

Gilliam County Court  
Public Hearing  
Aug. 15, 1018

**IN THE MATTER OF PUBLIC HEARING: ODOT-PHILIPPI CANYON QUARRY**

This being the time and place advertised, Judge Shaffer opened a public hearing at 2:00 p.m. to receive public comments and consider the matter of 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, T2N, R19E, WM, Gilliam County on land zoned Exclusive Farm Use (EFU) in Gilliam County.

Judge Shaffer also noted that the Planning Commission has held several public hearings on the matter and made a written recommendation to the County Court. Now, following Section 11.110, the County Court will review all Planning Commission recommendations.

This hearing is being held de novo. The Court decision will be the final County decision.

Those present were:

Steve Shaffer, Gilliam County Judge  
Mike Weimar, Gilliam County Commissioner  
Leslie Wetherell, Gilliam County Commissioner  
Nick Kraemer, Contract Planner  
Ruben Cleaveland, County Legal Counsel  
Sandy McKay, Court Administrator  
Mary Dyer, County Recorder  
Mac Stinchfield, Times-Journal  
Don Morehouse, ODOT  
Russell Frost, ODOT  
Robert Townsend, ODOT  
Stacy Posegate, Oregon Department of Justice  
Dewey Kennedy, County Roadmaster  
Sherrie Wilkins, Arlington

Laurie Bartlemay, Heritage Lane, Arlington  
Michelle Colby, Gilliam County Planner  
Connie Anderson, Heritage Lane, Arlington  
David Anderson, Heritage Lane, Arlington  
Brian Meece, Meece Family Trust, Bend, Oregon  
Blake Philippi, Hermiston

Judge Shaffer asked the following four questions to determine the qualifications of the commissioners to act as decision-makers on this matter:

1. Does any member of the Court have a potential or actual conflict of interest in this matter? No conflicts were indicated.
2. Does any Member of the Court have any ex-parte pre-hearing contacts to declare?
  - Commissioner Wetherell indicated she spoke to the Roadmaster about the location of the site and inquired about the condition of Heritage Lane.
  - Commissioner Weimar indicated he received an email from Brad Anderson regarding the availability of alternate sites. He also noted that as road department supervisor, he has frequent contact with the road crew during the normal course of work, and has done so long before this matter came before the Court.
  - Judge Shaffer explained that in a previous job, he delivered fuel to property owners in the area and is familiar with the roads in question. He also said he received a call from Laurie Bartlemay, but he explained that he was unable to discuss the matter. Judge Shaffer said he has also received emails from Brian Meece and Mary Anne Cooper of the Farm Bureau, both of which he deleted without reading. (Cooper's letter has been entered into the record). Judge Shaffer said he inadvertently read an email from Brad Anderson before he realized it didn't pertain to County Budget Committee business.

All indicated they can make an unbiased decision.

3. Does any Member of the Court have any personal bias in this matter? All responded no personal bias.
4. Does anyone in the audience wish to challenge the qualifications of any member of the commission? No challenges were presented.

Judge Shaffer read rules for the hearing. There were no questions. He then presented the Order of Testimony, as follows:

- 1) Staff report
- 2) Applicant
- 3) Proponents
- 4) Opponents
- 5) Neutral- or anyone else who wishes to offer testimony or ask questions
- 6) Agency Comments
- 7) Applicant Rebuttal
- 8) Close Hearing
- 9) Deliberations
- 10) County Court decision/motion

STAFF REPORT  
Contract Planner Nick Kraemer

In his staff report, Kraemer:

- described the location as follows: The 32.70 acre Philippi Canyon aggregate site is located 15 miles west of Arlington, just south of I-84. Access to the aggregate site is provided via exit 123 and the aggregate site is located approximately 0.5 miles up Quinton Canyon Road. The aggregate site is bisected by Quinton Canyon Road – with the rock source on the west side of the road and stockpile/processing areas located below the road to the East.
- presented a number of maps
- outlined land use processes and criteria detailed in the County's Zoning and Land Development Ordinance, Section 8.150, Standards for Mining Operations.
- noted that the County Planning Commission held two public hearings on the subject application in May and June. The Commission met on July 2 to deliberate on making a decision and recommendation to the Gilliam County Court.
- explained that at the close of deliberation, the Planning Commission voted to recommend denial of the application due to inadequate information provided by the application to make a determination that criteria are met. The Planning Commission offered suggested changes to the conditions -- if the County Court chooses to approve the application and those changes are incorporated into the Staff Report for the Gilliam County Court.
- noted that the County Court Public Hearing, scheduled for July 18, was rescheduled to August 15 after receiving a letter of request for a 35-day extension from Oregon Department of Justice on behalf of ODOT.
- DOJ, on behalf of ODOT, has submitted further testimony addressing opponent letters and issues raised at the Planning Commission Hearing. The Opponents have also submitted further testimony.

- explained that the 180-day processing period set forth in Oregon Statute apply to this application. The County must come to a decision and adopt findings by August 26, which includes the 35-day extension. The revised findings, decision and enabling ordinances amendments would be adopted at a subsequent meeting of the Gilliam County Court.

Kraemer's Recommendations are as follows:

- The Planning Commission voted to recommend denial of the application. Further testimony has been provided by ODOT.
- The County Court must review the Planning Commission Recommendation, review additional testimony submitted by both sides and take further testimony from applicant and opponents to determine if the information submitted by ODOT is sufficient to change the recommendation from denial to approval.
- As contracted staff, Kraemer is unable to make that determination -- a subjective decision to be made by the County Court. However, he will write findings to support that decision and help the Court determine which criteria are relevant or in dispute.

#### Applicant Testimony, ODOT

Robert Townsend, ODOT Area Manager

Russ Frost, Geology Manager, Region 4

Stacy Posegate, Department of Justice, Salem, representing ODOT

ODOT's PowerPoint Presentation is summarized as follows:

The site is publicly-owned and the aggregate will be used only for public purposes. The value of the aggregate is approximately \$7.5 million. Approval of the application provides an opportunity for a competitive bidding process, which will save taxpayers an estimated \$250,000 to \$500,000.

Contractors may use other pits and aren't required to use ODOT's pit. Any contractor can bid, unlike private pits with usage (and prices) to be determined by the owner.

The timeline is as follows:

- One project every five to 10 years.
- One week for grading and prep.
- One to two blasts per project, each lasting a few seconds.
- Two to three weeks of drilling to occur in advance of blasting.

- Up to three weeks for removal and transportation of rocks to the quarry.
- Four to six weeks for crushing.
- One to two months for batching.

Russ Frost provided responses to potential conflicts presented by opponents, as follows:

**Noise:** Cattle are not impacted by noise. Other ODOT sites around the state have generated no issues. According to noise standards, cattle may tolerate moderate levels of noise and may easily adapt to an intensity level of 60-90 db. Decibel levels do not reach over 65 outside of ODOT property. The surrounding only mapped spring where cows winter is at most 55 db.

**Dust:** The only sensitive use home is 3,000 feet away. There is no measurable conflict with agricultural practices. Portable crushers, concrete and asphalt plants must be permitted by DEQ. Permittee must take reasonable precautions to prevent particulate matter from becoming airborne.

**Water:** There are no known wells in the impact area and one mapped spring outside of the impact area. Water won't be used for processing. DOGAMI permit requires a 60-foot setback from Wildcat Creek. It also requires that the quarry floor will be sloped toward the floor and that there will be no discharge of water without first obtaining a DEQ permit.

**Traffic:** Each project requires a one-time, 21-day closure maximum. A 45-day notice is required in advance of each project, to occur November-March. A recent study (2014), indicated 19 trips per day on the road in spring, increasing to 67 per day during the summer. Emergency access is available via a detour.

**Delays during repairs:** The road will be made safe and passable after blasting and rock removal. Temporary repairs will be made before the road is reopened to the public. Permanent repairs will be made when the plant is operational. Judge Shaffer noted that paving usually takes place in June or later. Townsend responded that paving would be done in April, before the road is reopened to traffic, with final repairs at completion of the project. He said delays will be minimal, and that moving large equipment is infrequent and usually requires less than five minutes.

