

GILLIAM COUNTY COURT
PUBLIC HEARING – August 29, 2018
Public Hearing (Continued from August 15, 2018) Philippi Canyon Quarry
COMPREHENSIVE PLAN MAP AMENDMENT, P-2018-01
COMPREHENSIVE PLAN TEXT AMENDMENT T-2018-01
ZONING MAP AMENDMENT #Z-2018-01

This being the time and place advertised, Judge Shaffer opened a continuation of a public hearing at 9:00 a.m. The hearing is for an application submitted by the Oregon Department of Transportation (ODOT) for a Post Acknowledgement Plan Amendment (PAPA) to gain further protection of an existing 32.70-acre aggregate site. To protect the Philippi Canyon Quarry under Goal 5 rules for aggregate sites, ODOT is requesting that Gilliam County amend the Gilliam County Comprehensive Plan and include the Quarry in the Goal 5 Comprehensive Plan Map of Inventory of Aggregate and Mineral Resources, and amend the Zoning Map to add the site to the Significant Resource (SR) Combining Zone.

In addition, ODOT is requesting Site Development Plan Approval to operate the Philippi Canyon Quarry for an upcoming I-84 maintenance project. The Philippi Canyon Quarry is located along Quinton Canyon Road near Interstate 84 exit 123, Tax Lot 100, NW ¼ Sec 6, T2, R19E, WM, Gilliam County on land zones Exclusive Farm Use (EFU).

Judge Shaffer noted that oral and written testimony was submitted to the record at the August 15 Public Hearing, and procedures and applicable laws and ordinances were read. At that time, the qualification of decision-makers was completed and there were no objections to any of the County Court members participating in this decision.

Judge Shaffer read the Rules for the Public Hearing and asked if Court members had any questions. No questions were presented.

Staff Report
Nick Kraemer

Contract Planner Nick Kraemer outlined the meeting process and noted new information submitted during the continuance as follows:

- Kellington Law Group Letter dated August 22, 2018 -- DLCDC Comments on Noise impacts to cow/calf operations.

- Kellington Law Group Letter dated August 22, 2018 – Noise generated by blasting preparation and other work above the quarry floor not addressed in ODOT noise impact reports.
- Oregon Farm Bureau – Cow/Calf Impacts and DLCD.
- ODOT did not submit a rebuttal and stated that they “have addressed all of these issues previously.”

The following is a summary of Kraemer’s PowerPoint presentation. The presentation also included a number of maps, diagrams and other graphics.

Land Use Process:

PAPA, Zoning Amendments and Site Development Permit

- Both are being considered at this hearing.
- Future use of the site would require another Site Development Permit approval (administrative).
- All conditions of the PAPA and Zoning Amendments apply at each Site Development Permit Application.

SECTION 8.170 –STEP 1 -GOAL 5 PROCESS

STEP 1 -The first step in the Goal 5 aggregate process requires the Director to determine whether an application filed under this Section may be deemed complete under Section 11.040.

- Opponents contend the application should have never been deemed complete and was missing information. Opponents contend that the materials submitted for quantity and quality is not adequate.
- ODOT contends that they have met this standard.
Does the County Court have sufficient information to determine quality and quantity of resource?

SECTION 8.180 – STEP 2 - DETERMINE SITE SIGNIFICANCE AND CLASSIFICATION

STEP 2 -- The Director shall determine whether an aggregate resource site is a significant or a non-significant site pursuant to this section.

An aggregate resource site shall be significant if adequate information regarding the location, quality, and quantity of the resource demonstrates that the site meets the following criteria:

1. A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation(ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness; and
2. The estimated amount of material is more than 333,333 thousand cubic yards or 500,000 tons; or
3. The aggregate site was listed on an inventory of significant aggregate sites in the Comprehensive Plan on September 1, 1996.
 - Opponents contend that the materials submitted for quantity and quality is not adequate.
 - ODOT contends that they have met this standard.
 - Does the County Court have sufficient information to determine quality and quantity of resource?

SECTION 8.190 – STEP 3 - IDENTIFY IMPACT AREA AND ALL CONFLICTS WITH EXISTING USES

STEP 3A - Identify an impact area and known conflicts within it.

1. Identify an impact area for the purpose of identifying conflicts with proposed mining and processing activities.
 - a. 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 proposed mining area, except where factual information is adequate to indicate significant potential conflicts beyond this distance.
2. Prepare a map showing the impact area and proposed mining area; and
3. Identify known conflicting uses.
 - Opponents contend that the impact area should be extended up to seven miles due to impacts of road closures and detours.
 - Opponents also contend that impact area should be extended to assess noise impacts to Meece residence (DSA Letter).
 - Opponents contend that impacts from noise, dust, vibration and air polluting chemicals extends beyond 1,500 feet.
 - Opponents also contend that noise impacts to cows should be considered as a conflicting use.
 - ODOT contends that they have provided evidence that shows the impact area should remain at 1,500 feet and that cows should not be considered a conflicting use.
 - Does the County Court see factual information to warrant extending the impact area? If so, we need to assess all impacts in that extended area and adjust.

STEP 3B - Identify all conflicts from existing and approved uses in the impact area.

