STAFF REPORT

Planning Department File No. 2024-03-001

APPLICATION FOR
Application for Aggregate Mining Expansion in EFU Zone
And Addition of Expanded Mining Site to Malheur County Inventory of Significant Goal 5 resources.

Planning Commission Meeting Date: April 25, 2024

1. **Property Owner:** Steven & Barbara Gerulf Trust
   618 Railroad Ave
   Ontario, OR 97914

2. **APPLICANT**: Chad Gerulf
   408 Stanton Blvd
   Ontario, OR 97914

3. **PROPOSED ACTION:** Approval for aggregate mining expansion in the C-A1 zone. Recommendation to the County Court a PAPA amendment to designate a total of 63.34 acres as a Goal 5 significant aggregate resource. The existing 10-acre site had been listed on the Malheur County's Goal 5 significant aggregate resource inventory (Malheur County Recorded Instrument No. 84-122178).

4. **PROPERTY IDENTIFICATION**: Tax Lot 500, Assessor's Map 17S47E, Malheur County Reference No. 6908.

5. **PROPERTY LOCATION AND DIRECTIONS:** West of the intersection of Hwy 201 and Stanton Blvd, in Ontario.

6. **ZONING**: C-A1 Exclusive Farm Use (133.92 aces).

7. **PARCEL SIZE:** The total parcel size is 133.92 acres. The proposed mining site will be on approximately 63.34 acres, as identified in the site legal description submitted by the applicant. Testing of aggregate for quality and quantity was performed on area identified as "approximately 65 ac", which is the proposed Goal 5 significant resource site.

8. **PARCEL USE:** Existing aggregate site on approximately 10 ac. The rest of the property is used for farming and residential purposes.

9. **SURROUNDING USE:** Farm/rural residential use to the West, South, East and North.

10. **ACCESS**: No new access is being proposed for this action. The existing access point off Stanton Blvd will continue to be used. Most of the product will be hauled down Stanton Blvd to Hwy 201.

11. **SANITATION REQUIREMENTS**: The site is equipped with permanent restroom facilities that meet all regulatory requirements. Up to six (6) employees will be employed on site.

12. **FIRE PROTECTION:** The parcel is within the Ontario Rural Fire Protection District.

13. **NATURAL HAZARDS**: Parcel is not in the 100-year floodplain.

14. **WATER RIGHTS:** There are 50.3 acres of water rights attached to the property. A domestic well is used for the residence that is onsite.

15. **ZONING HISTORY:** The existing single-family dwelling was constructed in 1940. In 1998, a previous property owner (Joe Stirm), obtained a permit for mining and processing of aggregate resources for 10 acres (Planning Department File #98-1-15-1). In 2002, an application for a conditional use permit for a hot asphalt plat was denied (Planning Department File #2002-1-24-3). In 2006, a Measure 37 application was submitted by the same previous owner, Joe Stirm (Planning Department File #2006-11-012). In 2007, Mr. Stirm applied for a conditional use permit for 2 non-farm dwellings and 2 non-farm partitions (Planning Department File #2007-08-012). In 2020, a property line adjustment was processed (Planning Department File #2020-12-003) and an accessory building was constructed in 2022 (Planning Department File #2022-01-004).

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. **<u>Oregon Administrative Rule 660-023-0180</u>**

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 the C-A1 (Exclusive Farm Use) zone, consisting of 133.92 acres. The proposed mining site will be approximately 63.34 ac. The proposal is for the operation of a mining site, from 07:00 am to 05:00 pm, Monday through Friday, with an approximate one Saturday per month with the same hours. The mining activity will include: excavation, stockpiling and crushing via mobile crusher. Crushing will occur approximately one time per calendar year, typically sometime between February or March. The crusher's operating hours will be 08:00 am to 04:00 pm, 7 days a week, for a two-week period. The proposal is to excavate up to 2 acres per year, for a total life up the quarry up to 26.5 years. The soils on the property are of class I, II, III, IV, VI and VII; however, the site of the proposed aggregate mining site is covered only in soils of class III, IV, VI and VII, which are not identified as high-valued soils.

