only use about one-tenth of the allotted twenty minutes. I’ll try not to repeat too much that’s already entered. Essentially, we are looking to...

Kathy Clarich – Can you speak up, just a little bit?

Chris Paulsen – Yes. We request to partition off the edge of the northeast corner of the property. It’s a sloped section that has not been developed at any point in time; at least to our knowledge. Mr. and Mrs. Sexton have been very gracious and expressed their desire for generational ownership of the

property. This partition would allow us to do that. It would allow us to be closer to them, as they retire, as well. We filled out the application, very much with the help of Mrs. Burgess, and to the best of our ability. But, I welcome any questions that I could help answer.

Kathy Clarich – So, right now, you are just doing a house? You're not doing a shop?

Chris Paulsen – Correct. Yeah, when we did that plot map... when we did that plot map, it was in hopes of being transparent. At some point in time that shop will be there. But, our main interest is the house, at this point.

Kathy Clarich – And you have... you've got the International Fire Code for your driveway, right? You do now?

Chris Paulsen – Yes, I can't remember off the top of my head, if it was 15 or 20 feet. But I have tried to include it in that.

Kathy Clarich – Yeah, it depends on length of the property, of the driveway, what it finally ends up being. Okay. Anybody have any questions for him?

Teresa Ballard – This is Teresa Ballard. I would just like to ask for clarification about where your driveway will come in. It looks like there is a rise in that... where it comes in on that corner. But on that Exhibit #4, where is that, from where your driveway will be?

Chris Paulsen – So, the driveway access will be off of Mitchell Butte road. It would be just about... in the very corner of that northeast portion.

Teresa Ballard – I can see that. I just wondered in this photo. Looks like there is a rise there.

Chris Paulsen – Yes, I'm trying to fix that. So, that picture is from the southeast corner of that proposed partition. I believe it's the one that is before that. Photo 3, you can see the corner of the fence. Where Mr. Sexton has accessed the property before, just barely come off the road.

Teresa Ballard – And then it rises up as you come out?

Chris Paulsen – Yes. I'm not sure how great it is on that copy.

Teresa Ballard – It's fine. Just getting a perspective.

Chris Paulsen – So, driveway access would be just south of that corner post.

Teresa Ballard – Thank you.

Kathy Clarich – Okay, if nobody else has any other questions for him: Is there anyone here that is for this action, that would like to speak? Anyone here that is against this action, that would like to speak? Seeing none, I am going to close it to public testimony. You can go ahead and sit down.

No proponent testimony.

**No opponent testimony.
Closed to public comments.**

Kathy Clarich – What do you all think? I think it is a good spot for it. So, if somebody wants to make a motion...

Commissioner Bob Quick made a motion to accept the staff report and findings of fact. Commissioner Chad Gerulf seconded the motion, which was unanimously approved by the Commissioners present.

Vice-Chairman Ed Anthony made a motion to approve the non-farm partition. Commissioner Linda Simmons seconded the motion, which was unanimously approved by the Commissioners present.

Vice-Chairman Ed Anthony made a motion to approve the non-farm dwelling. Commissioner Chad Gerulf seconded the motion, which was unanimously approved by the Commissioners present.

Kathy Clarich – Motion carries. There you go. Good luck!

NEW BUSINESS

Applicant: Darren Lee
515 Noble Road
Ontario, OR 97914

Owner: Dallas Head
5560 Highway 201
Ontario, OR 97914

Action #1: Post acknowledgement plan amendment to include approximately 180 acres of tax lot 3200, a 308.42-acre parcel, Assessor's map 16S47E, in the Comprehensive Plan Goal 5 Resource Inventory as a significant aggregate site. Planning Department file #2023-12-010.

Action #2: Conditional use application for aggregate mining and processing in an exclusive farm use zone. MCC Title 6, Chapter 3, section 6-3A-3I; Chapter 6, section 6-6-8-4 and OAR 660 division 23.

Kathy Clarich – Okay, next thing on our agenda: Darren Lee. I need to read this in again into the minutes. Now is the time to hear the request for a conditional use permit for aggregate mining and processing in an exclusive farm use zone. Planning department file 2023-12-010.

When called to speak, please state your name, address and title (if any) for the record. There is a general time limit for testimony of 5 minutes. The applicant's initial presentation will be 20 minutes; with a rebuttal of 10 minutes. All testimony and questions shall be directed to or through the chair.

Testimony and questions should not be directed to staff or directly to witnesses.

1. Do any members of the County Planning Commission need to abstain?
If so, state the reason. *No abstentions given.*
2. Do any members of the County Planning Commission need to disclose any conflicts?
If so, state the conflict. *No conflicts given.*
3. Do any members of the County Planning Commission need to disclose any biases?
If so, state the bias. *No bias disclosed.*
4. Do any members of the County Planning Commission need to disclose any ex parte communications, including any site visits?
Kathy Clarich, Chad Gerulf, Linda Simmons, Ed Anthony, and Bob Quick have all visited the site in question.

Kathy Clarich – Anybody who has contacted me, I have told them to contact the Malheur County Planning and Zoning Department.

5. Does anyone challenge the County Planning Commission’s jurisdiction to hear these matters?
No challenges made.
6. Does anyone object to any of the members of the Malheur County Planning Commission hearing this application?
No objections made.

Land use statements for the record: Oregon land use law requires several items be read into the record at the beginning of this hearing. I will now read these items. The applicable substantive criteria upon which the application will be decided are found in Oregon State laws and rules as well as local code provisions, which are specifically set out in the Staff Report and include:

Malheur County Code

MCC 6-3A-3(E): Allowance of Certain Uses

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

Oregon Administrative Rules: OAR Chapter 660-023-0180

Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in state law, the Malheur County Comprehensive Plan, or the Malheur County Code, that the speaker believes to apply to the decision.

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The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to circuit court.

Order of Proceeding: The applicant will be allocated up to 20 minutes for initial applicant presentation. The applicant may also present up to 10 minutes for final rebuttal. All others wishing to

testify will be given 5 minutes each. Tatiana?

Preliminary Staff Report: Read by Interim Planning Director, Tatiana Burgess.

Tatiana Burgess – So, this is Planning Department file #2023-12-010. It's an application for a conditional use approval for an aggregate mining site, in EFU/ERU Zone. There is a proposal for the addition of the mining site into Malheur County's significant Goal 5 Inventory. The property owner is Mr. Dallas Head, at 5560 Highway 201, in Ontario. The applicant is Mr. Darren Lee, at 515 Noble Rd, in Ontario. The proposed action is for the aggregate mining site and also a recommendation to County Court for a (Post-Acknowledgement Plan Amendment) P.A.P.A. amendment to designate a portion of the proposal as a significant Goal 5 aggregate resource.

The property is identified as Tax Lot 3200, on Assessor's Map 16 South 47 East. There are two reference numbers associated with this tax lot: reference #6207 and #15139. Each one of those represents a portion of the property in its separate zones. So, the property is in a split zone of Exclusive Farm Use and Exclusive Range Use. So, everything that is north and east of the canal is Exclusive Farm Use. Everything south of canal is Exclusive Range Use, which is where the proposal is for. The total Exclusive Range Use zone is about 261.42 acres.

The property is located north of Ontario along Hwy 201. The proposed access site is off of Mesquite Road. As I mentioned, the total property size is 308.42 acres. Mr. Lee, in his application, is proposing three separate areas to have three different activities conducted on them. As identified in his application, Area #1 is approximately 80 acres. That's where the mining will occur. Area #2 is about 60 acres. That will be used for stockpiling, landscaping rock, and truck scales. Then, Area #3 is 40 acres. That will be used for personal excavating for Mr. Head's use, also, for crushing and for an asphalt recycling staging location. The testing of the aggregate for quality and quantity was only performed on Area #1, which is the area that is about 80 acres.

The surrounding use: There is an aggregate mining to the west and all the other surrounding properties are either farm or with residential houses on them. As I mentioned, the proposed access is at Mesquite Rd. That private access includes a crossing of a buried pipe (culvert) that is owned by the Church of Jesus Christ of Latter-day Saints. And, the Owyhee Irrigation District has interest and owns the canal. The property owner does have a current agreement for the crossing with Owyhee Irrigation District.

There are no restrooms that are provided for sanitation requirements. But, up to 3 employees will be on site, and they are proposed to be using port-a-potties. The property is within Payette Rural Fire District, Idaho. There is a letter included from the district, with the application. The property is not within the 100-year floodplain. There are no water rights associated with this property, and there is a domestic well, that is currently for the use of the property owner's residence.

Zoning history: As most of you are aware, this is an application for a similar proposal, which was accepted by the (Planning) department and denied by the Planning Commission back in 2021. That decision was upheld on appeal, that was submitted to County Court.

In 2023, Mr. Lee was found to be in violation of Malheur County's Planning and Zoning ordinances by the Malheur County Justice of the Peace. We have had conversations with the (Oregon

Department of Geology and Mineral Industries) DOGAMI's representative. As of the date of publishing of this staff report, we were notified that the violation was not resolved. Later, we actually received a formal letter from DOGAMI, which was included or added to the staff report as a subsequent exhibit. So, when the staff report was published and sent to you guys, we only had five exhibits. As of tonight, we have 19. So, as most of these people here, I'm assuming, that they have submitted letters that they wanted to be considered. One letter that I do want to point out, which I received tonight was from ODFW (Oregon Department of Fish and Wildlife) but I don't know how many of you had a chance to review it. That letter, in general, is talking about rather significant wildlife habitats that are identified within the proposed development area.

Tatiana Burgess – I think that is where I'm going to stop for now. Kathy?

(multiple conversations)

Kathy Clarich – Ok. We will start with the applicant's testimony. State your name and your address, please.

Applicant's Testimony:

Applicant Darren Lee – Thank you all for braving the fog and the weather. I appreciate it. My name is Darren Lee. I have a farm at 515 Noble Rd, in Ontario, Oregon. I'm here to submit an application again; another (second) application. Hopefully, I have learned some lessons from my first application. On behalf of Dallas Head, for aggregate extraction and production on a portion of Dallas Head's property. Adjacent to Jasmine Rd and Power Rd, as was stated in the application.

The parcel in question has historically been utilized as dryland farming, as well as extensive gravel mining for the local population, as well as other government entities. If you want to look at the map, in order to orient yourselves. There is one of the local quarry sites. Probably the best one. A little bit farther back (pointing).

Kathy Clarich – What is the exhibit number?

Ed Anthony – What is the exhibit number on that?

Darren Lee – I don't think I gave it one.

Stephanie Williams – It should be on the application.

Ed Anthony – Exhibit one? Okay. Thank you.

Darren Lee – Okay. A little history: Gravel extraction has occurred on this parcel since (or before) 1930. There is a deed granting the State of Oregon access to a certain portion of the property there. Over time, other government entities, such as Rural Road District #3 and the County, have also utilized the many quarries on the property over approximately 94 years now.

A 40-acre parcel that belongs to the BLM: It is... kind of intersected in there, as you can see. It has been extensively mined near where it adjoins the parcel in question. This parcel, that the BLM has, it

has been listed as a Goal 5 inventory resource before. In short, over time, a lot of aggregate has been hauled off of this, and adjoining parcels, to support the needs of our rural community there, on the Oregon Slope.

I think, as I stated before in my initial application, if I were on a community planning board, I would want a quarry about every 20-30 miles. With the cost of fuel and transportation, aggregate is kind of a high volume / low cost material. The cost of hauling is, a lot of the time, supersedes the cost of the material. The reasons I would be a big proponent of this, is the reduced impact on the infrastructure, on the roads, less traffic, as well as cost savings and fuel savings. A higher number of smaller quarries spread out around, but also lower overall costs for infrastructure development, construction projects, and road maintenance. That lowers the prices for local consumers. As is the case here, where I have not had some aggregate now on the Oregon slope, if I have to go over to Ontario – Fruitland, my customers are picking up \$100-\$200 more per load (of cost) for transportation. To be able to get to and service our area. That is not an insignificant amount on some of these projects, for 30 or 40 truckloads of gravel.

As an example of how important that I think this is: We have that Nyssa Reload Center. I was asked if I could provide riprap. At the time, I could not. That project required a lot. So, rock eventually ended up being hauled from Cambridge (Idaho) for about 5½ months. So, 10-12 trucks operating every day for 5½ months from Cambridge, which is a 100-mile round trip, to be able to support that project. My opinion: Malheur County, we've got the second largest land mass in the state. We've got about 32,000 people. We've got a lot of room out there. We have a lot of these resources, such as aggregate that we should be keeping that money in our own state in our own county. Smaller quarries like mine, I think that they're kind of a hedge against monopolistic behavior. You get a lot of these larger quarries, they get bought out by bigger companies. Then, there's no competition when road projects come up. The little companies, like me, you can't bid anything because we're run out of the business. So, for tax payers in general, I think that it's a good idea to have options for people in the community, and not just one or two quarries that are running the show. I think that aggregate is really important in our community. Any road project, any construction project, anything of any significance, requires a lot of aggregate. We should, as a community, do our best to make sure it's available to our citizens.

There is a boundary map that I have that shows the 3 different areas. I'll explain the reasoning for the 3 different areas. Okay, I have been operating the quarry next door on the other side of Moore's Hollow for about the past 15 years; taking care of the community. That's taken a lot of pressure off of Dallas Head's quarry because I've been able to fulfill those needs. Dallas is a farmer. He is not into aggregate mining. But with that, the quarry has pretty much been played out. The overburden is becoming too deep, and it's time to transition back to Dallas' quarry.