1. The decision maker shall identify all existing or approved land uses within the impact area that will be adversely affected by proposed mining.
2. The decision maker shall also specify conflicts from existing or approved uses that are able to be reasonably predicted.
3. For purposes of this subsection, “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 Gilliam County.
4. The consideration of conflicts that could be caused by the mining of a significant aggregate site shall be limited to:
 - (a) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;

Finding: The impact area is all zoned EFU and mostly consists of ranch and farm land. There are no residential uses, no existing or approved land uses within the 1,500-foot impact area that are sensitive to noise, dust, or other discharges.

- Opponents contend that the impact area should be extended up to seven miles, which would include several conflicting uses.
- ODOT contends that they have provided evidence that shows the impact area should remain at 1,500 feet, and that cows should not be considered a conflicting use.
- Does the County Court see factual information to warrant extending the impact area?

(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 to include the intersection with the nearest arterial identified in the Transportation Plan.

(1) Conflicts with local roads 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 County Code.

(2) Standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity which haul other materials;

- Opponents contend that a traffic impact study should be completed AND that Goal 12 transportation is not met when Quinton Canyon Road is closed.
- Opponents claim detour on Heritage Lane is not adequate.
- ODOT contends that the Heritage Lane detour is adequate and proposed to be improved to minor collector in Traffic Safety Plan.
- ODOT contends that there are no conflicts with sight distances, etc.
- ODOT estimate 19-67 ADT (Traffic counts 2008 and 2014 for TSP).

- Does the County Court agree that a traffic impact study is needed? Does the County Court determine that Heritage Lane is an adequate detour?

(4) 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 Plan amendment is initiated;

Opponents contend that basalt cliffs are a Goal 5 Resource Site.

ODOT contends that basalt cliffs are not protected as a Goal 5 resource.

See Finding #13 from the Comprehensive Plan: Pursuant to the requirements of compliance with State Planning Goal 5, the County must complete an Economic, Social, Environment and Energy (ESEE) Analysis for all identified "Natural" Resources in the County. Said Analysis has been completed and is hereby adopted as though set forth in full herein. However, with the exception of the aggregate resource sites, riparian habitat areas and historic resources, no such resources have been identified as needing County protection.

County Court: Is this adequate?

(5) Conflicts with agricultural practices.

- Opponents contend that there are significant impacts.
- ODOT contends that impacts are adequately minimized.
- County Court must determine which impacts to consider and what to consider significant.

Section 8.200 – STEP 4 - DETERMINE WHETHER CONFLICTS CAN BE MINIMIZED

Mitigation Measures for Quinton Canyon Road Closures:

- 1) Seasonality
- 2) Provide a reasonable detour
- 3) Provide adequate notice and ongoing communication
- 4) Improvements to detour roads

Mitigation Measures for Quinton Canyon Road Impacts:

- 1) Operations: ODOT needs to report operational plans to the county Roadmaster at least 45 days ahead of operations and get approval from. The Roadmaster can request detailed engineering analysis from ODOT to show that Quinton Canyon Road will be functional after active quarry use is completed for each project.
- 2) Road repairs: ODOT must complete road repairs after each active use of the quarry to ensure the roadway is in sufficient condition to handle standard roadway traffic. This work shall be completed before reopening of Quinton Canyon Road and approved by

the county Roadmaster to ensure safety of road users and mitigate any impacts to the surface of the road.

Mitigation measures for other impacts proposed by proponents:

- 1) Noise, Dust, Air Pollution Impacts
- 2) Impacts to Cows
- 3) Seasonality

County: Determine what conflicts should be minimized and how, if possible.

B. In making the determination whether proposed measures would minimize conflicts with agricultural practices, the decision maker shall consider only the requirements of ORS 215.296.

FINDING #30: The standard for evaluating impacts to agriculture is established by Oregon Revised Statutes (“ORS”) 215.296, which states that allowed uses must not “(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.”

The periodic closures of Quinton Canyon Road and potential impacts to the road may temporarily impact farm uses in the area, however the mitigation measures detailed above and included as conditions of approval will mitigate these impacts. The County Court needs to consider the testimony presented by the opponents and the responses from ODOT to decide if the conditions of approval address the ORS 215.296 standards for evaluating impacts to agriculture and effectively alleviate any potential impacts.

C. Recording a waiver of remonstrance in compliance with section 11.130, is evidence that a conflict has been minimized under Section 8.200, or resolved under Section 8.210 or 8.250.

FINDING #31: If approved, a future land use application made in the impact area triggers the need for a Waiver of Remonstrance. Following Section 11.130 of the Gilliam County Zoning Ordinance, as a condition of approval, ODOT and the owner(s) of properties located within the proposed SR zone must sign and record in the deed records for the County a document (Waiver of Remonstrance) binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from mining within the SR Zone.

- Opponents contend that this is illegal.
- Staff: This is verbatim from the zoning ordinance.

Section 8.220 – STEP 6 - APPROVE THE MINING OF THE AGGREGATE RESOURCE

A) The decision maker shall protect the resource site and approve an application for mining if:

1. No conflicts were identified under Section 8.190, or

2. All identified conflicts with a significant aggregate resource site are minimized pursuant to Section 8.200, or
3. Based on an ESEE analysis, conducted pursuant to Section 8.210, mining is permitted with or without limitations.
 - Opponents contend that conflicts can't be minimized.
 - ODOT contends that conflicts are minimized.
 - County Court: Need determination.

