

STAFF REPORT

Planning Department File No. 2023-12-010

APPLICATION FOR Conditional Use Approval for Aggregate Mining in EFU Zone And Addition of Mining Site to Malheur County Inventory of Significant Goal 5 resources.

Planning Commission Meeting Date: January 25, 2024

1. **Property Owner:** Dallas Head
5560 Hwy 201
Ontario, OR 97914
2. **APPLICANT:** Darren Lee
515 Noble Rd
Ontario, OR 97914
3. **PROPOSED ACTION:** Conditional use approval for aggregate mining and other uses in the C-A2 zone. Recommendation to the County Court a PAPA amendment to designate 80 acres as a Goal 5 significant aggregate resource.
4. **PROPERTY IDENTIFICATION:** Tax Lot 3200, Assessor's Map 16S47E, Malheur County Reference No. 6207 and 15139.
5. **PROPERTY LOCATION AND DIRECTIONS:** West of the intersection of Hwy 201 and Mesquite Road; then about 1 mile west on Mesquite Rd. Property address is Ontario.
6. **ZONING:** Split zone. C-A2 Exclusive Range Use (261.42 acres) and C-A1 Exclusive Farm Use (47 acres).
7. **PARCEL SIZE:** The total parcel size is 308.42 acres. The proposed mining site inclusive of all activities will be on approximately 180 acres and divided into three areas by use. Area #1 is 80 acres - mining. Area #2 is 60 acres- stockpiling, landscape rock, truck scales. Area #3 is 40 acres – crushing and recycling. Testing of aggregate for quality and quantity was performed on Area #1, which is the proposed Goal 5 significant resource site- 80 acres. Conditional uses for all activity described in the application is on 180 acres.
8. **PARCEL USE:** Farm/Residential.
9. **SURROUNDING USE:** Existing aggregate mining to the West; farm/rural residential use to the South, East and North.
10. **ACCESS:** A new private access road built upon an old haul road up the draw, turning south to and across Jasmine Rd. then a 90° angle onto Mesquite Rd. Private access

includes crossing a buried pipeline owned by the LDS Church and an Owyhee Irrigation District (OID) canal. Property Owner (Mr. Head) and OID have a current crossing agreement.

11. **SANITATION REQUIREMENTS:** No restrooms are proposed on the site. Up to three (3) employees will use portable toilets, to be located on site.
12. **FIRE PROTECTION:** The parcel is within the Payette, Idaho Rural Fire District. A letter from the District was submitted with the application.
13. **NATURAL HAZARDS:** Parcel is not in the 100-year floodplain.
14. **WATER RIGHTS:** No water rights are attached to the property. A domestic well is used for the Dallas Head residence.
15. **ZONING HISTORY:** The current application was accepted by Former Planning Director Eric Evans on December 20, 2023. In 2021, an application by Darren Lee (#2021-03-010) for an aggregate site was denied by the planning commission; and the decision upheld on appeal to the County Court. In 2023, Mr. Lee/ Dallas Head was found to be in violation of Malheur County's Planning and Zoning ordinances by the Malheur County Justice of Peace.
16. **OTHER HISTORY:** In a phone call with DOGAMI on January 18, 2024, County planning staff was informed that Applicant remains in violation of DOGAMI's 2023 orders pertaining to the site and mining activity. A letter from DOGAMI is forthcoming.

Approval criteria and proposed findings must be based on evidence presented by the Applicant in his application and at the Planning Commission hearings. The burden of proof is on the Applicant and his proof must be met by substantial evidence in the record. At the time of publishing this staff report, Applicant has not met this burden of proof.

I. **Oregon Administrative Rule 660-023-0180**

3. An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:
 - a. A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;
 - b. The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or

- c. The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.
- d. Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:
 - A. More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or
 - B. More than 35 percent of the proposed mining area consists of soil classified as Class II, or a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:
 - i. 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;
 - ii. 25 feet in Polk, Yamhill, and Clackamas counties; or
 - iii. 17 feet in Linn and Benton counties.

PROPOSED FINDING:

The parcel is in a split zone between C-A1 (Exclusive Farm Use Zone consisting of 47 acres) and C-A2 (Exclusive Range Use Zone consisting of 261.42 acres). The proposed mining site will be within the boundaries of the C-A2 Zone. Soils in the C-A2 Zone have not been surveyed by NRCS and are not high value.

Quality

Applicant provided 2 quality analyses, conducted by: 1. Strata Inc., a licensed geotechnical engineer, and 2. Atlas Technical Consultants, LLC.

