

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.

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:

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;”

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;”

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;”

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;”

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

“Conflicts with agricultural practices;”

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.”

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.”

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.”

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.)

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.

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

III. Malheur County Code

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.”

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

Goal 3 Agricultural Lands

Goal 4 Forest Lands

- Goal 5 Protection of Resources
- Goal 6 Air, Water, and Land Quality
- Goal 7 Natural Disaster and Hazards
- Goal 8 Recreation
- Goal 9 Economy
- Goal 10 Housing
- Goal 11 Public Facilities and Resources
- Goal 12 Transportation
- Goal 13 Energy
- Goal 14 Urbanization

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.
 - 2. Setbacks from property lines.
 - 3. Location of vehicular access points.
 - 4. Fencing needs.
 - 5. Prevention of the collection and stagnation of water at all stages of the operation.
 - 6. Rehabilitation of the land upon termination of the operation.