Typically, for our community, I'm between 10-15-20 thousand yards annually, of gravel that's sold. That pretty much takes care of our community. It's not anything more extensive than that. We're, for the most part, we are very much agriculturally-oriented. There's not a lot of big infrastructure construction projects that come down our way. The Head property traditionally filled the needs for a long time, for local population, as well as the state road districts. And now, with it being depleted, I need to go back to utilizing this resource.

So, my hours of operation for over the last 15 years are typically between 7 to 6 pm, Monday

through Saturday. I don't work at night. I don't have the equipment to be able to work at night, and I don't like to work when it's not safe. Historical data has basically been established over the last decade of operating the quarries as the volume has been between literally 6 and 15 thousand. Some years, it's a lot less, especially depending on the economy. Other years, it has been more with the last couple of years, in particular, with a lot more housing being built in the area.

Spring and Fall have the highest activity level demands with the Summer and Winter having limited or no activity. Processing gravel products also traditionally takes place in the Spring and Fall. Typically, there's about 3 weeks in the Spring and 3 in the Fall for crushing and screening. Kind of similar to what Seubert does. They crush about 3 weeks in the Spring, 3 weeks in the Fall. That takes care of their demand. And that's about where I'm at. Then, I usually pull that equipment out of there.

While the volume demand for aggregate products in this area is not high, due to a limited customer base, it is still a pretty important role in this community. The quarry in Payette, Rita quarry, we pretty much shut that one down. We have pulled all of our equipment out of there. And I would say, unless there is something new, it's pretty much done.

Seubert, as you all know, you guys have allowed a conditional use for them to mine some additional 26 acres out there. As of last Summer, I tried to buy just base rock from them. They didn't have any available for me. And that makes it a huge burden for any customer to be able to... I mean, we're already going all the way to Fruitland to possibly get gravel. On the Idaho side, most of their rock is a basaltic rock, which is really a dirtier rock. It's not appropriate for a lot of the projects that we do. So, that gravel up there is rather unique in this area, as far as Oregon has it. Idaho does not. So, we cannot go to Idaho and get it, for the most part, except for Rita's pit, which is now closed.

This area around where we live is pretty sparsely populated. Local residents would be insulated from the quarry activity due to an earth berm being established and its natural ability as a sound barrier. The traditional old access road off Mesquite (road) has been improved. And this location is also on Head property. It traverses a narrow draw away from any other housing and creates a natural sound barrier. Fugitive dust mitigation will be addressed by having properly graveled roads as well as having a water truck on-site for use; as necessary, during any dry or high activity periods. Water is typically purchased from the City of Weiser. Truck traffic will be the same as before, with the access point on the public road. Mesquite being the same one as what intersects with the DeHaven Quarry.

The DeHaven Quarry goes all the way up Mesquite Rd to Moores Hollow Rd. So, basically, it will just intersect that and actually cut out about 1½ miles of county road and no longer will be utilized for hauling. I spoke to the Road District #3 and the only concerns that they had, where that's already an established access, was they wanted a 30-foot apron off of Mesquite (road) to protect the shoulder of the road as well as two small aprons... to do the 90 parallel across Jasmine. That's, that would probably... I would probably do that anyway, just to protect my equipment.

So, referring to that quarry map, there's three separate activity areas. The 80-acre parcel designated as aggregate removal and processing will be just for that. That was the area where all the testing was done, as well as the quantity analysis. I think I put in there also, all of the test pits, their depths, and what was found. I also had an engineer, as you can see, do rather extensive mapping, showing how the aggregate lays in that 80-acre parcel, as well as the overburden that is on top of it. No gravel extraction will occur outside of this boundary, with the exception of the Head Farm traditional

private quarry section. And that'll be next to the concrete recycling area.

So, as a contractor, over time, we were the ones who filled in the pond over there, by Poole's, Love's Truck Stop. That was what used to be... all that was mined out for the highway district a long time ago. We ended up filling that in, over like a five-year period with a lot of concrete. That option is gone. The one down by Edge is gone. We're really, as contractors, in a pickle for having a place to put concrete. Now, Seubert does a really good job of doing their asphalt recycling up there. But they do not have the crusher that I have, that will process concrete back into CD.

So, this will mitigate a lot of problems in our community, because: 1) There's just no place to put concrete and 2) It's pretty expensive to take to a landfill at \$10 a ton. And 3) There's no reason for it, because you can recycle that material. 4) It also takes a lot of pressure off mining virgin aggregate. So, the other part of that, for Dallas, is so that he has access for his own gravel purposes. That will be done through an exemption certificate with DOGAMI. I've done several of those before. They are not difficult. They don't require a bond. They don't require a huge reclamation plan. They are pretty simple. But, he still wants to have access to aggregate for his own uses.

So, the other section of that, the 60-acre section, which is part two. I found out the hard way. It's the only time I ever gotten sideways with DOGAMI in the past was my old quarry at DeHavens is: It's considered aggregate activity if you're stockpiling aggregate. And so, it has to stay within that parcel. We have a decorative rock and landscape business out of Caldwell. They use a lot of my pea gravel. They use a lot of one-inch minus, and a lot of four-inch minus rock. That doesn't necessarily fit in with the overall profile of a crushing operation. So, I will pull some of that rock off and put that in that Area 2. So, trucks won't have to go in/across Jasmine Rd to get that material,

Also, I have another decorative rock site out of Weiser. It's a high desert quarry. Sometimes, I cannot access that in the winter months. Still, there are landscapers who want rock. While that portion of it is not required to be under DOGAMI, because it's a foreign rock that is brought in (it would be more like a storage area) I will have stockpiled rock there and DOGAMI will require me to have that under permit. Also, it will operate as a storage area for my trucks as well as the scales.

Access to the quarry will be through the old farm road, off of Mesquite. There should be a picture there of the roadmap. As you can see, there's not a lot of change from the traditional traffic plan, to the new one. The new portion of the traffic will be all on private property; with the exception of crossing Jasmine Rd. So, that road up there on Mesquite has been improved. Less than 10% (grade), the actual road up Jasmine is 11-12%. So, that doesn't even work for my trucks, to begin with.

So, we talked about Road District #3: their requirements to put an apron on there. There is an irrigation pipe that intersects the top of the road that, as we mentioned, belongs to the church. That was one of the reasons that I had to do such a switchback to come up there was to make sure that I didn't have to excavate at all over that pipe. I put a foot of aggregate over it. And it's just like any other utility, you know, it's something you have to deal with. It's a steel pipe that goes up through the field. It's buried fairly deep and I don't anticipate any issues with that, with a truck going over it.

Okay, the reclamation plan will be similar to what Seubert has going on. It's a rolling reclamation plan. There should be a rec map in there. It looks like this (pointing). As you know, there is...the only well is for the house. There's limited topsoil on the site and any encountered will be salvaged

and stockpiled, and spread evenly over the disturbed area; during the reclamation process. Most of that up there is caliche. There's not a lot of topsoil. So, this material will then be used to fill the void created by the gravel extraction; to level the site. The site, the 80-acres is fairly flat. It has about a 20-foot rise up to the top. There's not going to be a lot of slopes.

This ground is very poor for farming. Most of the moisture there is on it either runs over the caliche, or runs into the gravel. So, it doesn't have a lot of opportunity to stay wet. This reclamation process will be concurrent, just like with what Seubert is doing. As the gravel is extracted, you fill in the reclaimed area. DOGAMI is pretty good about staying on people about that. Because, if you exceed a certain acreage, then you have to increase your bond to be able to have more disturbed ground.

Okay, the concrete crushing section: Basically, this falls under D.E.Q. rules, and not DOGAMI-related. But, they usually are conducted on the same site, with them being similar in nature. They use crushers and earth-moving equipment. You're producing, basically, aggregate again out of waste.

So, that's pretty much it. I did want to go into a little bit about... after my last planning and zoning meeting, in 2021. I took the lessons learned and began to address some of the shortcomings and concerns of my neighbors with my original application. Two of the biggest concerns were an appropriate crossing on the (Owyhee Irrigation District) O.I.D. canal and a proper access road, that would not require use of Jasmine Rd. These are valid concerns and I did my best to try to set out to remedy these. Dallas had secured a permit to fix the crossing on the O.I.D. canal, and informed me that I could improve the road; as long as he had access to the top of the hill. The reason for this is there is a GPS system that is used by the local farmers in the community at the top. Access would be necessary for maintenance of the system. In 2022, I replaced the old culvert with a new one and widened the access.

I received a lot of attention from a few neighbors and received phone calls from the O.I.D., County Road District, and a Malheur County ordinance officer, complaining about my activity. I did not have anybody actually approach me and ask me what I was doing. Basically, just through complaining to local authorities. So, with that, I do have a list of just a few of the local residents that are in full support of this. We do not have a big community. We've got people with thousands of acres of ground. I did not realize actually how sparsely populated my community is. I offer this to any of the commissioners. There are phone numbers here for every one of the people listed. You are more than welcome to call them or contact them at any time and ask whether they are in support of this. Basically, I just took my... a small customer list and went down it. So, pretty easy for you.

(multiple conversations)

Kathy Clarich – Will this be under Exhibit #20?

Darren Lee – Alright, well thank you guys for your time. Are there any questions?

Kathy Clarich – Well, yeah. There are lots of questions for you.

Darren Lee – Okay.

Kathy Clarich – I'm going to start with questions on application. The first thing is your conditional

use permit. You are just asking us to rezone the property? You're not asking us for anything else? That's what you have on your application. I don't know if you know that. It just says...

Darren Lee – Well, conditional use is...

Kathy Clarich – That's all that you want us to do, is to have it rezoned, that's it? You don't want to mine or anything else? Just rezoned?

Darren Lee – No. A conditional use for aggregate. Maybe that was mislabeled.

Kathy Clarich – Okay. And then, in a couple of places, you say that you are mining 7-5 (pm). Other places, you are saying 7-6 (pm)...

Darren Lee – 7-6 (pm). Yes.

Kathy Clarich – 7-6 (pm) is what you are...okay. I have a question for you on your customer base. You state that it is 'local farmers.' So, how big of an area are you considering your customer base?

Darren Lee – Well, you can see it on that list there, that there are people like the McBrides and others, who are all the way up Moores Hollow to Interstate 84. And...all the way around the whole slope. I don't usually take care of many people in Ontario, because there's obviously a quarry that is closer. But, I have done some construction projects. I think there was that low-income housing deal off of Fortner. I did quite a bit of aggregate work and hauling off of concrete there.

Kathy Clarich – The reason I was asking was because you state that it is four miles to Weiser. So, I wondered if you were considering Weiser customers in your local...

Darren Lee – Well, they are. The same as Seubert's. I asked Seubert's and they said that 60% of their customers are in Idaho.

Kathy Clarich – Okay. And you do know that Goal 5 is "for the use of Oregonians"?

Darren Lee – Yes. I just expect the same treatment as Seubert's.

Kathy Clarich – Well, they never gave us a thing saying that they were going anywhere else. What was my next question... So, I do have a question. You state it several times in your plan about the proposed quarry access point on Mesquite is also currently utilized. So, the same road that you take, is utilized as a haul road off the DeHaven Quarry. So how does the DeHaven Quarry hit that same crossing?

Darren Lee – That Mesquite Rd goes directly to the west of Moores Hollow (road).

Kathy Clarich – Yeah. I understand that. But, it says your proposed quarry access point on Mesquite (road) is also currently used. Your proposed access point to your...

Darren Lee – Well, maybe again, I have misstated it. It intersects at Mesquite (road).

Kathy Clarich – So, Mesquite is the road that is currently used, is what you are trying to say.

Darren Lee – Correct. That is where the private road will jump onto that.

Kathy Clarich – Because, several places in...not just your application, but back in the other places, it says they are ‘currently utilizing that quarry access point’ for this quarry.

Darren Lee – Okay.

Kathy Clarich – Also in your application, you listed that there is ‘no identifiable conflict with the farm ground’ to the east...which is organic. So, why are you saying there would be no conflict with that? Because there’s conflicts for everybody with organic.

Darren Lee – Right. I guess my question is, because you state that it is organic, does it necessarily mean that it is organic?

Kathy Clarich – If it is certified organic, it is.

Darren Lee – Right. But, don’t you have to have activity there?

Kathy Clarich – What do you mean? What kind of activity are you talking about? Because, you can have organic cattle, and you cannot spray or do anything to the ground. And so, the same with organic farming. The reason why I know this is because we do spray. I know where I cannot go and how close I can get to stuff. And if it is organic, you cannot get close to it.

Darren Lee – Right, But, I don’t understand. Because I don’t use any spray or pesticides.

Kathy Clarich – No, but you are still going to have dust. Even if you put up a berm, you are going to have dust that is going to be affecting it. And you can’t farm what is in the dust. It can be a conflict for them.

Darren Lee – It could be a conflict. But, in my...we’re all professional farmers around there. I have not seen that farmed organically in any manner. As a matter of fact, I took a Google picture of it. There’s...a claim of animal husbandry going on, as well and organic farming. I do not see that as a farmer of 50 years.

Kathy Clarich – So, you have not had any contact with them to ask about their organic farming or anything?

Darren Lee – I think that it’s evident that there’s not organic farming going on. It has not been irrigated properly and there’s noxious weeds that come over onto the Head property.