The Strata Inc. report describes the aggregate quality on a portion of the property identified as an “80-acre area at the southeast corner of the intersection of Power Rd and Jasmin Rd”. The Strata Inc. testing was conducted on 06/21/2023 on excavated material from 5 test pits/holes. The laboratory testing included:

Specific gravity of coarse aggregate (AASHTO T-85)

Specific gravity of fine aggregate (AASHTO T-84)

Sodium Sulfate soundness (AASHTO T-104)

Los Angeles abrasion (AASHTO T-96)

Oregon air degradation (ODOT TM 208)
Sieve analysis (AASHTO T-27)
Sand equivalent (AASHTO T-176)
Lightweight particles (AASHTO T-113)

The alluvial gravel with silt, sand, and cobbles met the requirements for Sodium Sulfate soundness, Los Angeles abrasion, Oregon air degradation, Sand equivalent (for Special filter, Base aggregate and Shoulder aggregate) and Lightweight particles. The gravel failed to meet the gradation criteria for Special filter material (02610), Base aggregate (02630), Shoulder aggregates (02640) and PCC aggregates (02690), and also failed to meet the sand equivalent specification for PCC aggregates.

The report dated February 16, 2023 by Atlas Technical Consultants, LLC describes gravel quality based on testing conducted on 12/03/2020. This report describes quality of material excavated from 3 test pits. The location of these test pits are not identified in the report. The laboratory testing included:
Resistance to degradation of small-size coarse aggregate by abrasion and impact in the Los Angeles machine (AASHTO T-96)
Soundness of aggregate by use of Sodium Sulfate (AASHTO T-104)
Oregon air degradation (ODOT TM 208).

The Abrasion tests resulted in a maximum 20% loss. ODOT maximum loss specifications are 35% for this test. The Soundness tests showed a maximum 0.6% loss. ODOT maximum loss specifications for this test are 12%. The air degradation tests showed a maximum percent passing of 2.6% and a sediment height of 0.1". The ODOT maximum passing percentage is 30% and 3" sediment height.

DLCD submitted an email to the planning department verifying that a "hybrid sample" for quality testing is an acceptable practice if the samples are similar. The DLCD letter is Exhibit 4. There is no statement in the application from Strata or Atlas about the similarity of the samples that were combined.

Quantity

The quantity analysis is undated and was conducted by Petra Drilling and Blasting, California at the proposed borrow site near GPS coordinates 44.178047 and -116.996556, which is within applicant's proposed area #1 consisting of approximately 80 acres. The borrow pit extends 1,200 ft East to West and 2,500 ft North to South, which is approximately 68.9 acres. Petra Drilling and Blasting found "*the net borrow equating to 2.75 million tons using a conversion of 160 lbs/ft³. Through the borrow process it can be expected for a variance of ~25% of actual quantity*".

Quantity of gravel on the site is met.

Location

The location of all testing was performed within 80 acres. The location of the proposed Significant Goal 5 Aggregate Resource site is:

An 80 acre portion of tax lot 3200, Malheur County Assessor’s Map 16S47 E, reference number 6207; and legally described as follows:

**Land in Malheur Co, Oregon, as follows:
In Twp. 16S., R.47E., W.M.:
Sec. 17: S½ NW¼**

5. For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.
 - a. The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site
 - b. The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

PROPOSED FINDING: The application is for mining and other activities on 3 areas.

Proposed area #1 is approximately an 80-acre site where gravel extraction and processing of aggregate material will occur. The extraction and reclamation will occur concurrently, from east to west. Area #1 is the proposed Goal 5 significant resource site.

Proposed area #2 is an approximate 60-acre site for the gravel production equipment such as loaders, screen equipment trucks and other earth-moving

equipment. This area will also be utilized for gravel product storage, truck scales and stockpiling of landscape rock and other gravel products not produced or quarried onsite. The legal description of area #2 is: a 60 acre portion of tax lot 3200, Malheur County Assessor’s Map 16S47E, reference number 6207 and legally described as:

**Land in Malheur Co, Oregon, as follows:
 In Twp. 16S., R.47E., W.M.:
 Sec. 17: N½ NW¼, EXCEPTING THEREFROM the E½ of the NE¼ NW¼**

Proposed area #3 is approximately a 40-acre site and will be utilized for a concrete and asphalt recycling site and crushing and screening of aggregate, as well as the private quarry site for the landowner (less than 1 acre disturbed and/or less than 5000 cubic yards in any 12 month period). The legal description of area #3 is: a 40 acre portion of tax lot 3200, Malheur County Assessor’s Map 16S47E, reference number 6207 and legally described as:

**Land in Malheur Co, Oregon, as follows:
 In Twp. 16S., R.47E., W.M.:
 Sec. 18: SE¼ NE¼**

The total proposed area for mining and all activity proposed by Applicant is 180 acres described as follows:

**Land in Malheur Co., Oregon, as follows:
 In Twp. 16S., R. 47 E, W.M:
 Sec. 17: NW ¼, EXCEPTING THEREFROM the East ½ of NE ¼ NW ¼
 Sec. 18: SE¼ NE¼**

The impact area is a 1,500 feet radius from the boundaries of the mining site which is depicted on a map – Exhibit 2. A summary of the impact area by tax lot, zone, acres and use is set out below.

Assessor’s Map 16S4707:

<u>Tax Lot</u>	<u>Zone</u>	<u>Acres</u>	<u>Use</u>
100	EFU	77.15	dwelling/agriculture
300	EFU	7.90	dwelling/public land
400	EFU	.34	USA dwelling

Assessor's Map 16S4717:

<u>Tax Lot</u>	<u>Zone</u>	<u>Acres</u>	<u>Use</u>
200	EFU	76.14	agriculture
300	EFU	6.67	agriculture
400	ERU	21.13	dwelling/agriculture
600	ERU	5.00	nonfarm dwelling
700	EFU	7.14	nonfarm dwelling
800	ERU/ERU	39.40	dwelling/agriculture
1000	EFU	39.50	agriculture
1300	EFU/ERU	39.24	dwelling/agriculture
1400	EFU/ERU	31.41	agriculture
1500	ERU	7.89	dwelling/agriculture
1600	EFU	26.5	dwelling/agriculture
1700	ERU	39.31	dwelling/agriculture
1800	ERU	39.70	agriculture

Assessor's Map 16S47E:

<u>Tax lot</u>	<u>Zone</u>	<u>Acres</u>	<u>Use</u>
2300	ERU	476.70	agriculture
2700	EFU	77.80	dwelling/agriculture
2800	EFU	39.40	agriculture
2900	EFU	38.70	agriculture
3000	EFU	109.7	farm dwelling/agriculture
3100	EFU	41.45	agriculture
3300	EFU	38.75	agriculture
3400	EFU	118.46	dwelling/agriculture
5900	EFU/ERU	39.40	public land/ USA
6000	EFU/ERU	38.10	public land/ USA
6100	ERU	154.58	dwelling/agriculture
6200	ERU	157.50	public land/ USA
6400	ERU	39.35	public land/USA
6500	ERU	157.90	dwelling/agriculture

There are no schools or other gathering spaces in the impact area.

Noise and Dust Conflicts – OAR 660-023-0180(5)(b)(A)

“Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;”

PROPOSED FINDING: Applicant proposes to meet this criterion by gradually constructing a berm 12-feet high along a portion of Jasmine Rd bordering Applicant’s proposed area #2 and along a portion of the perimeter of Applicant’s proposed area #1. Applicant states that with the removal of overburden and aggregate averaging 28 feet, the total berm height will be approximately 40 feet from the top of the berm to the quarry floor. This below-grade placement of operations will create additional visual, noise, and dust barriers. Dust abatement procedures will also be in effect such as graveling and watering internal roads.

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.

Applicant will gravel the quarry floors, as well as onsite roads for dust mitigation and limit onsite traffic to 15 mph. Specifications on how much gravel will be used on internal roads is not in the application (i.e. 2”). Spray bars on screen plants and elevators will be utilized if dust is produced during processing operations in area #3. Water trucks will be used to water the roadways and site, as necessary. Water will be trucked in from the City of Weiser.(Weiser, Hwy 201, Mesquite Road to site). The exit apron onto Mesquite Rd will also be paved.

Traffic Conflicts – OAR 660-023-0180(5)(b)(B)

“Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;”

PROPOSED FINDING: Applicant proposes to travel from the site to Mesquite Rd as the public access to the site. From Mesquite Rd. the traffic will travel either north or south onto Hwy 201. Mesquite Rd is a county road, identified as a rural local roadway in the County Transportation Plan (Figure 7-2.2). Mesquite Rd is partially paved, partially graveled and maintained by Road Assessment District No. 3. Recently, Applicant states that he made some improvements to Mesquite Rd to make the grade less than 10%. Applicant states Rural Road Assessment District No. 3 requests that he asphalt approximately 30 feet of the approach where the private access road and Mesquite Rd intersect in order to protect the shoulder of Mesquite Rd. At the time of publishing this staff report, a written letter from the Road District was not submitted.