Section 8.230 – STEP 7 - DETERMINE THE POST-MINING USE OF SITE

Step 7 – Post-mining use and reclamation. At the time the determination under Section 8.220 is made, the decision maker shall:

1. Determine the post-mining use of the site.
2. Proceed as set forth in Section 8.240 (STEP 8).

B. For significant aggregate sites on Class I, II soils and unique farmland, the post-mining use shall be limited to farm uses under ORS 215.203, uses listed under ORS 215.283 (1), and fish and wildlife habitat uses, including wetland mitigation banking.

C. The County and Applicant shall coordinate with DOGAMI regarding the regulation and reclamation of aggregate sites, except where exempt under ORS 517.780.

DOGAMI permit includes reclamation plan.

Section 8.240 – STEP 8 - IDENTIFY CONFLICTS FROM POTENTIAL FUTURE USES

Step 8 - Determine all conflicts from potential future uses in the impact area. The decision maker shall:

1. Identify future potential uses which, if allowed, would conflict with the proposed mining;
2. Identify predicted conflicts from those future potential uses.

B. The consideration of future potential uses shall be limited to those land uses that, if approved, would be allowed outright in the underlying zoning district.

- Staff: possible conflicting future uses in the impact area are identified as:
Dwelling Uses (includes churches, schools, community centers, and home occupations).
- Opponents contend that farm use (grazing) is a conflict.

Section 8.250 – STEP 9 - ANALYZE ESEE CONSEQUENCES AND DETERMINE WHETHER TO ALLOW A FUTURE POTENTIAL USE

A. The decision maker shall determine whether to allow, limit or prevent a future potential use identified in Section 8.240. To make this determination, the decision maker shall apply the standard ESEE process set forth in OAR 660-023- 0040 and 660-023-0050.

B. Recording a Waiver of Remonstrance in compliance with Section 11.130 (E) is evidence that a conflict has been minimized under Section 8.200, or resolved under Section 8.210 or Section 8.250.

C. The decision maker shall next proceed as set forth in the applicable provisions of Section 8.260.

- Staff: See ESEE analysis.
- Opponents contend that use of waiver is illegal.
- Opponents contend that limits on use is burden on nearby farmers.
- County Court: Is ESEE analysis accurate?

Section 8.260 – STEP 10 - ADOPT FINAL DECISION AND IMPLEMENT AMENDMENTS

STEP 10A - Amend the Comprehensive Plan to carry out the decision. The decision maker shall implement the determinations made under this Article by amending the Comprehensive Plan as set forth in paragraphs (1) of this subsection.

1. Inventories. The decision maker shall amend the appropriate appendices following Article 10 (Land Development Ordinance) to include the site on an inventory and to include any supporting analyses pursuant to this paragraph.

2. If the decision maker makes a determination approving mining under subsections (A) (1) (a), the amendments set forth in the Comprehensive Plan shall include:

- a. A program to protect the resource;
- b. Identified measures to minimize conflicts and any special condition, and regulations. Such measures, conditions, and regulations shall be clear and objective; and
- c. The approved post-mining use.

B. STEP 10B - AMEND THE ZONING MAP TO APPLY THE SIGNIFICANT OVERLAY ZONE. If the decision maker makes a determination approving mining under subsections (A)(1)(a) the decision maker shall amend the Land Development Code Zoning Map:

1. To show the mining area. The extraction area shall be applied to significant sites where mining is permitted by the Comprehensive Plan. The mining area boundary as set forth in an application may be modified through the Goal 5 process to reduce conflicts with uses existing within the impact area.

2. To show the impact area. The size of the impact area may be increased or decreased through application of the Goal 5 process. To apply a Significant Overlay Zone to the impact area for sites receiving protection pursuant to Goal 5.

Section 10.050 - APPROVAL CRITERIA FOR AMENDMENTS

A. Applicant for an amendment must show that the proposed changes conform with the Comprehensive Plan

Goal 1 - Citizen Involvement: The land use process is following the citizen involvement policies detailed in the Comprehensive Plan and Procedures in the Zoning Ordinance.

Goal 2 - Land Use Planning: The purpose of Goal 2 is to require that local land use decisions are based on factual evidence and follow a policy framework (zoning ordinance). Further, Policy #7 states that "Comprehensive Plan policies are to be viewed as guiding statements, but are not mandatory approval criteria that will be applied to individual land use applications. The Plan policies are implemented through zoning, land division and transportation regulations."

Goal 3 - Agricultural Lands: The purpose of Goal 3 is to preserve and maintain agricultural lands. From the Comp Plan: "The policies are intended to support the state's agricultural land use policy (ORS 215.243) and should be so interpreted and construed."

Goal 4 - Forest Lands: Property is not considered forest land. Not applicable

A. Applicant for an amendment must show that the proposed changes conform with the Comprehensive Plan

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces

Findings:

13. Pursuant to the requirements of compliance with State Planning Goal 5, the County must complete an Economic, Social, Environment and Energy (ESEE) Analysis for all identified "Natural" Resources in the County. Said Analysis has been completed and is hereby adopted as though set forth in full herein. However, with the exception of the aggregate resource sites, riparian habitat areas, and historic resources, no such resources have been identified as needing County protection.

16. All active aggregate sources in the County are being inventoried and are identified by site location in the inventory set forth as an Attachment hereto. A comparison of the estimated total volume of aggregate from these sources to the estimated needs of committed or projected construction projects requiring such material clearly indicates that sufficient quantities are available to meet such needs.

17. It is the policy of Gilliam County to fully protect significant mineral and aggregate resource sites by determining the Economic, Social, Environmental and Energy (ESEE) consequences of not allowing conflicting uses to occur within the 1500-foot impact area.