<u>Quality</u>
Applicant provided a quality analyses, conducted by Atlas Technical Consultants, LLC ("Atlas"). The quality report was signed by Clinton Wyllie, Professional Geologist (ID) and Elizabeth Brown, Profession Engineer (OR) and Geotechnical Services Manager.

The Atlas report, dated May 22, 2023 describes the aggregate quality on a portion of the property identified as an "approximately 65 acres" site. The Atlas testing was conducted from March 28 to 31, 2023 on excavated material from 7 test pits/holes. The laboratory testing included:
Abrasion Test (AASHTO T-96)
Soundness Test (AASHTO T-104)
Oregon Air Degradation Test (ODOT TM 208)

The Abrasion Test resulted in a maximum of 18.38% loss. ODOT maximum loss specifications are 35% for this test. The Soundness Test showed a maximum 1.6% loss for the coarse material and 3.2% for the fine aggregate material. ODOT maximum specifications are 12% for this test. The Air Degradation Test showed a maximum percent passing of 6.1% and a sediment height of 0.3" maximum. The ODOT maximum passing percentage is 30% and a 3" sediment height.

Based on the reported test pit sample locations, the test samples can be expected to be generally representative of the aggregates at the overall site and associated subsurface conditions. Per Atlas findings, the test results of the samples indicate that the materials appear to meet the requirements of Oregon Specifications for Construction, 2018, Base Aggregate, 02630.1 (c) Durability section.

Quality of gravel on the site is met.

<u>Quantity</u>
The quantity analysis was performed by Atlas Technical Consultants, LLC ("Atlas"). The quantity report was signed by Clinton Wyllie, Professional Geologist (ID) and Elizabeth Brown, Profession Engineer (OR) and Geotechnical Services Manager.

The Atlas report, dated May 22, 2023 describes the aggregate quantity on a portion of the property identified as an "approximately 65 acres" site. The Atlas testing was conducted from March 28 to 31, 2023 on excavated material from 7 test pits/holes. GPS coordinates were obtained onsite for the test pit/boring locations, and elevations were assigned to each point from the survey data. The depths where gravel was encountered was converted to elevations with respect to the surface elevation at each point. New surfaces for the top and bottom of the gravel deposit was interpolated through ArcGIS Pro software.

"*Based on this model, an estimated back volume of approximately 2,053,700 cubic yards"* (which is 2,772,495 tons) *"of gravel is present on the site".*

Quantity of gravel on the site is met.

Location

The location of all testing was performed within the proposed 63.34 acres. The coordinates for each test pit are as follows:

	Latitude	Longitude
Test Pit #1	44.085946	-116.994515
Test Pit #2	44.085901	-116.989488
Test Pit #3	44.085924	-116.987235
Test Pit #4	44.085921	-116.985063
Test Pit #5	44.084106	-116.986162
Test Pit #6	44.084488	-116.991195
Test Pit #7	44.084750	-116.994194

The location of the proposed Significant Goal 5 Aggregate Resource site is:

A 63.34-acre portion of tax lot 500, Malheur County Assessor's Map 17S47E, reference number 6908; and legally described as follows:

Land in Malheur Co, Oregon, as follows:

In Twp. 17S., R.47E., W.M.:

That portion of the Unsurveyed Parcel No. 1 of Partition Plat 2007-24, recorded November 7, 2007, as instrument No. 2007-8243, records of Malheur County Clerk lying within the S½ SE¼ of Section 17, more particularly described as follows:

BEGINNING at the Northwest corner of said S½ SE¼;
thence South 00°18'56" East, along the west boundary of said S½ SE¼, a distance of 1198.66 feet to a point on the northerly right of way of Stanton Blvd;
thence along said northerly right of way of Stanton Blvd the following courses:

thence South 82°40'48" East, a distance of 15.29 feet;
thence North 81°06'26" East, a distance of 243.79 feet;
thence North 88°00'27" East, a distance of 393.95 feet;
thence North 06°01'14" West, a distance of 71.11 feet;
thence South 88°23'14" East, a distance of 111.87 feet;
thence South 85°52'23" East, a distance of 552.73 feet to a 910.00-foot radius curve to the left;
thence along said curve, arc distance of 301.64 feet, through a central angle of 18°59'30", and being subtended by a chord which bears, North 84°37'52" East, a distance of 300.26 feet;
thence North 75°08'07" East, a distance of 571.78 feet to a 1290.00-foot radius curve to the right;
thence along said curve, arc distance of 337.72 feet, through a central angle of 15°00'00", and subtended by a chord which bears, North 82°38'07" East, a distance of 313.26 feet;
thence South 35°11'02" East, a distance of 47.49 feet;
thence North 88°10'00" East, a distance of 44.21 feet to the west boundary of Parcel No. 2 of said Partition Plat 2007-24;

thence leaving said right of way, North, 04˚57'34" East, along said west boundary of Parcel No. 2, a distance of 691.88 feet;
thence South, 76˚04'07" East, along said north boundary of Parcel No. 2, a distance of 68.86 feet to the east boundary of said S½ SE¼;
thence North, 00˚08'19" East, along said east boundary of said S½ SE¼, a distance of 249.15 feet to the Northeast corner of said S½ SE¼;
thence North 89˚35'46" West, along the north boundary of said S½ SE¼, a distance of 2696.43 feet to the POINT OF BEGINNING.

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. Activities on the proposed site location will include excavation, stockpiling, and crushing via a mobile crusher. Stockpiling of overburden for noise, visual and dust abatement will occur at the proposed location. All portions of the parcel not being excavated will remain in farm use.

The total proposed area for mining and all activity proposed by Applicant is approximately 63.34 ac, as identified by the legal description submitted by the application.

The impact area is a 1,500 feet radius from the boundaries of the mining site which is depicted on a map – Exhibit 9 of the application. A summary of the impact area by tax lot, zone, acres and use is set out below.

Tax Lot	Map Number	Zone	Size (ac)	Identified Uses
800	17S47E17B	C-A1	26.06	Farmland with a dwelling
500	17S47E17	C-A1	49.44	Farmland with a dwelling
600	17S47E17	C-A1	21.35	Farmland with a dwelling
800	17S47E17	C-A1	1.88	Farmland with a dwelling
100	17S47E17	C-A1	93.80	Farmland with a dwelling
300	17S47E17	C-A1	133.30	Farmland with a dwelling
401	17S47E17	C-A1	10.01	Farmland with a dwelling
800	17S47E17A	C-A1	8.99	Farmland with a dwelling
900	17S47E17A	C-A1	7.60	Farmland with a dwelling
700	17S47E17A	C-A1	18.81	Farmland with a dwelling
1000	17S47E17A	C-A1	11.92	Farmland with a dwelling
1400	17S47E16B	C-A1	1.35	Farmland with a dwelling
1200	17S47E16B	C-RR	5.06	Rural residential lot with a dwelling
1100	17S47E16B	C-RR	5.06	Rural residential lot with a dwelling
1500	17S47E16B	C-RR	5.01	Rural residential lot with a dwelling
1600	17S47E16B	C-A1	8.00	Farmland
900	17S47E16B	C-A1	2.91	Farmland
600	17S47E16	C-A1	44.89	Farmland
1000	17S47E16	C-A1	1.79	Farmland; second approved NFD site, applicant-owned
800	17S47E16	C-A1	7.50	Farmland
1100	17S47E16	C-A1	2.00	Farmland with a dwelling
1200	17S47E16	C-A1	7.50	Farmland
1500	17S47E16	C-A1	0.70	Farmland
1400	17S47E16	C-A1	2.07	Farmland
1600	17S47E16	C-A1	1.21	Farmland with a dwelling
501	17S47ED001	C-A1	7.30	Farmland with a dwelling (NFD), applicant-owned
400	17S47E20	C-A1	77.37	Farmland with a dwelling
300	17S47E20	C-A1	2.20	Farmland with a dwelling
600	17S47E20	C-A1	163.50	Farmland with a dwelling
500	17S47E20	C-A1	39.90	Farmland with a dwelling
700	17S47E20	C-A1	34.71	Farmland
200	17S47E21	C-A1	37.13	Farmland with a dwelling
203	17S47E21	C-A1	0.79	Farmland with a dwelling
503	17S47ED001	C-A1	15.83	Farmland with a dwelling and an event center, applicant-owned

There are no schools in the impact area. There is an event center on tax lot 503 of map 17S47ED001, owned by the applicant, and approved per CUP #2022-09-011.