The Applicant proposes to place a stop sign at the site egress onto Mesquite Rd, as well as in both directions where Jasmine Rd and the onsite haul road intersect. Internal haul road speeds will be posted at 15 mph. Applicant states all internal haul roads will be graveled. A map depicting internal haul roads was not included in the application.

The private access to Mesquite Rd crosses the Owyhee Canal. The crossing is permitted by Owyhee Irrigation District (OID). The crossing was replaced in 2022, according to a crossing agreement between Dallas Head and OID. An email from OID is Exhibit 3. “OID is not 100% satisfied with the quality of work”. The private access road also crosses a buried pipeline owned by the LDS Church but located on the Dallas Head property. At the time of publishing this staff report, the LDS Church has not provided any information or comment on the application.

The Applicant proposes to operate 6 days a week (Monday – Saturday) and haul 750 loads per year. A load will be between 12 and 20 yards of aggregate. The truck traffic hauling out of the quarry in area #1 is anticipated to be 2.4 trucks per day.

No traffic or truck specifications were provided regarding the number or type of water trucks; trucking of landscape rock; or trucking of other gravel products not produced onsite to be stockpiled on proposed area #2.

Additionally, no truck or traffic specifications were provided regarding the crushing or trucking of concrete and asphalt products to be recycled on proposed area #3.

Safety Conflicts – OAR 660-023-0180(5)(b) (C)

“Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;”

PROPOSED FINDING: No conflicts with existing public airports are anticipated (Ontario Airport is 10 miles away and Payette Airport is 7 miles away). The proposed mining site has no open water impoundments or other bird attractants that will interfere with airport planning.

Other Goal 5 Resource Conflicts. – OAR 660-023-0180(5)(b) (D)

“Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;”

PROPOSED FINDING: There are two Goal 5 resource sites within the 1,500 ft impact area. They are aggregate sites identified on the County’s inventory list as:

	Goal 5 Designation	Original DOGAMI permit #	Township	Range	Section
Rural Road Assessment #3	1C	23-0065	16S	47E	NW ¼ SE ¼ 18
Rural Road Assessment #3	1C	23-0036	16S	47E	NE ¼ 18

Applicant states there are no conflicts with these sites or other Goal 5 resources within the impact area. Applicant states there are no protected wildlife and game habitats within the 1,500 ft impact area (i.e. big game, sage grouse plans for State of Oregon Fish and Wildlife or Malheur County). At the time of publishing this staff report, a letter from ODFW or US Fish and Wildlife was not provided. T. Cassity submitted maps and written information depicting wetlands, animal migration route and the riparian corridor – Exhibit 5.

Agricultural Practices Conflicts – OAR 660-023-0180(5)(b) (E)
 “Conflicts with agricultural practices;”

PROPOSED FINDING: A buried, mainline irrigation pipe that feeds the OID canal ditch, is owned by the LDS Church and is located on the subject parcel (Malheur Co Reference #16006). No information is contained in the application to ensure that the pipeline will be protected in order to prevent any conflict or interference with agricultural practices dependent on the irrigation pipeline.

The private access road to the site travels over the top of the OID canal. In 2022 a crossing permit was issued to Mr. Head (landowner) allowing Mr. Head/Mr. Lee to improve the crossing. However, OID is not 100% satisfied with their quality of work.

Hastings/Lightbridge Organics LLC owns a 30- acre organic farm operation/field directly to the east of the proposed mining site. The field is irrigated with water rights from OID and produces a variety of row crops including wheat, barley, oats, alfalfa, and grass. Directly to the south of the proposed mining site is the Lightbridge Organics’ pasture and grazing land. The land is used to raise organic livestock of several varieties. There are no mitigating measures presented by the Applicant (other than a proposed 100’ setback to the property boundaries or measures contained in the operation plan for dust mitigation) to demonstrate that the mining operation will not interfere with these farming practices; and in particular to the highly sensitive agricultural use of Hastings/Lightbridge Organics LLC to avoid herbicide, pesticide, synthetics, and airborne pollutants.

Other Conflicts – OAR 660-023-0180(5)(b)(F)

“Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to [ORS 517.780](#).”

PROPOSED FINDING: The County’s ordinances do not supersede the Oregon Department of Geology and Mineral Industries (DOGAMI) regulations. Pursuant to County ordinance (Malheur Code 6-6-8-4) Applicant must obtain DOGAMI approval for his reclamation plan as a condition of approval. DOGAMI has the final decision on approval of a reclamation plan.