A. Applicant for an amendment must show that the proposed changes conform with the Comprehensive Plan

10. In the past, extractive industrial activities of some magnitude have operated in the County, and although no such concerns are presently in operation, it is reasonable to expect that they, or others like them, will become active as heavy construction activity in the area commences. The policy of Gilliam County is to encourage development of the County's mineral resources, consistent with other objectives and policies of this Comprehensive Plan, and under conditions that will not result in permanent destruction of the natural beauty of the County's landscape. Basalt outcroppings characteristic of the area generally should be left in their natural state and only under particularly justifiable circumstances will County approval of mining of potentially scenic hillsides be given. The County's policy on mining of potentially scenic hillsides may require a search for suitable alternate sites for mining operations should any major construction project, not foreseen at this time, occur. Therefore, the County shall support, cooperate, and coordinate with any efforts by the Oregon Department of Geology and Mineral Industries (DOGMI) to carry out a Mineral & Aggregate Inventory of the County, and when such inventory is completed it shall be adopted as a component of this Plan and appropriate protection measures adopted to protect identified needed sites.

A. Applicant for an amendment must show that the proposed changes conform with the Comprehensive Plan.

Policies:

11. Because of the identification of limited mineral and aggregate resources in the County, appropriate protection measures for such identified resource sites shall be adopted to insure the continued availability of such sites for the purpose intended.

15. The requirements of OAR 660-023 will be used to consider the significance of Goal 5 resources.

16. The County will continue to process applications for Post Acknowledgement Plan Amendments to add sites to Goal 5 inventories when site-specific information on location, quality and quantity is submitted by individuals or agencies.

- A. Applicant for an amendment must show that the proposed changes conform with the Comprehensive Plan.

Goal 6: Air, Water and Land Resources Quality: The primary purpose of Goal 6 is to maintain and improve air, water, and land resources of the state.

Policies #2, #3, #4 and #5 from the Comprehensive Plan Goal 6 state the following:

2. The County shall continue to require compliance with State and Federal regulations, as applicable, for land use activities involving sewage disposal treatment and disposal, solid waste disposal, and air, water and noise pollution.
3. The County shall continue to support local, regional, state, and federal activities and programs directed at the maintenance and improvement of water quality.
4. The County shall continue to be supportive of local, regional, state and federal programs directed at the minimization of erosion hazards and adverse impacts, both water and air generated.
5. It shall be the policy of the County to rely on such environmentally related regulations and programs in the review of development permits concerning land use activities related thereto, rather than attempting to develop local regulations concerning such matters. Such reliance shall continue until such time as it is proven that said State and Federal regulations are inadequate.

Following the policies of the Comprehensive Plan the County must rely on DEQ, DOGAMI, ODFW, and other environmental regulation agencies to ensure the protection of air, water, and land resources where programs are in place for the review of development permits.

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Goal 7 – Areas subject to natural hazards property are not subject to known natural hazards. The County has the ability to close roads, as long as adequate detours exist and are maintained during closures. The DOGAMI permit addresses the need for slope stabilization and wildfire mitigation measures that need to be taken at each mining site.

Goal 8 – Recreational Needs. Property is not considered an asset for serving recreational needs.

Goal 9 – Economic development: Goal 9 generally applies to employment lands such as commercial or industrial lands. The subject property EFU and surrounded by EFU. The proposal does not conflict with Goal 9.

Goal 10 – Housing: The primary objective of Goal 10 is to provide for the housing needs of the citizens of the state. This generally applies to rural residential lands and all policies directed at those lands. Proposal does not conflict with Goal 10.

Goal 11 – Public Facilities and Services: The primary purpose of Goal 11 is to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. These policies are focused on services in urban areas and waste management proposal does not conflict with Goal 11.

Goal 12 -

- A. Applicant for an amendment must show that the proposed changes conform with the comprehensive plan goal 12 transportation: to provide and encourage a safe, convenient, and economic transportation system.

16. Gilliam County shall protect the function of existing and planned roadways as identified in the Transportation System Plan.

17. Gilliam County shall include a consideration of a proposal's impact on existing or planned transportation facilities in all land use decisions.

18. Gilliam County shall protect the function of existing or planned roadways or roadway corridors through the application of appropriate land use regulations.

Section 10.050 - Approval Criteria For Amendments

A. Applicant for an amendment must show that the proposed changes conform with the Comprehensive Plan

Goal 13 – Energy Conservation: Proposal does not conflict.

Goal 14 – Urbanization: The primary purpose of Goal 14 is to provide for an orderly and efficient use of land and to provide for livable communities. Proposal does not conflict.

A plan or land use regulation amendment significantly affects transportation facility if it:

1. Changes the functional classification of an existing or planned transportation facility

2. Changes the standards implementing a functional classification system.
3. Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility;
or
4. Would reduce the level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.

Opponents contend that a traffic impact study should be completed AND that this criteria is not met when Quinton Canyon Road is closed.

Opponents claim detour on Heritage Lane is not adequate.

ODOT contends that Heritage Lane detour is adequate and proposed to be improved to minor collector in Transportation Safety Plan.

ODOT contends that closures are every five to 15 years and do not reduce the level of service.

ODOT Estimate 19-67 ADT (Traffic counts 2008 and 2014 for TSP)

County: Does County Court agree that traffic impact study is needed? Does the County Court determine that Heritage Lane is an adequate detour?