Kathy Clarich – Yeah, because you cannot spray the weeds.

Darren Lee – Well, you are also not supposed to...if I remember correctly on organic property: If you are truly going to do organic, you don’t use mechanical equipment, for the most part. Is that correct?

Kathy Clarich – No, you can use mechanical equipment. You just have to make sure that it's cleaned off before you use it. So, that there is nothing that contaminates anything.

Darren Lee – But, the property on the other side of that is actually farm ground. They do a lot of onion and other very spray-intensive agriculture that is probably closer than I would be.

Kathy Clarich – Okay. We want to know about your dust, when you say you have a water truck that you can fill up with water from Weiser; if I understood it right. How many trips a day do you think you are going to take, to keep everything watered and keep the dust down?

Darren Lee – Well, typically, when we crush in the Spring and in the Fall, we don't have dust. You have the natural moisture in the aggregate. That's why you conduct those operations during that time period. So, for me, typically I crush my road mix in the Spring, because there's not going to be a lot of dust. Same as what...I was looking at Seubert's application. They had just stated that they have 10,000-foot water tower, just for their crusher. That's all that they mentioned. The reason that people call me and ask for aggregate products is because they do have dusty roads. When they have muddy roads, that is the remedy for that. So, like my quarry at DeHaven's, as well as any other quarry around here is they have a white coat aggregate on the floor pan, not only to mitigate dust, but to deal with when it does get wet, that they don't have a sloppy/slippery mess. Because, most of that is a caliche sub-base, or base below, that can become pretty slick and dangerous.

Kathy Clarich – Yeah. Okay. I know Seubert's said that every day, they keep them watered. They keep the roads watered. They keep the...

Darren Lee – And I would agree that that would be prudent for them, because their volume is exponentially higher than mine.

Kathy Clarich – Okay. Also, where will your access gates and signage going to be?

Darren Lee – At Mesquite (road).

Kathy Clarich – At Mesquite? Nothing up off of Jasmine (road)?

Darren Lee – Yeah, there will be. As I listed in there, there will be a stop sign on each side for if...I do have other trucks that come up; other than mine.

Kathy Clarich – But, there is no gate up on Jasmine at all? The only gate will be down there off of Mesquite?

Darren Lee – Right. It's all open area. It's open access all the way through there.

Kathy Clarich – On the conditional use permit, it says 'all processing shall be located no closer than 200 feet from residential and commercial uses.' It also says 'What are the proposed setbacks on the property lines, from any residential or commercial use in the area?' You stated 150 feet, when it says, it should be no closer than 200 feet.

Darren Lee – Okay. Well, as what I've seen in the past, both IMC and Seubert have houses that are within 150 feet of their property lines; for their aggregate activity. I'm not intending on mining anywhere close to people's property. But, I have to have a berm and it needs to be symmetrical. The berm that I had up there before was symmetrical. It was about 60 feet off of the roadway. Then, by time you have the berm, which is about a 30-foot depth, then you have where you're...it would be just mining in a corner for a moment. Then, you would be done, because your processing equivalent takes a big spread; probably 200-250 feet. You're not going to put that in a corner. You put that out in the middle of your quarry. So that you can bring out aggregate to it and you can access all side of your equipment. So, there would be no processing anywhere...not even close to 500 feet from any structure or near a house.

Kathy Clarich – You said you do not use water in production so that you would not have stagnation water or anything. However, even right now, there's water standing up there. So, how are you going to handle the water? Because...I have noticed the one spot, it was hard to see things right now. I will tell you that. But before, when you have the rain, stuff collects along the edge of the road. When you put your thing in, you didn't put a pipe or anything underneath; to let it flow like it would normally flow. So, how are you going to take care of that water that just stands?

Darren Lee – Well, the reason it stands is because it's an unbelievably hard layer of caliche there. And once you open that quarry up, as long as you're going to have (obviously) a low spot; where everything is going to collect. The same is up at Head quarry: You also have then a wall of gravel. That water tends to absorb quickly right into that bank of gravel. Unless you, you deface it with a bunch of dirt, or other material to stop that from happening. Doug was pretty excited about it right there, because the water was running through the gravel. Where it was coming out, he thought it was...that he had a spring. But, that's not the case. The gravel absorbs the same amount of water. But that gravel up there, for the most part, is pretty dry.

Kathy Clarich – I had a question on your legal description of the quarry site: Is that the complete description of the complete property? Or, is that just a description of the 80 acres?

Darren Lee – Of the 180...

Kathy Clarich – So that won't be the quarry site, then?

Darren Lee – It all has to fall under that, according to the Department of Geology and Minerals, to be able to be accepted into the exemption certificate for Dallas to be able to continue his operations. As well, as I stated before, you stockpile aggregate materials, it falls under that reclamation plan. Because, if I quit for some reason, that stockpile has to be addressed in the record.

Tatiana Burgess – If I may, Mr. Lee. When we worked the staff report, we did identify some mistakes in the legal description. So, in the staff report, each individual area is identified. We did write a legal description for each area.

Darren Lee – Okay.

Tatiana Burgess – And then there is legal that identifies the total 180 acres. So, the total 3 areas that you have proposed: We wanted, for the record, to state that the legal that is in the application, is

incorrect.

Darren Lee – Okay. Well, I appreciate that. Thank you.

Stephanie Williams – I just want clarification, because it really affects how your application is analyzed. It is a different application. I don't think we have ever had an application with 3 different areas being identified. So, for the 80 acres: We are doing just a straight-up analysis of the Oregon Administrative Rules (OAR) for aggregate mining and processing. Then...we do not include Area 2, because you identified it separately. So, we weren't going to put... to analyze Area 2, under the Oregon Administrative Rules. We are analyzing Area 2 under the conditional use permit process. So, then you go to Area 3, where the concrete and the asphalt is not really mining activity and the private aggregate, still requires a planning and zoning permit, as well as a DOGAMI permit. But we were analyzing that as a "small farm site." And analyzing it under the conditional use permit process, not the Oregon Administrative Rule. So, if you're telling me that you want DOGAMI to permit Areas 1, 2, and 3. All of those areas have to be analyzed under the Oregon Administrative Rule for the application process. So, if you look at DLCDC's letter that came in today late, from Amanda...she points that out.

Darren Lee – Okay. So, I don't know how to remedy that. Because I'm trying to comply with DOGAMI's rules that I have encountered before, and stay in line with them. So, maybe I don't know how to articulate to you guys, exactly what we are trying to do. Because, all of this stuff, within that 180-acre area is aggregate operation and aggregate activity.

Stephanie Williams – Okay, if that's the case, then I don't know. Maybe you need to determine whether or not you're meeting your application, having all of it included, or not. Because, that's not how we read your application. That's not how we wrote the staff report. So, if you look at Amanda's letter, that is exactly what she says.

Darren Lee – Okay.

Stephanie Williams – The Areas 1 and 3, it's fine. You still need to get a DOGAMI permit for Area 3, even if we process it under a conditional use permit.

Darren Lee – Correct.

Stephanie Williams – Okay. In Area 2, you cannot excavate in any shape or form.

Darren Lee – I am not intending on it.

Stephanie Williams – I guess that is how it can be resolved.

Darren Lee – That's how I stated in my application, was the 80 acres would be the only area that I would be using for commercial use for aggregate. The other 40-acre parcel is for Dallas' personal use.

Stephanie Williams – We'll still need to see a permit for Area 3. You need a DOGAMI permit and a County Planning and Zoning permit. That's how we are processing this. I just wanted him to know that we are not processing Area 1, 2, 3 as a significant aggregate site. We are only processing Area

1. The rest are conditional uses.

Darren Lee – Correct. Thank you.

Kathy Clarich – So, are you saying not everything will be on Goal 5, it would only be the 80?

Stephanie Williams – Yes. But DOGAMI is not going to permit Area 2. They will permit Area 3.

Ed Anthony – Even though he's just crushing cement on it?

Stephanie Williams – Yeah, he has to get... It's under ORS 215.298... It's 5,000... either per year, to get the DOGAMI permit. But it's 1,000 either for the conditional use permit. She doesn't understand why somebody would do it that way, but it can be done this way.

Kathy Clarich – Okay. When you are talking on your truck traffic: Are you talking just your truck traffic? Or are you talking about hauling in landscape rock, including any not in your traffic study? Under 'cement' or whatever it might be, pieces, parts...

Darren Lee – No, because the decorative rock aspect of it is kind of more like on standby. Typically, I haul directly from the quarry to our site in Caldwell. Sometimes, I come across material that I don't have the room, for capacity, over there in Caldwell. So, I need a place to put it. It's something that is in the works, but I would not be comfortable telling you 'it's going to be 10, 20, 100 trucks.' The bottom line is: it's decorative rock and landscape rock. It's not a huge volume activity. It's not like we're hauling 50 truckloads of gravel a day. I have some pictures of some of the trucks. Basically, you have to hand-pick each one of those boulders. And it's about a day process for one truckload. It's not a high-volume type of activity.

Kathy Clarich – And so, the concrete, is that just in a dump truck and you are dumping it out in an area?

Darren Lee – Typically, I don't use an end dump. It tends to come out a lot safer, so that's a 20-yard End Dump. The one thing about the concrete recycling area is that, that area has already been mined out or is mined out by Road District #3. They did a lot of crushing in the '70s and '80s. It gives me that nice flat pad that already has a little layer of gravel on it. Unless you have a lot of other equipment up there, concrete has got to be laid out. So, you have got to have several acres to store that concrete. If you stack it up, it's hard to get it extracted, to put it in the crusher.

Kathy Clarich – And do you use water to extract it?

Darren Lee – I'm talking just to grab a hold of the concrete itself and put it through the...

Kathy Clarich – Yes. I mean when you put it through the crusher, do you have to use water for it?

Darren Lee – You can. It has water bars on the crusher. As well as a magnet to separate all of the metal out of it.

Kathy Clarich – Is that what you are planning on doing then? So, you will be trucking water in, to do

that too?

Darren Lee – Yeah...

Kathy Clarich – And then, I was going to ask you about rebar, that is usually in the concrete.

Darren Lee – Yeah, it's got a magnet that sucks it right out and puts it in a bin.

Kathy Clarich – And I assume that will be recycled after that.

Ed Anthony – I've got a question about the pipe running across the canal. You are positive that it will not get crushed? It will not break?

Darren Lee – It's a standard culvert pipe, like what's under everybody else's road around here.

Ed Anthony – Because you've got neighbors who rely on that water...

Darren Lee – ...including myself and our farm.

Ed Anthony – And if it goes down, are you going to be liable for their crops?

Darren Lee – I can't see that being the case. It has a concrete headwall on it. I have 100-ton wheel loader. I probably wouldn't drive that over it. I wouldn't be concerned about anything else.

Ed Anthony – Well, what happens if your 100-ton loader accidentally gets driven across it by somebody else?

Darren Lee – Then, he probably doesn't have a job.

Ed Anthony – I'm just saying, if you are guaranteeing that it's not going to happen. Well, I'm a farmer also. I've got things that I cannot guarantee. Nothing is guaranteed in farming.

Darren Lee – Well sure. I'm not really sure what you are asking me.

Ed Anthony – I'm just saying...Something I'm concerned about, you know?

Darren Lee – Sure. Well, the nice thing about that particular part of the canal: It's the only place that does not have a bank. And, I do have excavation equipment.

Ed Anthony – When you say 'it doesn't have a bank,' what do you mean?

Darren Lee – I mean it comes right out to the roadway. It's fairly flat there. Pretty much, all the way along there, it's pretty steep, up on the bank. I would be more concerned about a gopher going off the ditch down below, rather than that.

Ed Anthony – Well, it happens.

Darren Lee – And again, I do have excavation equipment. What it would do, this would disenfranchise me because I wouldn't have the crossing, any more. That's all.

Kathy Clarich – And then, you would have to wait to put it in until the season is over.

Chad Gerulf – You're talking of the pipe, the pipe that pumps the river water up?

Kathy Clarich – No, he is talking about at the crossing.

(multiple conversations)

Tatiana Burgess – There's two things in there: There is right where he is crossing, off of Mesquite Rd. But there is also a buried pipe that goes underneath. The LDS (Church of Jesus Christ of Latter-day Saints) has an interest in it. It belongs to the church.

Chad Gerulf – Where are they able to cross that?

Tatiana Burgess – So, according to the maps that we found, if you look at the screen here, I believe that the pipe gets buried somewhere along the crossing there (pointing). It's underneath...I apologize if people cannot see. But it is underneath and comes out there, right? (pointing) And it comes out right at the canal there. That's my understanding of it.

Ed Anthony – So, would you be driving over that pipe?

Darren Lee – Yes, I'll be driving over it. It's buried quite deep. It's a two-foot steel pipe all the way through there.

Clark Forsyth – How deep, would you just guess at?

Darren Lee – I'd say 5-6 feet. It has to be buried fairly deep because it goes all the way through Dallas' field. I'm sure he doesn't want to get it tangled up with his equipment during a deep plow of some type.

Kathy Clarich – Exhibit #15 talks about it? Hmm, from the farm? But they said it's shallow.

Tatiana Burgess – That is from who is representing... We got this correspondence from a representative of the church.

Kathy Clarich – '...in section two is not deep.' Well, they are concerned about it. Next, are you going to be washing any equipment off, up there?