Measures to Mitigate Conflicts – OAR 660-023-0180(5)(c)

“The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of [ORS 215.296](#) shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.”

PROPOSED FINDING: Conditions of approval to minimize potential conflicts can be imposed pursuant to the Malheur County Code Conditional Use requirements.

Conflicts that Cannot be Minimized. – OAR 660-023-0180(5)(d)

“The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized.”

PROPOSED FINDING: Significant conflicts may occur to agriculture practices, wetland and riparian areas as well as to wildlife that cannot be minimized. None were identified in the application. At the time of publishing this staff report, the County has identified that conflicts to the organic practices of Hastings/Lightbridge Organics LLC more than likely exist. Additional information is needed from ODFW and other agencies to identify environmental conflicts, if any.

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

PROPOSED FINDING:

It is important to recognize that, when identifying and evaluating the ESEE consequences at this stage of the local review process for Darren Lee, a decision to allow mining has not been made yet. Mining is essential to accessing material from this significant aggregate resource and should be considered part of the resource. Impacts of the mining activity on existing uses will be minimized by measures described in response to OAR 660-023-0180(5)(b). These measures will be included in the plan amendments and implementing ordinances adopted to allow the mining,

as required by OAR 660-023-0180(5)(e).

The intention behind Statewide Planning Goal 5 and OAR 660-023 is to protect significant resource sites. This analysis informs options for protecting an authorized mining activity on a significant resource site. “Conflicting uses” are potential new uses, which are allowed outright or conditionally in the impact area and which could be negatively impacted by mining activity. Sensitivity to the allowed mining activity is what can potentially cause a conflict. OAR 660-023-0040(5) includes the possibility of fully allowing new conflicting uses in the impact area, without the application of conditions to protect mining activity. However, the bar for this decision is higher than that for a decision to prohibit or limit new conflicting uses. This is because OAR 660-023-0040(5)(c) requires that, if a local government decides a conflicting use should be allowed fully, “The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided”.

OAR 660-023-0040 explains that, “The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected.” Table 1 provides a qualitative analysis of the ESEE consequences that could result from a decision to prohibit, limit or allow new uses near Darren Lee’s proposed aggregate mining.

<p align="center">Table 1 ESEE consequences related to review criteria for new dwellings and gathering spaces in the 1,500-foot impact area surrounding Darren Lee’s proposed aggregate mining site</p>			
	<i>Prohibit dwellings and gathering spaces</i>	<i>Condition the placement of new dwellings and gathering spaces</i>	<i>No change to review standards for dwellings and gathering spaces</i>
<p>Economic Consequences</p>	<p>Consequences related to new use on neighboring properties There may be some negative economic impact to neighboring property owners if new dwellings were not allowed within 1,500 feet of the quarry boundary. Since only a portion of properties, all with an 80/160-acre minimum lot size, would be affected and some existing limits on dwellings are already</p>	<p>Consequences related to new use on neighboring properties The economic impact to neighboring property owners would be neutral. A requirement for a waiver of remonstrance would not restrict the residential use of the property allowed in the underlying EFU/ERU zones. Similar waivers are required by counties around the state as a condition of approval for a</p>	<p>Consequences related to new use on neighboring properties The economic consequence for property owners would be neutral. This decision would maintain the current approval criteria for new residences in the impact area. Consequences related to loss or interruption of quarry access The economic impact would be negative.</p>

	<p>in code, the negative impact would be small.</p> <p>Consequences related to loss or interruption of quarry access</p> <p>Increasing the number of privately-owned aggregate sites in an area enables more competition, which results in lower costs. The Darren Lee quarry will be material for road maintenance and construction for Northern Malheur County, as well as offer proximity to a gravel source and eliminate distant and costly gravel hauling.</p>	<p>new residential structure in a farm or forest zone. These waivers, required by ORS 215.213 and 215.282, restrict a land owner’s ability to pursue a claim for relief or cause of action alleging injury from farming or forest practices.</p> <p>Without evidence that the widespread use of such waivers having negatively impacted property values or development rights, it is reasonable to conclude that the proposed limit on new conflicting uses in the impact area of Darren Lee proposed aggregate mining site will have no negative economic consequence.</p> <p>Consequences related to loss or interruption of quarry access</p> <p>The economic benefit would be the same as that for a decision to prohibit uses since the proposed “limit” is to require that new uses would be permitted on the condition that they accept mining activity on a significant aggregate site.</p>	<p>Interruptions in use of a quarry, due to complaints and nuisance lawsuits, would cause delays and could increase costs for road projects. New noise sensitive uses locating within 1,500 feet of the quarry will bring the possibility that limitations on quarry activity will be sought by people who are bothered by mining activity. The potential negative economic impact ranges from small to large. Commercial users of state and county roads in the service area may experience negative economic consequences if maintenance of roads are compromised due to less efficient access/location to aggregate material.</p>
<p>Social Consequences</p>	<p>Consequences related to new use on neighboring properties</p> <p>Removing the option to place a dwelling, which otherwise meets all existing review criteria, within 1,500 feet of the quarry boundary, would have a negative social</p>	<p>Consequences related to new use on neighboring properties</p> <p>The social impact to neighboring property owners would be neutral if acceptance of the mining activity was added as a condition of approval for new dwellings within</p>	<p>Consequences related to new use on neighboring properties</p> <p>The social impact to neighboring property owners would be neutral if new dwellings within 1,500 feet of the quarry boundary were allowed</p>