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, at least 10-feet high. On top of the earthen berm, trees will be planted to further reduce any line of site and therefore, dampen any noise generated. The elimination of a line of sight from any dwelling to the equipment, which is generating the noise, will greatly decrease the sound from traveling. During peak noise production (the use of the crusher), the gravel pit is proposed to produce 86.5 decibels of sound. And earthen berm will reduce that noise by approximately 19.32 decibels, thereby reducing the noise to just 67.18 decibels. This is considered the same level as a normal conversation and is quieter than a vacuum cleaner (applicant's exhibit #10 and 11).

Dust abatement procedures will also be in effect such as graveling and watering internal roads. The gravel pit currently has an asphalted road, which mitigates any dust generated by truck traffic. In addition, a water truck will water the non-asphalted roads. Water is currently obtained from the City of Ontario, but will be obtained onsite in the future. Regularly spraying water on the roads will greatly reduce any dust generated on the site.

Windbreaks can also greatly reduce the amount of dust blown from a gravel put to other properties. The earthen berm in addition to the trees will reduce wind within the mining site, and therefore reduce dust blown onto adjacent properties.

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:

There will be no additional truck traffic generated at this site. The gravel pit operation is an existing operation. No conflicts with access roads are anticipated.

Truck travel already occurs to and from the Applicant's existing mining operation via Stanton Blvd. There will be no increase in traffic weight on the road to and from the expanded operation. The proposed use will not create a need to alter the current location and size of driveway access points, nor will it need right-of-way widening or improvements on Stanton Blvd.

Rural Road District #3 "does not foresee any negative traffic impact" (Exhibit #2) on Stanton Blvd. In an email received from John Eden of ODOT on April, 15th 2024, there were no expressed concerns regarding traffic impacts to Hwy 201 either. (Exhibit #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 6 miles away and Payette Airport is about 5.8 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 no other Goal 5 resources located within the 1,500 ft impact area
There are no Goal 5 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).

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

PROPOSED FINDING:

The applicant's goal is to operate a responsible gravel pit that coexists peacefully with surrounding agricultural activities. The applicant states that there are no conflicts which would force a significant change in accepted farm or forest practices on surrounding lands devoted to farm use or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

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.
The applicant's reclamation plan will follow the current reclamation plan, set in place for the Joe Stirm approval, dated 02/17/1998. The Applicant is proposing to use the mining site as a grazing pasture, in the post-mining proposal.

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: There are no conflicts identified 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.)

PROPOSED FINDING:

It is important to recognize that, when identifying and evaluating the ESEE consequences at this stage of the local review process for Chad Gerulf, 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 Chad Gerulf's proposed aggregate mining.

Table 1
ESEE consequences related to review criteria for new dwellings and gathering spaces in the 1,500-foot impact area surrounding Chad Gerulf's proposed aggregate mining site

	Prohibit dwellings and gathering spaces	***Condition the placement of new dwellings and gathering spaces***	***No change to review standards for dwellings and gathering spaces***
Economic Consequences	**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 (3), all with an 80-acre minimum lot size, would be affected and some existing limits on dwellings are already in code, the negative impact would be small.	**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 zones. Similar waivers are required by counties around the state as a condition of approval for a new residential structure in a farm or forest zone.	**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. Interruptions in use of a quarry, due to complaints