Darren Lee – No, I don't have the capability. I've got a farm right next door, with a pressure washer.

Kathy Clarich – Alright. Will you have a fuel tank on site?

Darren Lee – No.

Kathy Clarich – So, are you going to haul fuel from someplace else?

Darren Lee – I have portable fuel trailers, yes.

Kathy Clarich – But they are not going to be parked up there?

Tatiana Burgess – If you don't mind if I ask: Do you know how many trips the fuel tankers will take?

Darren Lee – I have property right down the road. We have 3,000 gallons capacity on the farm.

Kathy Clarich – I have a question on your crushing of the concrete and asphalt. Do you have to have a permit or anything from DEQ and EPA?

Darren Lee – No, I contacted DEQ. They said that they do not require a permit. Actually, because it is not required to recycle concrete in Malheur County, I can actually get grants to provide that service.

Kathy Clarich – And how about the asphalt?

Darren Lee – I'm not really keen on the asphalt. I just wanted to put that on there. Because, sometimes I get a little bit of it. But, my crusher doesn't make good crushed asphalt. My crusher is good for concrete.

Kathy Clarich – I'd just be concerned because the asphalt, they don't even let you use asphalt on the driveways, and stuff, in places (like in town).

Darren Lee – Oh, to use the crushed? It's pretty different material.

Kathy Clarich – I was thinking that the asphalt could be contaminated, with oil and whatever.

Darren Lee – They got that right.

Kathy Clarich – So, in part of your reclamation plan, you said that you're going to start at the East side and move to the West.

Darren Lee – Correct.

Kathy Clarich – But it says that you are going to have the berm on the east side. Then it says that you are going to move that berm as you go along.

Darren Lee – Yes

Kathy Clarich – So, it doesn't make a lot of sense to me. But, every time you move this berm, you have already moved the other equipment. What do you...will you make a new berm from the new?

Darren Lee – Yeah, you run out of room. So, basically...and the reason that I'm going from the East

to the West is there's almost no overburden at the very bottom there. So as I get into it, as you get to the very top, there's 16 to 18 feet of overburden. That material has to go somewhere. And so...the nice thing is, I have that big loader. It's a 15-yard loader. It's one of those giant mining loaders. I can move a lot of earth in a short period of time. So as that overburden, I do the same thing as Seuberts. As, as I go along, it's just a continual process, you get rid of the overburden, you mine out the aggregate, and you have got to continually get rid of that overburden. It has got to go somewhere.

Kathy Clarich – So, at the time you take down...you'll take down the far berm and you will replant the native grasses and stuff?

Darren Lee – Yes. And it might actually then have a potential of being some fairly decent ground. The thing with caliche...I don't know if you have ever...

Kathy Clarich – I've got it. I know what it is.

Darren Lee – If you let it expose, I talked to a geologist about this, the exposure to the sun and water for a couple of years, it tends to break down pretty good. So, by breaking that up and allowing that to be exposed, it should actually then not create that hardpan issue, which is what we have up there right now. Where it just will not soak into the ground.

Kathy Clarich – So, how long do you think, in between moving, how long do you think it is going to take you...I don't know how big of a section you are going to start with. Five acres? Ten acres?

Darren Lee – So, the whole quarry over the life of the DeHaven Quarry, I didn't use more than ten or twelve acres, on the whole quarry. That's a lifetime quarry up there. There is just not the volume that's going to support me doing like Seubert and doing acres at a time. I would be lucky if I mined two acres a year.

Kathy Clarich – So, how many years would it take to move from your first area to the next area? I mean, you know how much gravel is supposedly there. Would it be like ten years before you moved from one to the next? How long do you think it would take you to do the whole 80 acres?

Darren Lee – I couldn't tell you. That would be totally based on what the customer demand is and what I sell it at. I mean, I can't answer that question.

Kathy Clarich – Okay, I was just trying to get a timeframe of how long you thought you would be mining up there.

Darren Lee – Well, they have been there 94 years. They should be able to get another 94 for the community.

Kathy Clarich – Anybody else have questions?

Bob Quick – Where are you with DOGAMI?

Darren Lee – With DOGAMI? Okay, I am working with them. They are not very responsive. Dallas Head has stated that he will not allow me to take out the road, that DOGAMI told me that I had to

take it out. And I can...do you want me to...I had a note about that, since you've asked (finding paperwork). I do appreciate that. Okay, as far as DOGAMI and how I understood the rules to be: A local gentleman filed a citizen's complaint stating that we were mining up on Dallas Head's property, and said that we're mining in an 'exclusive farm use unit,' which is not true. It's range ground. One of the designated uses for range ground is as aggregate exploration. So, this individual then called DOGAMI and stated that I had been cited for mining up in 'exclusive farm ground use.' Now, this is a citizen's complaint. This was not an ordinance officer or person of authority. It was just a complaint. But it was presented as a person of authority that had cited this. Many times, an ordinance officer would come out and talk to me. I explained what I was doing to the ordinance officer. He was becoming increasingly irritated by calls. There is no requirement in the county to notify any authority for the improvement of a road on private property. In regards to DOGAMI rules, which I'm very familiar with, which is ORS 517.750, part 16b.

(b) "Surface mining" does not include:

(A) Excavations of sand, gravel, clay, rock or other similar materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads on the same parcel or on an adjacent parcel that is under the same ownership;"

And in Part H:

(b) "Surface mining does not include:

(H) Excavation or grading operations that:

(i) Are associated with on-site construction activities;"

So, those are the rules that I was following. With that, I proceeded to excavate the twelve exploratory holes on an 80-acre parcel, which is required by...again, I didn't quite get my Goal 5 inventory testing done properly. So, I had to go back and redo this process.

According to DOGAMI, chapter 632, division 33: Exploration Permit Requirements:

"An Exploration Permit is required for all activities that disturb more than one surface acre or involve drilling to greater than 50 feet for the purpose of determining presence, location, extent, grade or economic viability of a deposit."

During my exploration, I did not exceed 50 feet, nor did I disturb more than one acre. And you can see that by the test hole map I have given you. That is why you will not find an exploration permit for Seubert or Road District #3, or me. Because, none of those are required in our area. When you go to the west side of the state, there's a lot of hard rock mines, and they exceed that 50-foot rule, and then they have to get an exploration permit. It's very rare out in this area that that permit is ever required. Dallas had his ticket mailed to him. I received a call from DOGAMI. They literally were screaming at me, asking me what I was doing. I told them I was doing what I've always done and what is within the law. He told me that there were dozens of complaints that had been filed as to my activity, and also cited the ticket as evidence that I was mining on this property. There's also some very cleverly edited video, giving the impression that gravel was leaving the property. Now, Dallas Head has every right to haul up to 5,000 yards of gravel off of that quarry, every year. We have not hauled one rock off of that quarry. I have another quarry that satisfies that. I know what I'm dealing with in this situation. And I also found it really curious that there were dozens of complaints that have been filed, when less than a dozen people live up there, and more than half of them support this quarry being in operation. And you have that list of those individuals that live next to this quarry also. So, it's a pretty well-orchestrated yarn of truth. But DOGAMI, like the IRS or any

other regulatory agency, tends to make you prove your innocence, and not the other way around. That's what I am dealing with. I do look forward to having the ability to eventually have them come out here, make an on-site inspection. They have not done that, and their office is in Albany, Oregon. They have not been out, not one time. I have offered many times. Again, they have not been very responsive to me or my legal counsel. So, Mr. Head, when I filled in the test holes. I was going to fill them in anyway. That's...you do the test and you fill the holes in. I also thought about I said, 'Okay, I did put that berm up.' And yes, it was to protect my employees from the people videotaping everything. But I thought, 'Okay, I'll leave that one.' I can say that was quarry activity. So I removed the berm. I know we need everybody halfway in the middle.

So, Mr. Head informed me that he will not allow me to remove his existing access road and he sent a letter to DOGAMI, in August, asking them under what authority they had. Where, it expressly states in their rules that they do not have that authority. He has not received a reply, and he said he considers this matter closed. You know, I spent 10 years of my military deployment money to build this business, so that I would have a job when I retired. I'm not Seubert Excavation. I'm not Knife River. I'm just Darren Lee. The challenges have been great, but I'm willing to accept them. I love what I do here, and I have a role in this community. And I intend on fulfilling it, to the best of my ability.

Bob Quick – How many people are on plain with this site?

Darren Lee – Well, what do you mean?

Bob Quick – You got an elevation gain there, at the top, at a higher elevation that a lot of the properties that we are talking about. How many people are actually right at the border? Or right at the level of the site?

Darren Lee – Oh, okay. As far as the actual property line? There's 2 people that are close to the property line and they are built really close. Everybody else is 1,000 feet plus away from any of the actual quarry activity. And I did that...part of the purpose was to mitigate as much of that as possible.

Bob Quick – Okay. Basically, you have two households, that are affectively close, property wise.

Darren Lee – At some point.

Bob Quick – The others are down at lower elevation gains, as I understand of what I see. Although, they're not really on plain with you.

Darren Lee – No. Although, one of them is actually in an old abandoned quarry, on the top of the hill.

Bob Quick – And the other question I asked, which he brought up about the culvert, is that there was a notation in our report here, that there was dissatisfaction with the...that there was a certain degree of R&D was not completely satisfied with quality of work. Do you agree with that at all?

Darren Lee – I kind of find that a bit irritating. Because, there's both our ditch riders there. Neither one of them have ever stated one thing about that. It said, '100%.' I don't know what they mean by

100%. I found that a little bit odd.

Chad Gerulf – I've got a few questions here.

Darren Lee – Yes, sir.

Chad Gerulf – I wanted to state, too, that I am a proponent of gravel in Malheur County. But, this application...there's a list of criteria that has to be met like before. I feel like I'm left with a lot of questions. I mean, the water truck: How many loads of water? There's... there's been a lot of questions, and not many answers, or kind of statements. But, nothing like 'Hey, I'm going to haul ten loads of water to satisfy the dust. And this is why, or how I came to that calculation.' And that's the kind of stuff that we need; to make a good decision.

Darren Lee – So, I used Road District #3's. I went through their application. I went through Seubert's application. The only mention that Seubert made was they said they 'will have a 10,000-gallon water tank there for the crusher.'

Chad Gerulf – The thing about hearing about Seubert, is that this is your hearing. We need to know what you are planning.

Darren Lee – I get that. I look at what they got approved and what was required. I've got no problem watering a quarry down, if it's necessary. But as you know, most quarries typically are not dusty. The only dust that you'll get is from where you're extracting you fresh overburden. Because, even like the berm that, you'll see the picture of the berm in there, that's pretty established. This has got grass growing on it. That was only over a 6-month period. So, your dust that you're going to be dealing with, is very minimal. And like I thought I articulated well is, in the Spring, there's a lot of moisture in the ground. And you actually get to a point where you've got to wait until it dries out just a little bit, 'cause it's sticky. So, there is no dust when you crush in the Spring, in particular. In the Fall, or more importantly, if you're running at Spring time alone. Because the crusher, typically, is pretty contained. A lot of that dust is staying in the bowl. It's when the Spring plant starts vibrating all that stuff off, if you have dust. But, if you look at that report on the aggregate quality itself, there is almost no organic or earth material in that. It is extremely clean gravel. We have really clean, good gravel up there. So, if a person wants to do a concrete...something like that, you'd not have to use a lot of water to be able to make that meet spec. Because it is incredibly clean. The story I heard was it used to be the bottom of Lake Bonneville, like, 9 years ago. Apparently, it was pretty clean.

Chad Gerulf – Yeah.

Darren Lee – So, I don't know how to tell you other than that it's situational. And I think that I've put somewhere in there that I would be more than willing to put a sign out there to the front, where my access point is; with a contact number. If there was fugitive dust or there was an issue that maybe if I wasn't up there and somebody was driving a truck, then they can contact that number instead of alerting authorities and taking their time to be able to mitigate that as an issue. But again, this is not a, this is not a Seubert operation. This is not a Knife River. If I haul two or three truckloads of gravel out of there, a day... You know, the school bus goes by more often than I do.

Chad Gerulf – The problem is, regardless of how much you've hauled, you still developed a gravel

pit there. So, you have a responsibility to keep the dust knocked down.

Darren Lee – I'm aware of that. I don't think that I've ever been a bad steward of that in the past. If you look at Doug DeHaven's road, I've put...I don't even want to talk about how many loads or gravel on there to be able to keep that up and not have dust; when I drive through his yard. Because I go right through his yard. I mean, I have watered that as well, and graded it, and kept it maintained. So, historically, I think I've been a good steward as far as dealing with dust. It's not my first rodeo.

Chad Gerulf – Okay. Well, that's why I figured you be might be able to tell how many loads...I mean, I'd just thought you might have somewhat of a...for your operating plan. I thought you could provide us with a number of loads. I mean, 'I will water this every day' or 'there's one load' or something. But, this is criteria that you have to meet. So, you have to sell this to us.

Darren Lee – Right.

Chad Gerulf – We're asking you a question, and you need to make us understand. Does that make sense?

Darren Lee – Right. But, what I'm also stating is that if I'm not creating dust, then it's silly for me to water the road. There's a lot of times when it will be completely unnecessary.

Chad Gerulf – Okay.

Darren Lee – I guess, that's what I'm getting at, is whether it's necessary or not. Because if I have my roads properly graveled and maintained, they're not going to create dust. They have to have dirt on it, to create dust. If it's sand and crushed rock...like I said, that's why I have a job is people want to get rid of their dust in the road.