	<p>consequence. The social consequences stem from a land owner’s desire to have reasonable options and flexibility when making choices about what they can and cannot do on their land.</p> <p>Consequences related to loss of quarry access Noncommercial users of state and county roads within the region derive social benefit from using roads. Efficient road maintenance in Malheur County will preserve this benefit.</p>	<p>1,500 feet of the quarry boundary. Options available to property-owners would not be reduced. Dwellings that meet existing review criteria would be allowed, provided the applicant agreed to accept the mining activity approved by the county.</p> <p>Consequences related to loss of quarry access Noncommercial users of state and county roads within the region derive social benefit from using roads. Efficient road maintenance will preserve this benefit.</p>	<p>under the existing review criteria.</p> <p>Consequences related to loss of quarry access Noncommercial users of state and county roads within the region derive social benefit from using roads. Obstacles to efficient road maintenance, which could result from opposition to mining activity, would have a negative social impact.</p>
Environmental Consequences	<p>Consequences related to new use on neighboring properties There are no environmental consequences identified that stem from prohibiting new dwellings in the impact area.</p> <p>Consequences related to loss of quarry access Efficient road maintenance practices include obtaining aggregate material from a quarry close to the project site. There will be some environmental benefit from fewer vehicle emissions when truck travel is minimized.</p>	<p>Consequences related to new use on neighboring properties There could be a negative environmental consequence from noise if new dwellings were limited in the impact area. There are 2 parcels within the 1,500 ft impact area, larger than 160/80 acres, without a home site, on which a new dwelling is allowed. The proposed “limit” is to require that new dwellings in the impact area be authorized on the condition that the applicant except the mining activity approved by this decision. This approach assures that a property owner will make an informed decision when locating a new residence. If they decide to locate within the impact</p>	<p>Consequences related to new use on neighboring properties There could be a negative environmental consequence from noise if new dwellings were allowed in the impact area. The negative consequence is similar to that for a limit decision. However, unlike a limit decision, there would be no mechanism in the county’s code to inform property owners of the authorized mining activity. This would result in a higher possibility for a residence to be located in the impact area and a higher potential for a negative consequence.</p> <p>Consequences related to loss of quarry access</p>

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

PROPOSED FINDING: Through the ESEE analysis, the resource site and the conflicting uses (dwellings and public/private gathering spaces) are both important when compared to each other. Proposed conflicting uses could be limited within the 1,500-foot impact area for the life of Darren Lee’s proposed quarry in order to achieve Goal 5.

A condition of approval could be imposed that any new land use application for a proposed conflicting use within the 1,500-foot impact area, and within the zoning jurisdiction of Malheur County, requires a waiver of remonstrance prior to final approval. The waiver shall include language stating that the applicant accepts normal mining activity at the significant aggregate site and restricts a landowner’s ability to pursue a claim for relief or cause of action alleging injury from the aggregate operation. This measure has been used in other aggregate sites in Malheur County (i.e. recent expansion of Seubert quarry when no objections were made on the record).

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

2.

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

PROPOSED FINDING: The project requires mining of more than 1,000 cubic yards of material; therefore, a conditional use permit is being sought.

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

PROPOSED FINDING: The conditional use permit must address all proposed activity on the property. No information was provided for the activities (i.e. stockpiling, crushing, recycling, truck scales, landscape rock) on area #2 and area #3 proposed by Applicant. A conditional use permit to mine is needed for area #1.

III. Malheur County Code

Malheur County Development Code Provisions with approval Criteria.