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ODOT estimate 19-67 ADT (traffic counts 2008 and 2014 for tsp)

County: Does County Court agree that traffic impact study is needed? Does County Court determine that Heritage Lane is an adequate detour?

Conditions of Approval

Precedent Conditions: The following precedent conditions must be fulfilled prior to final approval of this request:

1. The County Planning Department will prepare an Ordinance to amend the County Comprehensive Plan to add this aggregate site to the County's Inventory of Significant Sites as a Large Significant Site. After approval by the Board of Commissioners, the County will submit the Notice of Adoption to DLCD.

Subsequent Conditions: The following subsequent conditions must be fulfilled following final approval of this request:

1. Solid Waste Disposal: Sewage disposal on site shall be done with portable facilities of which a licensed company will be utilized to dispose of the sewage. Any solid waste from the site will be disposed of at a permitted and licensed facility.

2. Fire suppression: the operator of the mine shall provide all necessary fire suppression equipment.

3. Compliance with applicable laws: The permitted shall obtain all necessary federal, state, and local permits required for extraction of material from this pit and provide the Planning Director with a list of all required permits and copies of said permits for the permanent file.

4. Site inspection: The Permittee shall allow site inspection by County Representatives to assure compliance with permits issues.

5. Access roads(s): The Permittee shall obtain access permit from Gilliam County Roadmaster for proposed new access points from Quinton Canyon Road. If required for access, the Permittee will be responsible to obtain the private easement across and construct the proposed access road to the South connecting to Quinton Canyon Road as shown on the site plan.

6. Restoration: Permittee will restore the area to a natural state including contouring and spreading overburden over exposed area and re-seeding of site as per the DOGAMI reclamation requirements including re-seeding rates and recommended seed types after exhaustion of material source. Interim restoration will consist of grading and seeding of erosion control berms, safety berms and overburden stockpiles.

7. Noise and dust control: Adhere to DEQ Noise Standard as found in OAR 340-035-0035, Noise Control Regulations for Industry and Commerce. Permittee shall provide dust control mitigation measures for this site and access roads and provide mitigation plan to the Planning Director.

8. Hours of operation: The Permittee is allowed to work at all hours and all days of the week during operations in order to facilitate less road closures and nighttime work on freeway maintenance projects.

9. Lighting provisions: If Permittee determines that it is necessary to operate during nighttime hours, any outdoor lighting (i.e. non-FAA required or recommended) shall be hooded and directed so as not to shine directly upon adjoining property or public rights of way.

10. Notification of onsite projects: The Permittee is required to notify Gilliam County Planning Department at least 45 days in advance of aggregate extraction, blasting, crushing, and/or batching at the permitted site. Gilliam County will provide a list of contacts (emergency responders, affected agencies, and landowners in the 1,500-foot impact area) for ODOT to notice. Routine maintenance activities and use of the site will be exempt from this notification requirement. This information will be forwarded to the Planning Commission and County Court. ODOT shall provide contact information for an available representative who is available at all times during active use of the quarry.

11. Periodic Review: After active use of the quarry, within 45 days the Permittee shall provide a written update to the Planning Director which shall include the dates of operation for aggregate mining, batching, blasting and other operations. This report should include the amount of aggregate mined from the operation. The report should also include any information about conflicts or complaints as a result of mining operations. This information will be forwarded to the Planning Commission and County Court.

12. Repair of Damage: The Permittee shall be responsible for any damage to Quinton Canyon Road and County Roads used for Detour routes demonstrated to have resulted from use by project construction, mining operations, aggregate processing maintenance vehicles or local use of the detour route. Permittee shall meet with Gilliam County Roadmaster prior to quarry operations to review existing conditions of roadway. Before the reopening of the road following road closures - the road must be made traversable and provide adequate capacity for road users. The permittee shall gain approval of Gilliam County Roadmaster before reopening of the road to ensure the road meets County policies for County Roads. Before completion of each active quarry project - Permittee shall meet with the Gilliam County Roadmaster and determine any necessary repairs that need to be made to bring the road up to pre-project condition. Upon completion of each active quarry project - Permittee agrees to make any necessary repairs to restore road to pre-project conditions within 60 days of meeting with Roadmaster. This applies to County roads used for detour routes as well.

13. Site Layout: Crushing and batching shall only occur in the existing stockpile/processing area as shown on site plan. Rock crushers and batching plants will not operate in new excavation areas south of Quinton Canyon Road.

14. Road Closures and Delays: Vehicles travelling on Quinton Canyon Road may be delayed for no more than 20 minutes without prior notification and adequate detours in place. Permittee shall notify affected land owners of approximate delay times and

closures at least 45 days ahead of any impacts to Quinton Canyon Road. If extended multi-day closures are required, they will be planned to occur between October and June - so as to not conflict with seasons of agricultural operations. Road closures can occur for no more than 21 consecutive days for each closure and no more than one closure is allowed for each major use of the site.

15. Detours: During the closures of Quinton Canyon Road, a detour route will need to be established to connect impacted farmers and residents to I-84. Just south of the quarry site, Heritage Lane provides a detour route connecting to Blalock Canyon Road and eventually accesses I-84 via exit 129. The Detour routes shall be reviewed as part of the Site Development Plan Review and confirmation of the County Roadmaster that the detour routes are adequate is required.