Chad Gerulf – Yup. I also have a question on number eight of this conditional use criteria. It says here: the question is, 'What are the proposed landscaping improvements for the visual benefit of the subject site and the improved appearance of the neighborhood' up there and for the county as a whole? So, you had 'seed berms as necessary for erosion control and dust abatement.' So, to me, that's not meeting the criteria. Then, we can't pass this if the criteria is not met.

Darren Lee – I looked through Seubert's. Always, what they said was that they were putting a ten-foot berm up. They didn't mention anything about seeding or anything else. And this is the berm that I have there. It's a nice-looking berm, and it has grass growing out of it naturally. So, that was the berm that I put up, that I removed; after the complaint was made. I would say, that's a fairly nice-looking berm. And it's not dusty. It's got grass growing out of it. The deal is also that you can seed a lot of that stuff. Remember, we're talking about on top of a hill that's very dryland ground. There's not a lot of water up there. So, unless you seed it and mulch it in the Fall, you're probably not going to get much, and probably by June it's going to be burned off. But, the nice thing about that is that is caliche. It creates a kind of hard candy shell on it. So, it doesn't blow dust. This didn't. So, I guess I've already done the test run on it.

Chad Gerulf – Okay. So, that's the proposed landscaping plan. Sorry, I just have a hard time with that. It says 'seed berms.' We don't have any description of the berm.

Darren Lee – I've got a photo of it. I thought that would be much better than saying twelve-foot berm. Because all that Seubert put in their application and the Road District #3 was 'ten-foot berm.' That was the end of the story. There was no other. I only expect to be treated with the same criteria as what my fellow competitors and other entities are held accountable for.

Chad Gerulf – And you are. And we have the same conversation with them.

Ed Anthony – This is not Seubert's. You keep bringing them up. No, listen. I understand what you're saying. But, I'm getting tired. They're done. This is your application.

Darren Lee – The deal is that I was told to utilize those two, as an example of how to put my application together.

Kathy Clarich – Who told you that?

Darren Lee – Eric Evans.

Stephanie Williams – And that might have been fine if you did not have any opposition. But you have opposition. And you need to address the opposition. That's where we are coming from. We haven't really done that by substantial evidence in the record.

Darren Lee – Okay. Thank you.

Stephanie Williams – That's the difference.

Ed Anthony – Didn't it say that you have to reclaim the ground?

Darren Lee – Yes.

Ed Anthony – So you are reclaiming the ground as it was?

Darren Lee – It will be a little bit lower.

Ed Anthony – But I mean, the same material: Sagebrush and...there's no weeds? No grass?

Darren Lee – Just Grassland.

Ed Anthony – You are reclaiming it with grassland? You are planting grass?

Darren Lee – Yes. It actually, possibly might produce something after it's reclaimed. When you get rid of that material.

Ed Anthony – I've got sagebrush growing on my ground, around the grass.

Darren Lee – Then you understand what I'm saying also...A lot of times, that is not successful. Especially where you have a berm. I'm just trying to be honest and realistic. We're talking about a

really dry area, and you can seed the hell out of it and it doesn't mean you're going to get anything out of it.

Ed Anthony – You’ve got to seed at the right time of the year.

Kathy Clarich – I have caliche. We grow on caliche. Even though it’s a hard pan. It will still grow.

Darren Lee – That has grown stuff up there, but it’s not productive. So, I guess, I could seed it. But, in my experience in the past, given that type of land up there, unless we have a like a long, wet Spring, it's probably not going to be very effective. Probably by August it will either be burned off, or become a fire hazard.

Chad Gerulf – I was just wondering what your plan is. That’s all. It's the same with the water truck. I'm not criticizing. I was just asking.

Darren Lee – I'm trying to be very honest and say that if we don't have any fugitive dust off of the property, then I would not water the road. I think that would be prudent and reasonable.

Kathy Clarich – I have a question from, I think it was Strata? They said that some of it failed the test? It says, ‘The gravel failed to meet the gradation criteria for spatial filter material, base aggregate, shoulder aggregates, and PCC aggregates, and also failed to meet the sand equivalent specification for PCC aggregates.

Darren Lee – Right. That means, basically, it meets all of the goals, their requirements for Goal 5. But, you'll never get any base gravel to meet all of the specifications. That's why we have crushers and processors. So, as an example on the DeHaven quarry, I did an ODOT spec road mix, which is very good. It's a pain in the butt, as you know, to make. And so, I had to screen off like 25% of the round rock, to be able to make it make spec. That's all that means. But, as far as the base criteria, both of those tests from both different engineering firms, they met or exceeded those criteria.

Stephanie Williams – There's only 3 things that are tested, under the ORS: Soundness, abrasion, and air. And so, apparently, gradation...that is a test that's usually done, But, it's not a test that’s done for that.

Kathy Clarich – I have a question on your dust mitigation plan.

Darren Lee – Yes.

Kathy Clarich – It says, ‘Operations will be suspended during high wind periods, that would generate, excessive dust. So, like, what are you saying? Anything over 10 miles an hour or anything over 15? I mean, what do you consider high winds?’

Darren Lee – When you start having fugitive dust blow off of your property. Because remember, when we excavate this, we're going to be in a 40-foot hole. So, depending on how open the quarry is, most of the time, if you have any type of wind, it’s going to go right over the top of you. Unless you have those dust devils.

Kathy Clarich – Dust devils, or inversions. Inversions really wreak havoc with you. Okay, does Carol or John have any questions? They are on mute. Do either one of you have any questions for Darren?

Carol Skerjanec – No, I don't have any questions, Kathy. Thank you.

Kathy Clarich – Ok. How about you, John?

John Faw – Nothing currently. I'm still pondered.

Kathy Clarich – Alright, thank you. I think we will let you go ahead and sit down and we will listen to the other people. If we have more questions, we will ask.

Bob Quick – I have a question. Do you we have any of those people on that list he gave us, who are here in favor of it?

Kathy Clarich – Well, first what we are going to do: Is anybody here with public testimony?

Tatiana Burgess – Anybody representing any agency? The irrigation district or...I thought the irrigation district was going to be here.

Kathy Clarich – I thought the irrigation district said that they were going to be here, too. That's why I was asking.

PUBLIC TESTIMONY - PROPONENTS

Kathy Clarich – Okay, so first, we're going to go for anybody...you five minutes for proponents, and I'm going to read the names of the people that gave me that they were proponents. The first one is Randy Sartin. He needs to step to the podium. State your name and your address.

Randy Sartin – Yeah, my name is Randy Sartin and I live at 5341 Buckhorn Rd. I live next to Darren Lee. And you were saying earlier about the dust, being an organic farm. Have you ever been up on Moores Hollow road and seen a dust storm come through?

Kathy Clarich – I've seen lots of dust storms.

Stephanie Williams – Okay, they don't get to ask us questions.

Randy Sartin – Okay. The other one is I have cut Dallas Head's property for years. I baled it, did everything. All it was a big weed patch. So, whatever Darren is doing up there is a benefit to that ground. We have barren ground. We don't make a dime off of it. Not unless you run cows. So ultimately, the rangeland is worth nothing. And I think where somebody could come in and make some money off that ground, you pay taxes. You pay it and we don't make a dime. So, that's all I have to say for Darren.

Kathy Clarich – Okay. Thank you. So, next on the cards is Rose Sartin. Again, state your name and

address.

Rose Sartin – Hi. I'm Rose Sartin. I live at 5341 Buckhorn. Our ground is, or runs right against DeHaven's ground. The time Darren was running the quarry up there, I was putting in about 700 steel stake posts. And I never saw any dust coming off of it. It was just as dry as can be. I've been back there with the roads. It's very clean and neat. I've been a neighbor of Darren's for about 17 years. Other than when Darren was in special forces. And he has been just the best neighbor. I just can't think of anything...he's just a good neighbor and I think that he needs to be doing this. Because, I think we would enjoy getting some gravel close and I know a lot of the farmers in our area would too.

Kathy Clarich – Well, Darren. You already did yours. The next one is Houston Head. Again, state your name and your address.

Houston Head – Houston Head. I live at 5601 Highway 201. Also, very near the subject's property. I am actually the landowner's son. Dallas is my father. That property has been in my family since about 1930, under the same continuous family ownership. For years, we tried dryland farming, grass hay, alfalfa hay. Never been profitable to try and farm that ground. And unfortunately, if you don't farm it, what you get is a big fire hazard, lots of tumbleweeds, weeds, etc. But, it never really was very profitable in the long run; trying to dryland farm. I think the gravel that we've hauled off to use on our farm and stuff, is probably the most beneficial thing that ever came off of that property. I think allowing anything that might actually provide that ground some usefulness to the area, rather than just being...it doesn't really have a lot of other economic value for many other reasons. So, I'm definitely in support of allowing the aggregate mining operation.

Kathy Clarich – Alright. Thank you. Next is Brian Sheets. Again, state your name and address.

Brian Sheets – Good evening. My name is Brian Sheets. My address is 93 SW 4th Avenue, in Ontario, Oregon. I'm Mr. Lee's legal counsel. First of all, I just want to thank you for what you do. Because part of what I do on my volunteer time is that I am the vice-chair of the Canyon County Planning Commission. So, I know what kind of stuff you do, what kind of things you're looking for, and what kind of things you're able to do with what you've got. So, first of all, thank you very much. But, the second thing I want to do is just talk to you a little bit about Mr. Lee.

So, Mr. Lee and his family have been here farming in this community since 1944 and have been involved in the earth moving business for the last forty years. He was born and raised within the area. Perhaps you know, he's also a combat veteran. He served in the special forces for 28 years, having retired and having left the army three years ago. During his time, he served on several deployments, including deployments to more than 30 countries: Including seven years in Iraq, three years in Afghanistan, and two years on the Israeli West Bank.

In his time off from the army, and during the last 15 years, he's been excavating gravel; slowly building his business for work, after leaving the Army. He has a Masters (degree) in Emergency Preparedness and Disaster Planning from American Military University and has completed half of the requirements for an Engineering degree from Drexel University.

So, what we are talking about here tonight is the Goal 5 inventory, as well as the Conditional Use

application. So, the application, along with the supplemental testimony that we received today, is going to meet that criteria. Now, that criteria is applicable to whether it's being opposed or it's not being opposed. So, I just want to go on the record stating that the criteria and the status of the burden of proof remains the same, whether it's opposed or it's unopposed.

It's up to you to make sure that you found that there is substantial evidence to meet the criteria to make that decision. That you do the cross examination. You are the truth seekers. After tonight, you're going to find out that this application meets the criteria for conditional use. And adding the Goal 5 resource to the Cannon County. Sorry, Malheur County...I feel awful for saying that...Malheur County's resource list.

So, I just want to talk about a couple of deficiencies that was noticed in the staff report. First of all, on page ten, regarding the irrigation pipeline. This was addressed in the Traffic Plan. I'm sure that Mr. Lee would welcome any sort of condition that you put on to make sure that irrigation pipeline would be protected. Second of all: I did reach out to the Hasting's attorney to talk to him about what kind of mitigation would be...what would be good for their organic farming practices. The response was he didn't have enough time to tell me before tonight's hearing. So, he said that it would take some time to figure out exactly what was needed.

So, I hope that they give you some good information that you can use to provide those kinds of conditions to be able to protect their property and make sure that their interests are met. Just like it says in the Oregon Administrative Rules: "You can't force a significant change in accepted farm, or forest practices on surrounding lands devoted to farm or forest uses that significantly increase the cost of accepted farm or forest practices, on surrounding lands devoted to farm use."

So, those are the two different things, the two different findings, that you need to make: If it's significant. And the second part is that it can't be mitigated, in order for you to put forth a denial. So, when it comes to mitigation, dust, noise, and airborne pollutants, for the Hasting's property, we are proposing to mitigate that through the dust mitigation plan. He's not planning on spraying for weeds. Any petroleum spills, or anything like that, will be handled on-site through spill kits, as well as any sort of regulations required by mining regulations. They are not looking to do any airborne pollutants, and they are not looking to do anything that would negatively affect them.

(alarm goes off)

Brian Sheets – That's my time? Well, thank you very much. I really appreciate your time here and I'd stand for any questions.

Stephanie Williams – Did you see the letter from Mr. Ty Wyman; the attorney?

Brian Sheets – I did.

Stephanie Williams – Okay. And you don't have anything to say about his letter?

Brian Sheets – Oh, I do.

Stephanie Williams – Do you have something in writing?

Brian Sheets – I’m not submitting any as written testimony tonight. But, to the effect he's stating that there is not a geological certification...

Stephanie Williams – Right. They are Idaho geologists, is what they are saying. They're not licensed in Oregon. So therefore, he doesn't, or they don't meet the...

Kathy Clarich – Do we do this part now?

Stephanie Williams – Well, I don’t know. Otherwise...we don’t just ignore it. I mean, when are you going to do it?

Kathy Clarich – Well, that’s what I was going to inquire of him.

Stephanie Williams – I just heard the comment that he did not receive the ODFW letters. I just wanted to make sure that he did receive...

Brian Sheets – I...I did not receive a majority of any of the things that were uploaded today.

Stephanie Williams – Yeah... A number of things came in today. That literally came in today.

Brian Sheets – I did not see the majority of that. I didn’t see a majority of things that were uploaded today. I checked the website yesterday. These eleventh-hour submissions are very unusual.