	Consequences related to loss or interruption of quarry access Increasing the number of privately-owned aggregate sites in an area enables more competition, which results in lower costs. The Gerulf 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.	These wavers, 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. 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 chad Gerulf's proposed aggregate mining site will have no negative economic consequence. **Consequences related to loss or interruption of quarry access** 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.	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 is compromised due to less efficient access/location to aggregate material.
Social Consequences	**Consequences related to new use on neighboring properties** Removing the option to place a dwelling, which otherwise meets all existing review criteria, within 1,500 feet of the quarry boundary, would have a negative social consequence. The social consequences stem from	**Consequences related to new use on neighboring properties** The social impact to neighboring property owners would be neutral if acceptance of the mining activity was added as a condition of approval for new dwellings within 1,500 feet of the quarry boundary. Options	**Consequences related to new use on neighboring properties** The social impact to neighboring property owners would be neutral if new dwellings within 1,500 feet of the quarry boundary were allowed under the existing review criteria.

	a land owner's desire to have reasonable options and flexibility when making choices about what they can and cannot do on their land. **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.	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. **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.	**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.
Environmental Consequences	Consequences related to new use on neighboring properties There are no environmental consequences identified that stem from prohibiting new dwellings in the impact area. 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.	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 3 parcels within the 1,500 ft impact area, larger than 80 acres, on which a new dwelling could be allowed through a potential non-farm dwelling/non-farm partition process. 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	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. Consequences related to loss of quarry access There may be some negative environmental consequence if new uses

		to locate within the impact area, they will be exposed to noise impacts when mining activities are conducted on the site. 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	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 emotions will increase if trucks have to travel further to access material.
Energy Consequences	Consequences related to new use on neighboring properties There are no energy consequences identified that stem from prohibiting new dwellings in the impact area. 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.	Consequences related to new use on neighboring properties There are no energy consequences identified that stem from limiting new dwellings in the impact area. 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.	Consequences related to new use on neighboring properties There are no energy consequences identified that stem from allowing new dwellings in the impact area. 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.

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 Chad Gerulf's proposed quarry in order to achieve Goal 5.

Applicant has proposed in the operation plan that a 200-foot setback from all existing dwellings be in place. 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).

PROPOSED CONDITIONS OF APPROVAL

1. Conform to the requirements of DOGAMI or its successor, or the applicable state statutes. Provide copies of these permit approvals to the County Planning Department.

    a. Obtain all applicable permits for the mining operations from DOGAMI before these activities begin. Applicant will obtain approval from DOGAMI for the reclamation plan and submit a copy of the reclamation plan to the Planning Department.

    b. Obtain all applicable permits for the mining operation from DEQ (air, noise, and water quality issues) before these activities begin.

2. The post acknowledgement plan amendment including the subject site identified as a significant aggregate site in the Goal 5 resource inventory must be approved by the Malheur County Court and take effect prior to any mining on the property.

3. Adequate emergency ingress/egress routes should be provided to the work site. A copy of the routes must be provided to Malheur County Dispatch and the Ontario Rural Fire Protection District.

4. Any hazardous materials storage and use must be permitted through the Oregon State Fire Marshall's Office Community Right-to-Know program.

5. On-site fuel/oil storage shall meet the Oregon Fire Code and be located on a site plan. A copy of the fuel/oil storage plans must be submitted to the Ontario Fire and Rescue for use in the Emergency Response Plan for the site.

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

aggregate operation.

7. Applicant must conform to all mitigation measures as described in the application and operation plan below:

    a. Noise, dust, or other discharges: Applicant must place 10-foot high visual and noise barrier berms made of overburden between the operation and neighboring properties.

8. Mining and all other developments shall occur within the proposed area as shown on the site plan and according to the operations plan. Any deviations from this plan must be approved by the Planning Commission.

9. No blasting is proposed on the site. If blasting is to occur, notification must be provided to the Oregon Department of Transportation.

10. Malheur County reserves the right to conduct onsite inspections, to ensure adherence to proposed conditions of approval.

EXHIBITS

1. Application with Exhibits
    1. Atlas Quantity Analysis
    2. Atlas Quality Analysis
    3. Topographical Map
    4. Soils Map
    5. Current Deed
    6. Legal Description
    7. Operations Plan
    8. Reclamation Plan
    9. Impact Area
    10. Earth Berm Study
    11. Decibel Level Chart
    12. Water Rights Map
2. Letter from Rural Road District #3
3. Email from John Eden, ODOT