16. Cultural Resources: If cultural artifacts are observed during ground-disturbing work, that work must cease in the development area until the find is assessed by qualified cultural resource personnel from the State Historic Preservation Office and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Once qualified cultural resource personnel from SHPO and CTUIR are satisfied, the ground-disturbing work may continue.

Background: The County Planning Commission held two public hearings on the subject application in May and June. The Planning Commission met on July 2, 2018 to deliberate on making a decision and recommendation to the Gilliam County Court.

At the close of the deliberation, the Planning Commission voted to recommend denial of the application due to inadequate information provided by applicant to make a determination that criteria are met. Planning Commission offered suggested changes to the conditions, if the County Court chooses to approve the application and those suggested changes are incorporated into the Staff Report for the Gilliam County Court.

The County Court Public Hearing was scheduled for July 18th and was rescheduled to August 15th after receiving a letter of request for a 35-day extension from Oregon Department of Justice on behalf of ODOT.

The Department of Justice on behalf of ODOT has submitted further testimony addressing the opponent letters and issues raised at the Planning Commission Hearing. The opponents have also submitted further testimony. This information is included with the record.

As described in the Supplemental Staff Report for the July 2, 2018 Planning Commission Hearing, the 180-day processing period laid out in OAR 660-023-0180 (5) applies to this application. Due to several extenuating circumstances at the County, we are running up against the 180-day time limit. The 35-day extension requested by

ODOT extends the 180-day window by the amount and allows the County more time to come to a decision and adopt findings by August 26, 2018.

Staff Recommendation
Nick Kraemer

The Planning Commission voted to recommend denial of the application due to inadequate information provided by applicant to enable a determination that criteria are met. The applicant has submitted further testimony to address the Planning Commission request for more information.

- The overall major issue I see is a determination of whether the applicant has provided sufficient information to meet the following criteria:
- Section 8.200 (B) Determine Whether Conflicts Can Be Minimized states: In making the determination whether proposed measures would minimize conflicts with agricultural practices, the decision maker shall consider only the requirements of ORS 215.296. ORS 215.296 states an application can't be approved if mining will either "(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."
- The letter from the DOJ makes a case that this criterion has been met and any impacts to farming have been mitigated appropriately through the conditions of approval.
- The opponents make a case in their testimony that there are significant impacts to agricultural practices and they are not adequately mitigated.
- As contracted staff for the County, I am not able to make this determination. This is a subjective decision to be made by the County Court. I will write findings to support that decision and it is my goal to show you which criteria are relevant and in dispute.
- I recommend that the County Court make a tentative decision to approve or deny the application and direct Staff to prepare the final order before the 180 days + 35-day extension is exceeded on August 26th. The revised findings, decision, and enabling ordinances amendments would be adopted at a subsequent County Court Meeting
- Throughout the Staff Report and Draft findings, I have highlighted areas in green that are specific areas of contention between the applicant and opponents. The County Court needs to decide on whether all of the criteria have been met.
- The County Court needs to review the Planning Commission Recommendation, review the additional testimony submitted by both sides, take further testimony from applicant and opponents, and determine if the information submitted by ODOT is sufficient to change the recommendation to approval.

Court Deliberation and Decisions

In response to a question posed by Commissioner Wetherell, Kraemer explained that any time ODOT causes traffic delays, they must provide advance notification to impacted locals and emergency services. He explained that maintenance projects which might cause delays are likely to occur during the summer. Kraemer also reiterated that Heritage Lane is the established detour route during any road closures, which would occur in winter months due to mining activities.

Regarding cultural resources: Kraemer explained that if cultural artifacts are observed, SHPO or the Tribes will call for the work to cease and the situation will be assessed. SHPO has stated that the work won't affect those resources.

Judge Shaffer suggested that the Court first make a determination about the impact area because all other questions are dependent upon that.

Step 1: Court agreed that the application was deemed complete by staff in January, 2018.

Step 2: *Does the County Court have sufficient information to determine quality and quantity of resource?* Court deemed that material submitted by applicant is sufficient and shows the site has adequate quality and quantity.

Step 3A: *Does County Court see factual information to warrant extending the impact area? Identify impact area and all conflicts with existing uses, including expansion of the impact area.* Judge Shaffer asked Ruben Cleaveland if wording was changed in this situation, would it set a precedent that would affect determination of all significant sites? Cleaveland responded that the ordinance is fact-specific and determined on a case-by-case basis.

Commissioner Weimar requested clarification about maintenance of Heritage Lane and Kraemer said the road would be returned to its pre-project condition and would be maintained to be adequate for use as a detour. Improvements are done when funding is available (unless conditions are changed to accommodate this). Judge Shaffer noted that seven miles would encompass everything in the detour. Commissioner Weimar said the road, which will be maintained in a similar condition as it is now, would be reasonable for use as an alternate route.

Judge Shaffer said that a 20-minute delay is too long, and that reducing the Conditions from 20 to five or 10 minutes maximum would be one way to alleviate the concerns.

The Court agreed to change the Condition (#14) to five minutes.

Regarding the question of extending the impact area, Judge Shaffer said the project will impact anybody living on Heritage Lane (for the 21 days), and will encompass the seven-mile radius. Commissioner Weimar said the impact will be minimal for those living on the east end of Heritage Lane, in terms of travel time, while people who live further west will be more impacted. Kraemer asked if a specific traffic impact study would be helpful, although ODOT has submitted considerable information about the adequacy of the road and the number of trips to be impacted. Judge Shaffer noted that Heritage Lane is slated to be improved in the future according to the Transportation System Plan.