Tatiana Burgess – We got about 90% of them today.

Brian Sheets – I find that to be...

Stephanie Williams – Right. So, I’m not saying that there isn’t a burden of proof or an objection. I’m just saying that they have raised some legitimate concerns.

Brian Sheets – Alright. They have raised legitimate concerns, that nobody has time to rebut. So, there’s an unfairness at the hearing, when it comes to those kind of things. Especially, when you have got ODFW saying that there is ‘significant winter range’ here. When was anybody supposed to know that? And how is an applicant supposed to respond to that?

Stephanie Williams – You do realize that this letter only goes towards the conditional use permit part, rather than through the Oregon Administrative Rules part. Because the first sentence in this letter says ‘This site is not identified as an acknowledged, significant wildlife habitat’ for Malheur County Goal 5 program.

Brian Sheets – Yeah. But to that extent: I don’t have the chance to go through and check that kind of stuff out. I don’t have the chance to look through other attorneys’ filings, and things like that. It doesn’t really lead to a fair hearing when you don’t have the opportunity to...

Stephanie Williams – But, you have the burden of proof, though.

Brian Sheets – There is that burden of proof. I also have a rebuttal opportunity as well at this

hearing.

Stephanie Williams – Okay.

Brian Sheets – And when those kinds of things are presented, I don't. Not only that, I still haven't seen them. They have never been presented to me.

Kathy Clarich – I think what she is saying is that, in the application itself, he says that there is no wildlife up there. Well, he should have been doing that research. That is on him to do, to present to us. It's not for everybody else to have to send it in. And then, somebody contacts somebody, then they send us the stuff. I mean, if he had done his job in the first place, he could have covered all this stuff. That's what, I think, Mr. Gerulf was getting at. That it's not all...not a complete application. Because, there's a lot of stuff that is missing on it.

Brian Sheets – Well, I know how this works. I think there could always be something missing.

Kathy Clarich – True. To a certain extent, but there's a lot of things that are missing...especially some of the big stuff. Like your wildlife. When you get a letter from them saying 'okay, but this is a winter migration and it has some spatial...' He should have contacted ODFW and talk to them. Because, that is one of the questions in the application; in the first place. It asks about that. Instead, he just passes it off. There's another spot where he says...again just passed it off, about the people that live there. That, there is no problem with them. Well, obviously, there are some problems with them. So, that's all I am saying. I don't know if that's what she (county counsel) was trying to get at. But, there is an opportunity for him to have covered that stuff in here. So, it's not really unfair, that we get a letter at the last minute, stating 'Hey, this is going on.' When he could have covered it.

Brian Sheets – Fair enough. Alright, thank you very much. I appreciate it.

Stephanie Williams – I just didn't know what we were...

Kathy Clarich – I don't know if I took that over too much. Okay. Is that all of the proponents? Okay, next we will go to the opponents. The first one I have is Ben Mitchel?

PUBLIC TESTIMONY – OPPONENTS

Tatiana Burgess – I'm sorry Kathy Clarich. Can you ask if there are any proponents online?

Kathy Clarich – Oh, just a minute. Are they unmuted?

Tatiana Burgess – So, we one person that is online right now that...there's no label for the name. It says 'Caller One.' Are you here to testify in opposition? Or, are you a proponent?

Bill and Riley Downing – Would that be me?

Tatiana Burgess – No. We see that is Bill and Riley Downing. Then, we have somebody else who is identified as 'Caller One.' Maybe, they are just on the phone.

Kathy Clarich – They are muted. Do they know how to unmute?

Tatiana Burgess – If you are on the phone, use ‘*6’ to unmute yourself.

(audience member states it is a relative who will not comment, they are just listening in)

Tatiana Burgess– Okay. Just listening? We just want to make sure we are not missing anyone. Do you know if they are wanting to testify? They are just listening in? Okay.

(multiple conversations)

Kathy Clarich – Do we want to start with Downings, since they are on there?

Tatiana Burgess – That is up to you.

Kathy Clarich – Okay. Let’s go ahead, since they have already clicked in. We are going to start with Bill and Riley Downing. Are you a proponent? Or are you an opponent / opposed to it?

Opponent Riley Downing – We are opposed.

Kathy Clarich – Okay. Would you like to go ahead and use your five minutes and make your testimony? I need you to state your name and your address.

Opponent Riley Downing – I’m Riley Downing. 5151 Power Road. I had a nice letter all written. I had submitted it. But after listening to this, I have to deviate from that. There's been some things said tonight that I absolutely, I absolutely cannot believe have been said. We actually live in the old abandoned quarry that Mr. Lee talks about. He has repeatedly referred to our property as ground that has been historically a rock quarry. Historically? Yes, if you go back 45 years ago. There was an agreement between Fred Coons and Malheur County Road Department. They gave them the right to take the gravel off of this property to help build a road; so there was access for the people that had houses beyond this property.

Dallas Head: His quarries have been dormant for at least forty years as well. That's not something I am just stating. This is a statement that's supported by Dallas Head himself in a statement from the Malheur County Enterprise. Les Zaits spoke with him, and it was dated March 15th of 2023. In that article, which you can look up, Mr. Head said, in a recent interview, ‘There had been no gravel operations on this property for 40 years.’ Darren says fifteen.

We've been out here for fifteen years and I am here to tell you, there has been zero, zero activity over there until three years ago. Our property looks right into that pit. There is a ravine between us. I would invite any commissioner to come out here, drive up my driveway, come to my backyard, sit on my deck, and look and see what I get to look at. He's had his loader up there, moving dirt, pushing gravel around. To say there's no dust? It is laughable. It's truly, truly laughable. I have pictures of dust. I can't even describe the dust. The sound? We will be listening to backup beepers and a gravel-crushing operation that is like none other. My father worked for Idaho Concrete for 32 years. I was around the concrete activity growing up. It's loud, it's obnoxious, it's dusty, and it's annoying. To put that in an area where Mr. Lee just stated. We've got a huge county. We've got lots

of room out there. 'Lots of room out there' doesn't mean you have to destroy a neighborhood. And I'm not going to get into a lot of other people's testimony that's going to be given tonight about the testing that was done.

The parking of fuel tanks, I wanted to talk about that. He has left fuel tanks parked up here for days. To say he has not, is a blatant disrespect for the truth. He has left them parked up here. We have had fire scares before, where we have had things in our car and ready to evacuate. That is a huge concern to us.

Constantly...you told us that you would be constantly moving those berms after you started digging. How is grass going to grow when you are constantly moving those berms? Yes, it's dusty. It's very dusty. To say that there's so much moisture in the ground and no dust? It's ridiculous. I have a gravel driveway. People see me coming for miles. It's a dusty mess. I also look into the DeHaven pit. It's a lot farther away. I don't hear it much, but I can hear his trucks running.

There are weeks when his trucks run all day long. How many loads? I wished now that I would have kept track so that I could tell you how many loads he actually runs. And for them to say there's no dust? You live on the other side of the hill. I live where I look at that road, and I've watched those trucks come out of there. There's a lot of dust. And in fifteen years of living out here, I've never seen one water truck ever; on that road. Ever. It's always trucks moving at a high rate of speed. They're flying out of there and there is dust behind them.

We've all felt the ramifications of his illegal operation blueprint. One example: I still had berms standing within fifteen feet of my fence. The noise level: He started one morning at 6 a.m. I have a video and I have a time-stamp on it. He can argue. I can prove it. Backup beepers going off, blowing dust, road deterioration, fire hazard. There's a riparian corridor that's being disturbed. There's wildlife winter range that's being disturbed. Our property values are going to plunge.

(alarm goes off)

Riley Downing – Nobody moved out here, thinking that our life savings would be put into our biggest asset...

Kathy Clarich – Riley? Your time is up. Thank you very much.

Riley Downing – Thank you.

Kathy Clarich – Does Bill want to make a comment?

Riley Downing – No. We're done.

Kathy Clarich – Okay. Thank you. Okay. So, the first form that's here is a Ben Mitchell. Go ahead and state your name and your address.

Opponent Ben Mitchel – Hello. I'm Ben Mitchell. I'm with Ag Reserves, Treasure Valley Farm, the LDS Church (of Jesus Christ of Latter-day Saints). Off of 597 Grove Rd and I was asked to represent our farm. My manager and the managers in Washington weren't able to attend this

meeting. So, they asked if I would come here and speak and give some of our concerns with this project. I'd like to just read the concerns that were brought up and go into detail a little bit on those. The first one is in section one. The open canal in section one of the proposal is not lined. Water seepage will occur around the canal with digging.

The second one: Canal crossings may not be rated or built to withstand heavy equipment and trucks. Mining right up to the canal would degrade its integrity. The underground pipe in section two is not deep. We are concerned about the heavy equipment trucks over the top. I think it's important to include that the pipeline and the canal supply our water irrigation for seven months for our 2,500-acre farm. Any problems that might happen can be detrimental with our crops; if something were to happen with the canal or the pipeline. Especially, it not being very deep. I don't know how deep it is for sure. I haven't been around the farm for a long time. But, David Blaylock, the manager previous had said that it was not very deep.

So, that raises up a big concern to us: Whether or not, when or if that will happen; especially during the season. How big of an impact that would have on the farm? And, I would just include that all the people that have come here to oppose it tonight, are our neighbors (to the site). I think that it's important that they're the ones, we are the ones that will be dealing with this every day. And so, it has a bigger impact on each of us. I think that's all I have to say. Thank you.

Kathy Clarich – Alright. Thank you. Next is Tina Cassidy. Please state your name and address.

Opponent Tina Cassidy – Good evening. My name is Tina Cassidy. I live at 478 Jasmine Road, in Ontario. I live with my husband Bob and my daughter Brooke. Next month, we will have lived at this residence for 30 years. We are here tonight to show our opposition to Mr. Darren Lee of Weiser, Idaho and Mr. Dallas Head, the property owner. I am going to address the location. As previously stated from the staff report (on page 6, DOGAMI's rule) for complying with Goal 5, the impact area is a 1,500-foot radius from the boundaries of the mining site. Which, you have outlined for thirty impacted properties and dwellings, with our eight homes being the closest and most directly affected. Our home in particular, being the closest.

As stated, conflicts are defined as noise and dust or other discharges, with regard to those existing and approved uses and associated activities. Houses and schools that are sensitive to such discharges. Noise impacts can include truck noise, from constant truck movement, deceleration, acceleration noise, the use of engine breaks, extraction noise from construction extraction, processing equipment, stone crusher, loaders, earth-moving equipment, back up alarms on machinery...you know the beep, beep, beep, beep, beep... Yeah.

His proposed hours of operation of 6 days a week, 10 hours a day, 60 hours a week, 7 am to 5 pm. He also states his application 'not typically nights,' but leaving the door open; for it to be a possibility. Dust and pollution can include aggregate dust from construction, extraction, operation, and stockpiling, vehicular and equipment emissions, pollutant emissions from diesel trucks and equipment, e.g. nitrogen oxide organic compound, fine particulate matter. Dust from gravel pits gets into the body through our nose and mouth. Respiratory disease is well documented. It gets into the lining of the lungs and can be infiltrated by these micro particles. And these end up in the bloodstream and can get to your brain. Which, is even more harmful to children.

Large trucks and mining equipment produce toxic pollution and are safety hazards. Exposure to these pollutants and emissions have been associated with a wide range of adverse health outcomes; including increased risk of respiratory diseases, such as asthma, birth and developmental concerns, cancer, and cardiovascular and respiratory-related mortality. Please, see Exhibit A.

Mr. Lee states he ‘will suspend his operations during high-wind periods.’ Well, I’m here to tell you: We live on a hill and we have high wind all the time. I cannot even tell you how many flagpoles I have had to replace over the last years. And I can tell you: No amount of water is going to keep that dust down; especially in the hot summers.

Mr. Lee has also stated in his application that ‘no aggregate production will take place closer than 500 feet from any dwelling and no aggregate removal will take place closer than 100 feet from the property boundary’ as well as constructing 12-foot berms to mitigate noise, dust, etc.

During Mr. Lee’s illegal mining activity last year, which is outlined by DOGAMI’s suspension order, please, see exhibit B, which, he is currently under and where he disturbed over eighteen acres. In which, over ten acres of that area is in Area #1. Which, includes constructing 12-foot berms. His illegal mining boundary last year was twenty feet from our property boundary, 104 feet from our front door, and also 91 feet from our well.

Please, see Exhibit C, showing those distances; as well as Exhibits D and E, showing the close proximity to our home. As well, Exhibit F, showing the close distances to our other neighbor’s property. It’s easy to throw out arbitrary distances to try and mitigate these issues; as Mr. Lee has done. But, to see it and to live it: It’s another thing.

What Mr. Lee is proposing to do currently: To mitigate noise, dust, etc. is what he already did last year illegally without a permit. So, we can say with certainty that this plan to mitigate these issues cannot be achieved. Because, we already experience this mining plan in real life, because we lived with it last year, but on a much smaller scale, compared to what he is proposing now.

We experienced the dust just like Riley stated, from his mining activity, as well as from the berms, the constant noise of the equipment, the beeping all day at times, waking us up. Being on this hill the sound travels great distances, as well as the dust from the constant wind, so even as Mr. Lee at the other end of...

(alarm goes off)

Opponent Tina Cassidy – Oh, sorry. Thank you.