1. **Allowed as a Conditional Use.** Section 6-3A-3 of the Code specifies conditional uses allowed in the County’s EFU zones including:

“E. Operations conducted for:

- 3. Mining of aggregate and other mineral resources or other subsurface resources subject to section 6-4-7 of this title.
- 4. Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement.
- 5. Processing of other mineral resources and other subsurface resources.”

PROPOSED FINDING: Applicant submitted an Operations Plan to support his request for a conditional use permit.

2. **Conditional Use Criteria.** Malheur County Code Chapter 6 governs conditional uses.

Section 6-6-7 specifies general approval criteria:

Section 6-6-7: In considering the suitability of proposed conditional uses, the planning commission shall base its decision upon the following criteria:

A. Comprehensive Plan Goals: Comprehensive plan goals and policies, as applicable.

Goal 1- Citizen Involvement and Goal 2 Land Use Planning

PROPOSED FINDING: This criterion is met with the notice and hearings process required by Oregon law and Malheur County Code. The Malheur County Planning and Zoning Commission will hold a public hearing on January 25, 2024. Public Notice was published in the Argus Observer and mailed to all property owners within 750 ft of the subject parcel on January 5, 2024. Public notice was also provided on Malheur County Planning and Zoning’s website.

Goal 3 Agricultural Lands

PROPOSED FINDING: This goal can be met through:

1. **Continued use of the property for agricultural uses (dry farming) before and after mining.**
2. **Mitigate interference with surrounding agricultural uses.**
3. **Good quality of aggregate material determined through quality testing.**
4. **Non-existence of and no loss of water rights.**

The conflict analysis in OAR 660-023-0180 (5) requires an analysis of mining conflicts with agricultural and agricultural practices under ORS 215.296. Such analysis or a mitigation plan to minimize conflicts with agricultural practices within the 1,500-foot impact area were not presented in the application.

Goal 4 Forest Lands

PROPOSED FINDING: Does not apply.

Goal 5 Protection of Resources

PROPOSED FINDING: Generally the criteria are met through the identification of quality aggregate on a site and protection of that site for use under Goal 5. The potential aggregate quantity extractable from the site is more than 500,000 tons, the minimum requirement to qualify as a Goal 5 Aggregate Resource. Additionally, the

quality of the aggregate qualifies the property as a Goal 5 Aggregate Resource. The subject parcel is not identified as sage grouse habitat.

Goal 6 Air, Water, and Land Quality

PROPOSED FINDING: Generally, the criteria met through operational restrictions that eliminate impacts to air, water, and land quality. As presented in Applicant's reclamation/operation plan, the mining will occur from east to west. The reclamation process will be concurrent with the gravel extraction process so that no more than 20 acres of disturbed ground is anticipated at any given time.

Goal 7 Natural Disaster and Hazards

PROPOSED FINDING: No special natural disaster or hazards are identified.

Goal 8 Recreation

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

Goal 9 Economy

PROPOSED FINDING: Criteria are met through the development of a natural resource and the availability of aggregate to local road assessment districts and other customers, which will assist in the maintenance of the transportation network, as well as support construction and development efforts in the area. Applicant proposes to hire 3 employees.

Goal 10 Housing

PROPOSED FINDING: Housing does not apply as the application will not affect the opportunity for citizens to obtain adequate housing. Impact to dwellings in the impact area will be mitigated by preventing any aggregate production to take place closer than 500 feet from any dwelling. Applicant proposes a sound abatement and visual screening plan through berms, setbacks and access from Mesquite Road (as opposed through housing on Jasmine Road).

Goal 11 Public Facilities and Resources

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

Goal 12 Transportation

PROPOSED FINDING: The estimated truck traffic does not account for the watering trucks and other hauling uses coming to and from the proposed mining site, area #2 and area #3. Mesquite Road is within the Malheur County Transportation System Plan. Applicant's use does not exceed its classification as a

rural local road. Road Assessment District No. 3 proposes improvements to Mesquite Rd., which will be a condition of approval for the application. A letter from the Road District was not provided at the time of this staff report.

Goal 13 Energy

PROPOSED FINDING: The criteria is met by providing a local reliable, economic, and long term protected supply of high-quality aggregate for road maintenance without the energy impact of hauling for longer distances. There are no substantial energy consequences associated with the location of the aggregate site. The location is not remote or far from market or major transportation routes that would raise the end cost of the aggregate product or increase energy consumption.

Goal 14 Urbanization

PROPOSED FINDING: Does not apply.

B. Specific Plans: Specific plan recommendations.

PROPOSED FINDING: No specific plans.