Commissioner Wetherell commented that expanding the area would have other effects, and Judge Shaffer agreed it would be almost like starting at step one.

Kraemer noted that noise and vibration impacts have also been specifically addressed by opponents, who state that a groundwater study should also be included. He said ODOT found that noise levels, including those at the nearest source of water, didn't exceed the threshold. Correspondence from opponents stated that noise at the Meece residence, which is outside the 1,500-foot impact area, could exceed acceptable levels, and that noise impacts associated with blasting and drilling weren't sufficiently addressed. However, Kraemer said the opponents didn't provide studies to support their claims. Commissioner Weimar said that drilling takes place over a relatively short period of time, and blasting takes only seconds.

Judge Shaffer said the noise level during drilling within the 1,500 feet will exceed what ODOT has estimated. Commissioner Wetherell asked about the length of time involved in drilling and blasting. Sandy McKay said Roadmaster Dewey Kennedy estimated work could be done over a two-week period. Commissioner Weimar asked about similar work done on the road recently (which included blasting), and Kraemer said that he described it briefly. Judge Shaffer said he thought that history could be considered, although the scale is much smaller. Ruben Cleaveland advised the Court to consider only what's on the record and Kraemer noted that factual information includes ODOT's noise report, which is the information that should be used when making a decision. Opponents claim that noise levels are high enough in the initial report, the impact zone should be extended and a new noise impact study should be done. Commissioner Wetherell agreed that ODOT's report didn't mention drilling, but that, "We're only talking about a couple of weeks every five to 15 years."

Commissioner Weimar asked if the only option is seven miles, and Kraemer said the Court can extend the impact area to seven miles because the opponents made a case, or can determine how much to expand the area. Cleaveland said that there isn't a ceiling, and the Court can decide to expand the area even further. Sandy McKay reminded the Court that seven miles is based on the length of the detour route, not noise levels. Commissioner Weimar said he wouldn't want to extend past 1,500 feet without further information regarding the noise, especially considering the length of time

the noise would be occurring. He said it would be a different matter if the noise was occurring “day in and day out.”

Kraemer read from ODOT’s timeline for excavation, which included preparation for drilling -- one week; drilling in advance of the shot -- two to three weeks; actual blast -- seconds; removal of rock from above to the County Road across to the quarry -- three weeks. The crushing operation is variable depending on size of project, but likely one month to six weeks depending also on project schedule, but could be concurrent. Batching operations are variable depending on size of project, but large projects could take one to two months.

Judge Shaffer said the question to be decided is whether the 1,500-foot impact area established by statute is adequate in terms of noise, dust, air pollution, which is outside the 21-day closure. He also clarified that the 21-day closure strictly involves blasting and moving materials from the road.

The Court agreed that the impact area will not be extended.

Step 3b: *Identify all conflicts from existing and approved uses in the impact area.*

The Court agreed that livestock will not be considered a conflicting use.

Step 3b: *Does the County Court agree that a traffic impact study is needed? Does the County Court determine that Heritage Lane is an adequate detour?*

Judge Shaffer said there is some validity to concerns about emergency access, including fire service and health care. He also questioned ODOT’s estimate of 19 to 67 average daily trips on Blalock Canyon Road from the point it leaves Quinton Canyon Road. Sandy McKay clarified that estimate is for Quinton Canyon Road traffic that would instead be routed to Heritage Lane. Kraemer said the question is whether Heritage Lane has the capacity to manage the extra 67 trips and the Court agreed it is adequate, especially considering it will occur in a period of three weeks every five to 15 years. Commissioner Weimar said that the time of year should also be considered; there may be 67 trips during harvest, but probably not during the time of closure. Commissioner Weimar said 67 additional trips isn’t a problem, but the greatest impact is the additional time involved for emergency services.

The Court agreed that Heritage Lane is an adequate detour.

Step 3b: *Determine whether conflicts can be minimized: Mitigation Measures for Quinton Canyon Road Closures.*

The Court agreed that Heritage Lane can handle the additional traffic and that conflicts have been minimized.

Step 3b: *Are there Goal 5 protected resources in the impact area?* The Court agreed that the question is subjective. Kraemer said that in this criteria, it's clear that there are no Goal 5 protected resources.

The Court agreed that there are no Goal 5 protected resources.

Step 3b: *Identify all conflicts from existing and approved uses in the impact area.* Judge Shaffer said he continues to have reservations regarding feeding and watering of cattle in the area, and whether cattle are wintered there. Commissioner Weimar agreed that impact of noise on livestock is a concern, although the time is variable. Kraemer noted a letter from Philippi Ranches noting that cattle are hauled into the area in early January and remain until mid- to late June. Philippi Ranches contend that cow-calf operations are sensitive to loud noises and light.

Judge Shaffer asked if a three-month period of time, November through January, is appropriate, in which case the road would be closed for 21 days. Commissioner Weimar said a larger window with certain restrictions might be more flexible, and that the matter could be resolved between the landowners and ODOT. Ruben Cleaveland said the conditions must be clear and objective, as it's possible to get into a situation where no time is "good" for the landowners. However, the Court has the option to deny the application if the conflict is too great.

The Court agreed to accept the Planning Commission's recommendation for a three-month window consisting of November 1 to January 31.

Nick Kraemer noted ODOT's testimony that an upcoming project won't meet this window, and will take place in a five-month window extending to March.