Kathy Clarich – Next is Dinah Lord. State your name and address, please.

Opponent Dinah Lord – My name is Dinah Lord. I and my husband live at 458 Jasmine Rd. I would first like to address that Darren Lee stated that there are only two neighbors on the plain of the proposed operations. There are actually eight. The proponents of this plan do not live directly within the proposed area. Also, letters submitted by the Oregon Department of Fish and Wildlife (ODFW) and Oregon Water Resources Board that addressed riparian corridor and waterways that flow underneath the proposed area, are published and available online.

My husband and I have spent a good number of years employed in the heavy highway construction industry. As well, a good number of years for myself, serving the United States Army, reviewing contracts, federal regulations, and balancing yearly budgets of \$30 million. My focus of Darren Lee's current application is as blatant disregard for the state of Oregon's Administrative Rules and Revised Statutes. Darren Lee was served with a Suspension Order, as well as a Notice of Violation and Compliance Schedule. The suspension order addressed Darren Lee conducting surface mining operations without an operating permit.

Further, Darren Lee was ordered to suspend surface mining operations; to include extraction of materials. Photographs and video of Darren Lee removing materials from sites, including the suspension order, were forwarded to DOGAMI. They were not altered in any way. Darren Lee was ordered to restore all surface impacts and return the sites to a stable, pre-mining condition by 15 June 2023. Darren Lee obtained an extension from the state to 30 September 2023. Even after a 3½ month extension to complete this restoration, Darren Lee failed to comply with the compliance requirements.

Dallas Head was cited and found to be guilty of mining in an EFU zone on 4 May, 2023 and fined \$500. Darren Lee has shown, by his actions of conducting mining operations without a permit, that he does not respect the laws and regulations of both Malheur County and the State of Oregon. Darren Lee's new application for a conditional use permit is submitted to a lower authority...and I mean no disrespect to Malheur County.

While penalties and fines are being reviewed by the State of Oregon Office of the Attorney General, to initiate legal proceedings and fines. DOGAMI cited twenty separate Oregon Administrative Rules and Revised Statutes pertaining to his suspension order. Again, this shows a blatant disregard of published regulations. As no permit was issued for mining, due to his not applying for one with DOGAMI at present there are no protections afforded to the taxing lots located in the Jasmine Hill area. Damages to wildlife and underground water sources that have been published by Oregon Water Resources and Oregon Fish and Wildlife. This is only very small sampling of the violations that are continuing to occur, and which penalties and fines can be assessed for up to \$10,000 per day.

All landowners located on Jasmine and Power roads are 100% in agreement that Darren Lee's application for a conditional use permit, as well as his application for Goal 5 status, should as a minimum be denied. At the present time, the Oregon Office of the Attorney General is reviewing DOGAMI's submissions. Thank you very much.

Kathy Clarich – Next is Mandi Hastings. Please, state your name and address.

Opponent Mandi Hastings – Hi, my name is Mandi Hastings. I live at 464 and 470 Jasmine Rd. I'm going to address the water issues that are resulting in the...

Kathy Clarich – Can you speak up a little bit?

Opponent Mandi Hastings – Yeah. I'm going to address the water issues that are resulting on the property that's being considered for this aggregate mine. And again, in reference to the idea that this hasn't been fair or hasn't been...information hasn't been made available: These are questions on the

application where Darin Lee is asked, 'Are there wetlands / waterways on your property?' His answer is 'no.' There is actually a significant amount of water on the property as well as on the surrounding properties. This is all listed on different websites; state and federal websites. I submitted several maps, showing those websites and showing the riparian corridor that originates within Dallas Head's property; within the 80 acres of where the main mining is supposed to be going on.

It's documented by the Oregon Department of Fish and Wildlife, as we've heard from them (previous testimony), National Wetlands map, Oregon Water Resources, and statewide wetlands. These maps document a main riparian corridor that originates on the proposed mining site; specifically, in phase one. This riparian corridor then flows into an underground riverine and onto adjacent properties that contain crucial wetlands, which, eventually flow directly into the Snake River.

There are also several other documented riparian areas to the west of phase one, and in the proposed mining area, known as phase three. Phase three was significantly disrupted last year, when the applicant illegally mined the area, removing perennial native vegetation and wetland areas. See attached maps and photos of all of those different areas. And we've really outlined it quite well. There is also the large irrigation canal that traverses the entire western side of the proposed aggregate site; as we've already been speaking about tonight, in phase one. Hundreds of thousands of gallons of water flow through this canal. It's a dirt canal. The land is sloped 105 feet from that canal to my property line, which is the eastern border of the mining aggregate...and it is at 4% grade. It is not flat. It slopes significantly. And then, as it slopes, it flows downward towards several homes and residential wells that are present there. If Mr. Lee were to mine area one as described, there is a high probability it would become inundated with water and it could also call into question the stability of the entire western side of the hill, which we have talked about.

There is, undoubtedly, a large amount of groundwater that Mr. Lee refuses to acknowledge in the area. However, Mr. Lee seems to be aware of this, as he has indicated in his plans to build a holding pond. And you can note that on page 11 of his application. There will be the possibility to create an impoundment area to the east of the quarry, due to an elevation drop, and the creation of a berm. The location of this pond is in a very sensitive area within the riparian corridor and the riverine and directly on the border of our farm and our actual irrigated row crop fields. Not to mention the homes and the residential drinking well water; that would be put at risk for that.

We have a lot of aerial photographs that we printed off for you today, that show the water collecting in different test holes. Also, in different areas where Mr. Lee dug last year. And you can clearly see that there is perennial wetlands that were there and even ducks floating on the ponds; that sit up in those areas. These wetlands will be destroyed with phase three mining as well. Darren Lee also fails to provide any independent studies concerning drainage, water, or geological soundness of what he is attempting to do. We have no idea where groundwater sits in there because there's never been any testing or test results given to us. That is really all I have to say today. Thank you so much. We really appreciate you listening.

Kathy Clarich – Alright. Thank you. Next, we have Mike Hastings. Please state your name and your address.

Opponent Mike Hastings – I happen to have seven copies. Should I just kind of spread them out?

This is a new exhibit. (hands out papers)

Kathy Clarich – Please state your name and your address.

Opponent Mike Hastings – Okay. You betcha. Excuse me. My name is Mike Hastings. I live at 464 Jasmine. My property is just on the other side of the fence, to the east of this project. My comments today are going to be very specifically addressed at the OAR rules of the Goal 5 rules that that we're talking about. Specifically, I want to talk about the quantity test. Mr. Lee, before his application, was given an example of an accepted, third-party, independent test that was done on a Goal 5 project that is 7½ miles to the south of our land. Within this example, being how important it is to know with certainty what the quantity of land is in this certain...thing that he's trying to accomplish.

This report has things that you would expect: It is signed by geotechnical services manager, a geotechnical engineer, a geologist, a certified geological engineer. Within this example report that he was given, they also utilize state-of-the-art 3D models for subsurface soils and sediment profile. They do test samples with continuous flight, hollow-stem augers. Groundwater levels were documented and recorded on each hole that was drilled. Samples were sealed and documented with a continuous chain of custody record. Drainage of ground and surface water was documented with the studies. Gravel quantities are shown both above and below groundwater.

So, that was the example he was given. And this is what he has provided as the quantity study in this application. This has none of that list; that I just read. It does not have any of that in here. And so, we started to ask the question 'who is Petra?' This is, just so you know, you're probably aware. This is on Petra letterhead. They appear to be out of California. There are no qualifications, certifications, or licenses of any kind noted. There's no date on the letter. It's signed by an individual named Nicholas Cunningham with no title.

And so, we wanted to really find out who this was. There's no website available online that describes who Petra Drilling and Blasting is. By their name, we would assume that they do drilling and blasting. So, we could not find anything until we reviewed the minutes from July 28th, 2021 where Darren Lee actually gives testimony in front of Judge Joyce in the County Court, when they appealed last time.

This is how Darren describes Petra Drilling and Blasting: 'I had Petra Drilling and Blasting doing the analysis. They are probably the premier, I would say, quantity takeoff people in the West. I was very fortunate to get them. I originally had Atlas do that. And then, Petra became available and I would rather use them. They do everything in California and up the coast for big concrete plants and stuff. And they have sharp pencils.'

So, this example that was given...this is by Materials Testing and Inspection. They are a subsidiary of Atlas. In Darren Lee's testimony in front of a judge in court, he says that rather than use Atlas, he decided he would use Petra. Because, they are the premier quantity takeoff company in the West. Right? So, we couldn't really figure out who they were. So, we did some digging and there... Essentially, what we found is there's three people associated with Petra. It's Chris Ray, Heather Ray, and Nicholas Cunningham; who signed the letter. They have a business filing in California and a business filing in Idaho, but there is no business filing in Oregon. Their business filing in Idaho shows that their mailing address is 941 Eaton Rd. That is Darin Lee's home address in Weiser.

So, Petra Drilling and Blasting's mailing address is Darren Lee's house in Weiser. I don't know what's going on there. But, Chris Ray went to high school with him. Nicholas: I don't know who Nick is, that signed this letter guaranteeing that there's nearly three million tons of gravel in a 78-acre field across my fence. But, that's why we're here today; because of this letter. And that is not...there's nothing about this that is reasonable, that is sufficient. This is not a real test.

And so, we sit here today still not knowing really what's in that ground. No tests of water, no...nothing. That is what I wanted to address: The quantity testing is still not adequate. It's not there. And I don't know what the address thing...I don't know why Petra has a mailing address at Darren's house in Weiser; at 941 Eaton Rd. All the...back up for everything I have said is in that pamphlet. Thank you.

Kathy Clarich – Thank you. Okay. Darren, you have a ten-minute rebuttal. Both of you can work together...

Brian Sheets – Alright. Good evening. Thanks so much for having us back up here. I really appreciate it. So, we heard the concerns. We heard the concerns about the dust, the noise, the water; those kind of things.

Stephanie Williams – Can you speak up please?

Brian Sheets – I'll try to be as loud as I can. All right, and so what we're looking for tonight is conditions. How are you going to adequately condition this, right? Because, this is a conditional use. If you feel that you can't condition it, you need to make findings on exactly why you cannot do that.

Kathy Clarich – We know that.

Brain Sheets – All right. I just want to reiterate; and for everybody else here. All right. So, just for some rebuttal here: Mr. Lee did talk to ODFW. When he did go talk to them, he was told that Malheur County Planning and Zoning would contact them. So, he should let them handle that issue. So, when it comes down to those kinds of wildlife issues: When he went to contact them, he was looking for answers. They said that the County would give him the answers. And we got the answers...late tonight! All right.

Next, as far as the Idaho and Oregon engineers: What difference does that make? You've got the quality there. You've got state-certified engineers saying that this is the quality of the aggregate there. Does it...if you can explain to me the difference between certifying an Idaho engineer and an Oregon engineer, and how that affects your decision, I would be very happy to hear it.

Kathy Clarich – I would guess that Oregon is probably more conscientious about their stuff. I mean, it takes a lot more to get licenses in Oregon than it does in Idaho.

Bob Quick – We don't know that.

Kathy Clarich – Well, we don't. But, I think that it said we needed...

Ed Anthony – In the real estate business, my wife sells real estate. She has to have a license in Oregon and a license in Idaho.

Tatiana – Would you guys mind letting them finish with their time first?

Brian Sheets – Fair enough! I appreciate it.

Ed Anthony – Okay. You have got to have licenses. You just can't jump borders.

Brian Sheets – Well, I'm an attorney. I know that. All right. Thanks so much. All right. So, as far as the dusty mess and talking about the illegal mining out there: All right, Mr. Lee was...he did some things out there and people told him to stop. Do you know what he did? He stopped. He learned his lesson. He hasn't been out there doing things since. And he will not be doing things until DOGAMI says that he can do it. All right?

To the extent that this is being cast as improper character evidence of him being willing to violate laws? I don't think that that's in your criteria to evaluate. I appreciate that it's been brought up and Mr. Lee, like getting a speeding ticket, has learned his lesson. All right? He's not going to be doing things without DOGAMI going after him.

To the extent that DOGAMI has an issue with him: I'm going through that with them. It has to do with their jurisdiction. I think that there's some overreach from Salem; on some of the activities on this property. And their statutory exemptions that I pointed out to them; that they can come back. So, to the extent that me and DOGAMI are going to be working things out: We are going to work things out. To the extent on the conditional approval of this: To having the stop work order lifted? We welcome that. Because he is going to need that anyway.

So, what we are looking for is conditions. If you need additional information, we ask that you either continue the hearing...or an outright denial ...you need to make a finding. But it can be adequately conditioned.

When it comes to the water and wetland issues: Mr. Lee has no desire to mine in that area. When it comes to the eastern side there: I believe there is topographical area issues there; as well as potential water infiltration issues there. He doesn't want to do that. So, a condition stating that 'you cannot mine within a certain distance of that water feature or those proposed wetlands?' We welcome that. As far as the quality test with the...what Mr. Hastings talked about, the quantity analysis. Do you want to address that?

Darren Lee – Okay. Petra Drilling and Blasting: Yes, Chris Ray is a good friend of mine. He's the third largest blaster in California. They do, they get paid every day by the amount of material that they blast. They do that for a living. A quantity analysis is nothing more than a really good guess about what's going on under the ground. And I think that if anybody says different, I would have to call you out. It's kind of like drilling a well for oil. You really don't know what mother nature has done down there. That's the same with gravel. I've encountered that before, where we have removed a bunch of overburden and guess what? Mother nature didn't put any rock there.