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

PROPOSED FINDING: Property owners in the surrounding area expressed opposition to a previous proposal for an aggregate site on the subject parcel (CUP #2021-03-010). Their concerns were the significant impact mining would have on agricultural practices, as well as the noise, dust, traffic and other impacts that a mining operation would have on their quality of rural life and property values. At the time of writing this staff report one written objection had been filed by surrounding landowners (T. Cassity – Exhibit 5). More written objections are forthcoming. An attorney representing several landowners made telephone contact with the planning department and intends to file an objection to the application.

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

PROPOSED FINDING: There is existing electrical service to the site. A septic system will not be required. The subject parcel is within the Payette Rural Fire's jurisdiction.

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

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

F. Fish and Wildlife: It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the fish and wildlife habitat protection plan for Malheur County. (Ord. 86, 12-7-1993)

PROPOSED FINDING: There are no identified critical or sensitive fish or wildlife habitat protection areas on or near the site identified in the Malheur County Comprehensive Plan.

G. General Criteria:

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

PROPOSED FINDING: There are no structures proposed other than a truck scale, which does not require increasing setbacks to reduce overshadowing adjoining property from noise, odor or night lighting nuisances. The Applicant proposes to meet this criterion by placing 12-foot high visual and noise barrier berm made of overburden between the operation and neighboring properties. Additionally, excavation will occur approximately 28 feet below ground surface to hardpan. This below-grade placement of operations will create additional visual, noise, and dust barriers (dust abatement procedures will also be in effect). Lighting for nighttime operating, if any, will be pointed at the ground and general ground surface, reducing glare and night lighting nuisance for the neighbors. Operations will generally not occur at dark and is limited to the hours of 7 a.m. to 6 p.m.

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

PROPOSED FINDING: Applicant will meet this criterion by providing earth berms made of overburden that will be placed between the operation and neighboring properties. Once excavation has occurred, the land will be backfilled with the stockpiled overburden, berms will be seeded as necessary for erosion control and dust abatement.

3. Location and size of driveway access points and right of way widening and improvement for present and future traffic circulation consistent with the adopted county road standards or the standards of the appropriate road district and the access management standards of the Malheur County transportation system plan.

PROPOSED FINDING: The Applicant will meet this criterion by making improvements to Mesquite Rd and the approach to Mesquite

Rd. The Owyhee Canal crossing will have to be improved to the satisfaction of Owyhee Irrigation District.

4. Visual screening of outdoor waste and storage areas.

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

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

PROPOSED FINDING: The Applicant will utilize the earth berms to provide screening from the operation. Night operations will not be conducted.

6. Special criteria listed below, as applicable. (Ord. 125, 6-20-2000)

H. Allowance Of Certain Uses: A use allowed under section 6-3A-3 of this title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

PROPOSED FINDING: The Applicant states there are not any conflicts with agricultural practices on adjacent properties; and did not provide any mitigation measures.

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

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

A. Submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to:

1. Noise, dust, traffic and visual screening.

PROPOSED FINDING: Applicant proposes to meet this criteria through the following mitigation measures:

Noise Screening: Noise screening will be conducted using natural earth berms.

Dust Screening: Dust screening will be conducted by graveling the onsite roads, the quarry floor and utilizing water trucks as necessary.

Traffic Screening: The Applicant is proposing to use an access gate and posted signage for traffic screening.

Visual screening: Visual screening will be conducted using natural earth berms.

2. Setbacks from property lines.

PROPOSED FINDING: The Applicant proposes to meet this criterion by preventing aggregate production to take place closer than 500 feet to any dwelling. No aggregate removal will take place closer than 100 feet from any property boundary line.

3. Location of vehicular access points.

PROPOSED FINDING: The location of the vehicle access point to the proposed quarry site will be off Mesquite Rd and over the OID canal crossing. Applicant will make all improvements required by Rural Road Assessment District #3 and OID.

4. Fencing needs.

PROPOSED FINDING: The application lists natural earth berms as sufficient barriers. Fencing is not proposed.

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

PROPOSED FINDING: Applicant is not proposing water utilization in the production of the gravel products and is anticipating that any water collected will be absorbed by the soil or gravel and sand.

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

PROPOSED FINDING: This requirement will be met with an approved DOGAMI reclamation plan. The Applicant's proposed reclamation process will be concurrent with the gravel extraction process and no more than 20 acres of disturbed ground is anticipated at any given time.

EXHIBITS

1. Application
2. 1,500 ft impact area
3. Email from Clancy Flynn of Owyhee Irrigation District
4. Email from Amanda Punton of DLCD
5. Email of opposition from Tina Cassity