Step 4: *Determine whether conflicts have been minimized.*

The Court agreed that seasonality, reasonable detours, adequate notice, maintenance to detour roads and ongoing communication have been addressed and are detailed in the conditions.

Regarding mitigation measures for other impacts proposed by opponents, Kraemer asked the Court to consider what conflicts exist within the 1,500-foot impact area. He noted there are no residences in the area and any future residents would need to sign a waiver. Kraemer asked if it would make sense to limit the window for rock crushing and

batching. In response to a question posed by Sandy McKay, it was noted that similar actions haven't been taken for other pits within the county.

Kraemer also asked about other impacts that may need to be considered, such as dust control, fire suppression and noxious weed control. Judge Shaffer said the County already has an agreement with ODOT for weed control. Kraemer said weed control is covered under the DOGAMI permit.

The County must determine whether proposed measures would minimize conflicts with agricultural practices.

Kraemer asked the Court to consider if proposed mitigation measures are sufficient to offset any potential for significant change in farm or forest practices and significantly increase the cost. ODOT contends mitigation is sufficient, but opponents contend that it is not.

Commissioner Wetherell asked about a previous discussion regarding reduction of delay time. Kraemer said Condition 14 stipulates 20 minutes without prior notification, but the prior discussion involved changing that number to five minutes to reduce the cost to landowners.

Commissioner Wetherell asked about the time of harvest. Commissioner Weimar said harvest generally begins in late June or early July and lasts about three weeks.

Commissioner Weimar asked about the definition of "significant" Kraemer said the Court has discretion, with the evidence provided to determine what is significant and if the impacts have been minimized. Judge Shaffer said one concern is that five minutes actually becomes 10 minutes because of barriers both coming and going.

Commissioner Wetherell asked about the timeframe for the delays. Kraemer said that the timeframe isn't limited, but it appears that ODOT has about a 12-week period between removal of rock, crushing and batching and paving -- likely April to June or July, depending on temperatures. Most of the work would take place at night.

Commissioner Weimar commented that to put the five-minute delay into perspective, the wait at the elevator is sometimes many times greater. Kraemer said Philippi Ranches' letter estimated 10 minutes per load, average of 120 loads per year, total of \$3,200 of expense. They estimate 45 minutes extra to detour on Heritage Lane, at 120 loads for a total of \$14,000 of expense. Commissioner Weimar commented that the estimates are maximum, and that he doesn't see the situation as significant. Judge Shaffer said significance is time-dependent and delays could be significant in July, but probably not at other times. He asked if the 45-day notice applies during batching and Kraemer said notification must be provided for any delay over five minutes.

Commissioner Weimar said the same delays apply during chip-sealing operations on Highway 19. Kraemer recommended that the Court to follow the zoning ordinance.

The Court agreed that conflicts have been minimized, the ESEE analysis has been addressed and that the DOGAMI permit, post-mining use and reclamation plans

are in place. Kraemer asked the Court if they want to identify potential conflicting future uses (other than dwelling uses) and they Court indicated they did not.

SECTION 10.050 - APPROVAL CRITERIA FOR AMENDMENTS

Applicant for an amendment must show that the proposed changes conform with the Comprehensive Plan goals.

Kraemer noted that contentions include Goal 5 wording regarding basalt outcroppings and the natural resources goal about whether air pollution and groundwater impacts exist.

The Court agreed that the basalt outcroppings are not protected by Goal 5.

Judge Shaffer noted that the Court might want to ask the Planning Director to look into the issue, but based on available information, the Court has no choice.

Regarding Goal 6 - Air, Water and Land Resources Quality: Kraemer asked the Court if the Conditions are adequate to minimize conflicts.

The Court agreed that it is appropriate to rely on State agencies to issue necessary permits.

CONDITIONS OF APPROVAL

Kraemer asked the Court if any other conditions should be added. He noted the following Conditions.

No. 17, regarding noxious weeds, was proposed by ODOT: Applicant will ensure that reasonable precautions, commensurate with reasonable acceptable practices, will be implemented to prevent the spread of weeds during active operations.

No. 14, regarding closures, has been changed from no more than 20 minutes without prior notice to five minutes.

No. 14, the closures will be planned to occur between November 1 and January 31.

APPROVAL

Judge Shaffer asked the Court members if they have enough information to make a decision. Commissioner Wetherell and Commissioner Weimar responded "yes."

With no further deliberation or comments, Judge Shaffer closed the Public Hearing at 12:05 p.m. and opened the matter to discussion by Court members. There was no further discussion.

Judge Shaffer asked Court members if they would like to make any comments. Commissioner Wetherell and Commissioner Weimar indicated they had no further comments.

Ruben Cleaveland told the Court there are areas in which the language needs to be changed slightly. He will make necessary changes before the Sept. 19 Court meeting, at which time amendments will be adopted.

MOTION by Commissioner Weimar, second by Commissioner Wetherell, to tentatively approve ODOT's application for the Philippi Canyon Quarry, subject to imposing the Conditions of Approval detailed in the Staff Report. The County Court directs Staff to prepare revised findings and enabling Ordinances for the amendments to be adopted at the subsequent Court meeting to be held on Sept. 19, 2018. Shaffer – Yes; Weimar – Yes; Wetherell – Yes; **Motion Carried.**

GILLIAM COUNTY COURT

By _____
Steve Shaffer, Judge

By _____
Michael Weimar, Commissioner

By _____
Leslie Wetherell, Commissioner

Mary H. Dyer/Recorder