I did at least double the test holes of any other organization that has done a quarry permit, recently;

to do my due diligence. If it shows eighty acres and they're...even somebody who doesn't know what they're doing. If they estimate 2.75 million tons? The criteria is at least 500,000 tons. My assumption is the reason it's 500,000 tons is just to make sure that there's enough gravel there to make it worth anybody's while; to make it into a permitted quarry. Nobody, I don't think, is looking for an exact measurement.

Also, what Petra Drilling and Blasting did above and beyond is: If you look at those other maps that go with that. They are pretty descriptive about what their analysis is of the overburden, and how it lays out, as well as the gravel itself. So, no other application that I looked at for guidance on, did they go above and beyond and do that.

Brian Sheets – So, I mean, in closing: We really appreciate your time. We know that we've been here before and maybe we'll have to come back again. We really don't want to have to do that. But, we'll get the information that is needed, either in continuance or after. Let's say a denial happens, right? Guess what? We are going to go through the minutes, figure out exactly what your rationale was. We will fix that and resubmit again. And we will be back. Because, if you keep denying it, it's going to be, basically a moratorium on exactly...this property.

To the extent that you can't adequately condition it: It's going to be a moratorium. I don't know if this body has gone through the correct process, to do a moratorium on it; on specific operations, for these kinds of things.

So, we really appreciate your time and energy on this. We're going to keep coming back. We're going to meet. We're going to research and report and do everything we can. But we are going to come back. If it's not enough next time, when will it ever be enough? So, I'm telling you as we've got enough here for you to make it a decision. Okay? We really appreciate your time. If I sound like I have tone with you, it's not. I'm just trying to speak loud. I really appreciate what you guys do. So, thanks for hearing us. We appreciate it.

Kathy Clarich – Okay, thank you. Are we ready to close it?

Ed Anthony – I'm ready to be closing.

Kathy Clarich – Unless we do a continuation?

Linda Simmons – I move for a...(inaudible)

(multiple conversations)

Ed Anthony – We should close the hearing.

Stephanie Williams – I mean, just tonight's hearing. If you continue it, you would be opening...

Kathy Clarich – We would then open it back up? Okay. I am closing it to public testimony for tonight.

Closed public testimony

Kathy Clarich – This is a hard one. Because, I still feel like there is stuff missing. And that his application was not complete, to make a sound decision on it. We've got things from...I don't know if everyone got to see the other things that we've got today.

Ed Anthony – I make a motion to continue.

Kathy Clarich – I was going to say, because there's enough exhibits that we need to...

Clark Forsyth – They can look at these exhibits that came in today. Then, everybody has time to look at everything that came in today.

Teresa Ballard – I will second that motion.

Kathy Clarich – Okay.

Clark Forsyth – That's only for the website.

Tatiana Burgess – Can I ask regarding the continuance? Is the Board asking that they provide any additional information? Is there a specific list that you guys want to be coming back to you, that is addressed? Or, are we just all coming back in a month to start this over again? Is there something specific that you want him to bring back?

Kathy Clarich – I think that they need to have the chance to read the rest of the stuff that came in today. So, I think that's one of the reasons for the continuance. The things that I would like to see? I would like to see that he has gone out and have a discussion with ODFW on what now they have said. So that, he can come back and clarify what he was thinking. And...I don't know. There were things, like Chad was talking about. We need to have clarification on things like that. And just...he needs to look over his application again. Then, instead of just making it that 'there's no problem with the neighbors' type of comment. The organic farm and stuff like that. I think he needs to check into that more.

Tatiana Burgess – So, to address mitigation?

Bob Quick – Yes.

Kathy Clarich – Yes, exactly.

Ed Anthony – Some of the water trips. He says he doesn't know...well, all dirt roads are dusty. I don't care what you say. All dirt roads are dusty.

Tatiana Burgess – Do you want him to redo a traffic analysis?

Ed Anthony – Traffic analysis. And talk about how much water he is going to put on those roads. He says that he does not have to do it most of the time. Well, I live on rural roads. Our gravel roads? Our county does a good job maintaining them.

(laughter)

Kathy Clarich – But they are dusty!

Ed Anthony – They are dusty. I mean, we have got big, gravel roads. Unless you water them, they are going to be dusty.

Bob Quick – We also need to have the question answered, about that water right that was brought up. On the farms with that pipeline. He needs to, you know, tell us how... Because I know he may feel blindsided, as we are, on a lot of this stuff. But, they have to be given an opportunity to address these things that were brought up.

Kathy Clarich – Exactly. I also noticed that none of the holes that, supposedly, Petra did. Or that they encountered groundwater there in some of the holes. So, that needs to be...

Chad Gerulf – You'll see. Water moves through gravel and there's a canal above it. Of course, there's groundwater,

Ed Anthony – There's always going to be groundwater there.

Kathy Clarich – So, how are they going to mitigate having that come up in their pits?

Bob Quick – Is it coming up? Or is it flowing through?

Kathy Clarich – That's what I want to know. It doesn't tell us.

Bob Quick – I worked in a gravel pit for a long time, a submerged gravel pit. One of the things brought up that is absolutely true is how the wind flows over the top. Well, they work out in the middle of the pit. They don't work along the edges. All of that is true. The water thing, some questions which I don't think anybody is ever going to find out where it comes from. We know that the thing they are referring to is known as wetlands, primarily is dealing with the canal. I mean, as far as that one area on the east side, we have already said we need to have that written into that. So that it would not be interfering with that.

They already have knowledge, or willingness, to mitigate anything that comes up. So, what we have to do is, we need to give him a specific list of specific questions. I have no desire to regurgitate this thing one more time. I'm sorry. It's on record. I see no reason for us to go through...or for the citizens to go through it. They brought up their complaints and brought up their concerns. It's our job to give due diligence to everybody and hear everything that's involved. I think that actually, we're kind of trapped in one part. That's just my view. Without the DOGAMI suspension, we actually should not have been...I don't know. It seems like that should have been resolved before.

Kathy Clarich – I think so too.

Bob Quick – This came in blind on us.

Ed Anthony – We can also make a motion, or could have...to pass the gravel pit. That they could not

mine until they got DOGAMI cleared up. Right?

Bob Quick – Even by their own testimony. He’s already done that.

Ed Anthony – You know what I’m saying? But, we could put that in there, saying ‘Okay, you can’t mine until you get that cleared up.’

Kathy Clarich – Get the suspension lifted.

Ed Anthony – That way, nobody would have to show...

Bob Quick – But, I'm more concerned about all this other stuff. I'm more concerned about the ODFW thing that popped up. They are the most unreasonable of all the agencies that we deal with, on a lot of this stuff. And no matter what we do, or what we say, that has to be handled.

Ed Anthony – Right. Because they could shut him down.

Bob Quick – Because it doesn't matter what we do at that point in time. That, as we've encountered before, that is something that Darren...it has to be handled. Because we have no recourse or anything over the top of it, they say ‘nixed’, it’s nixed, and that’s the State of Oregon. So, I think we need to somehow, we need to put this, Stephanie, in some type of thing... a proposal that they go through, the things we specifically want to have answered, can come back to us.

Stephanie Williams – Well, I don’t think that you need to limit the record that way. I think you can just keep your record open. But we're not going to accept repetition. We’re not going to accept the same testimony, or have people repeat themselves. It’s going to be anything new that’s admitted.

Tatiana Burgess – And we can say that they need to address at least this list that you guys have come up with.

Bob Quick – Well, they brought up a good point. Whatever decision that we make, if it’s adverse, we’re going to have to defend that lawfully too, I mean... It can’t be our feelings or ‘*I think*’s at that time. We’re going to have to know and understand exactly why, and have justifiable, legal reasons, on that too. I guess we should ask the attorney is we out-loud said the things that we wanted to have... Because I’m in favor for a continuance, but there’s several things here that have to be answered.

Kathy Clarich – I was going to say also that there is a letter from the other attorney that came in too. From the other attorney...So...Everybody’s got to have a chance to review it...

Linda Simmons – We have a motion on the floor.

Kathy Clarich – We have a motion, and second. All in favor, say ‘aye’.

Motion to continue the hearing to a date and time certain (February 22, 2024 at 7:30 pm) carried by all the commissioners present, except for Chad Gerulf, who voted against it.

Linda Simmons – Do we have the directions to them?

Tatiana Burgess – So what I wrote so far, what I've gathered from their decision, Mr. Sheets, is to address the letter that was submitted by ODFW, to really detail mitigation plans, to do a traffic analysis regarding water trucks specifically, to address that underground pipeline and to address the water table issue. Have I written down everybody else's?

Bob Quick – ODFW & DOGAMI.

Tatiana Burgess – What about DOGAMI? Their Suspension Order?

Bob Quick – Yeah.

Stephanie Williams – I think there needs to be further analysis on impacts...

John Faw – What about a business plan for his volume in and out?

Linda Simmons – That's above and beyond our application...

Stephanie Williams – County staff developed the 1,500-foot impact area. In the staff report we identified the properties and generally the uses. But actually, that kind of data should've been presented by the applicant, not county staff combing the records and finding it. So, they need to look at all the property in the impact area and actually make a determination as to, the existing use in the impact area. Whether it's a dwelling, whether it's dry farmland, whether it's a horse pasture... they need to specify that and they need to, next to it, like in a table, they need to say how they are going to mitigate any conflicts with those existing uses. Because at this point in time, he has just said...

Ed Anthony – ...it's okay.

Stephanie Williams – Yeah. And that there are no conflicts. That is one thing that... they need to do. They need to bring that information to us. Those are facts, not just conclusions. And in his report, his application is just conclusions, it's not supported by facts. And the county did a lot of... The county staff took the time to develop that, but... That info needs to be brought by the applicant. And then, how he proposes to mitigate those impacts? Are the conditions that we put in the conditional use (permit), if we were to allow the mining... you know, you do need to get past the quantity, quality and location portion.

Ed Anthony – Okay. He did have Petra do it. To me, that's not a legal deal because they weren't licensed in the State of Oregon.

Bob Quick – Is that a requirement?

Stephanie Williams – Well, I think I'm going to give them the opportunity to... Because I haven't done the legal research, it wasn't one of the things that was on my radar, until tonight. I think that what the attorney suggests, for Hastings, is that they need to be in Oregon, because DOGAMI says they need to be from Oregon.

Ed Anthony – If they’re not licensed in the State of Oregon, they can’t use them.

Tatiana Burgess – That is per DOGAMI’s requirements...

Stephanie Williams – I’m more than happy to research it, if the Commission wants me to, but I think that the applicant needs to defend this, not us. In Oregon, the applicant defends it to LUBA. The County doesn’t make an appearance, we don’t. If the applicant wants to make certain findings, those should be brought forward to us. Or conditions of approval – those should be brought forward to us, we shouldn’t be...

Tatiana Burgess – Can we ask with respect to timelines, to limit testimony, or anything prior to a hearing?

Stephanie Williams – I don’t think that... I think that we’re just going to keep the record open and not allow for any repetition...

Ed Anthony – It’s still open, but they can’t testify to the same thing. We’ve got it on our record...

Tatiana Burgess – I was more talking about the written testimony that I as receiving from after business hours yesterday, and all throughout today, including after business hours... Because, with regards to what Mr. Sheets said, it puts a burden on staff too. To try to address what was being brought up, to at least give us a chance to print it, to present it to you guys. When I was presented with an attachment that is twenty-three pages long, I don’t know that you necessarily have the capacity to absorb that information, and I guess anything that needs to be submitted... I think it is respectful to submit it in a timely manner to where everybody can process it.

Ed Anthony – I agree with you.

Bob Quick – Are there any statutes on things like that, Stephanie?

Stephanie Williams – No. I mean, the staff report has to be done seven days before. But if the evidence isn’t there, I mean, you deny it. That’s what it is. It’s not...

Bob Quick – So, if there is a bum rush at the end, are we obligated to accept that or we deny it?

Stephanie Williams – Yes, you accept it.

Bob Quick – Okay. But they’re not able to respond in that time line?

Stephanie Williams – That’s why they’ve asked for continuance...

Tatiana Burgess – You will accept it, but whether you want to consider it...

Bob Quick – I got it. I just want to make sure that...

Ed Anthony – That’s why Tatiana was saying if you want to consider it...

Tatiana Burgess – I was trying to stay on top of it and publish everything as soon as I was getting it, but there was a lot of things that were coming in...

Ed Anthony – And how are you going to get it to my house?

Tatiana Burgess – I can't.

Ed Anthony – That's what I'm saying. I'm reading this stuff and going...

Kathy Clarich – She sent you an email saying to check it out daily. Ok. So, the next thing on our agenda is the minutes.

Vice-Chairman Ed Anthony made a motion to accept the minutes from October 2023 Planning Commission meeting, with the approved changes. Commissioner Bob Quick seconded the motion which was unanimously approved by the Commissioners present.

Vice-Chairman Ed Anthony made a motion to adjourn the meeting. Commissioner Linda Simmons seconded motion which was unanimously approved by the Commissioners present.

Kathy Clarich – 10:22 pm. Meeting adjourned. Thank you.

Submitted by Planning Staff Marc Berg.

Minutes approved by:

Name: Kathy Clarich Date: 2/22/2024