Heritage Lane provides a viable detour during 21-day closures. Width of Heritage Lane graveled portions average 20 feet with the exception of one straight, high-visibility stretch with a width of 16.6 feet. The remainder is paved. The Roadmaster has confirmed that Heritage Lane is safe and passable during the winter. The detour adds 8 additional minutes for eastbound travelers and 21 for westbound travelers. Repairs made to the road after a flood in 2006 added base rock and armor to prevent future washouts.

**Wildfire protection:** Wildfire is a concern, but is not a Goal 5 criteria. Closures will be during periods of low risk. Emergency service providers will be provided a 45-day advance notice. Contractors are required to maintain firefighting equipment on-site.

**Impact on agricultural practices:** ODOT states that the project will not force significant changes or significant increases of costs in surrounding farmland, and will not significantly diminish or displace accepted farm practices on surrounding farmland. Rock crusher concrete and asphalt plants must be permitted by DEQ. The permittee is required to take reasonable precautions.

**Noxious weeds:** Any equipment must be cleaned prior to coming on-site. ODOT does vegetation management and maintains a statewide spraying program. Commissioner Weimar noted that the County works with ODOT on weed control.

The PowerPoint presentation, which has been entered into the record, also includes a number of maps, photos, graphs and other visual elements.

#### Opponent Testimony

##### Brian Meece, Meece Family Trust

Nick Kraemer noted that Mr. Meece had supplemental testimony and advised that this would be time to for those documents to be entered into the record. Meece provided letters from Kellington Law Group, PC and DSA Acoustical Engineers, Inc. Other documents referenced below were also entered into the record.

Judge Shaffer noted that much of the information was received at the last minute.

Meece's PowerPoint presentation is outlined and summarized as follows:

**ODOT does not meet applicable standards:** The impact area is unlawfully small – it is not limited to 1,500 feet. All impacts have not been evaluated as required and those that have been evaluated have been improperly and inadequately valued. In particular noise impacts are not evaluated as is required and because they are not considered, there is no mitigation proposed as required. Adverse farm impacts are devastating and unmitigatable – as the experts in the record have stated. DOT and its lawyer are not experts on adverse farm impacts including loud sudden noises on cow-calf operations. ODOT's proposal violates County's Goal 5 element of its own Plan. Comprehensive Plan at Goal 5, Policy 10, p 6, specifies: The Proposal is prohibited by the County's Comprehensive Plan, cited as follows: "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.”

**ODOT has not even tried to carry its burden of proof to show compliance with this Gilliam County Plan standard:** When any applicant, even ODOT, ignores an approval standard, they are denied. Even if ODOT tried to comply with this county plan standard, it could not comply. There is no “particularly justifiable circumstances” to blow up these scenic basalt outcroppings. ODOT has other options close by including the Anderson Pit on Blaylock Canyon.

**ODOT Proposal has Significant Adverse Effects on Farming:** The Oregon Farm Bureau’s letter, cited at this point, has been submitted into the record.

Closing Quinton Canyon Road causes significant adverse impacts on farming and adds significant costs to accepted farming practices. Adverse effects of loud sudden noises on cow-calf operation run on Meece and Philippi ranches. Adverse effects of light at night on cow calf operations. Contract staff’s conditions don’t adequately mitigate. ODOT must be denied. Pregnant cows hauled in during January/February in 18-wheeler trucks.

Farm employees arrive before cows are delivered to ready property for cows. Farm employees arrive continuously afterwards to tend cows. Large trucks haul in hay to feed cows in the winter/early spring. Veterinarians must have swift and reliable immediate access to provide medical care to cows with a problem pregnancy or delivery.

Bulls are hauled in during May for breeding in large 18-wheelers. Cattle are hauled out to market during hot weather. Not legal or humane to force them to endure delays of up to an hour to travel over Heritage Lane, which is not wide enough throughout its length. To accommodate an 18-wheeler if any other vehicle is having a problem or if the road itself has a problem. Is not safe or humane to expect an 18-wheeler to back out loaded with cows.

Philippi seeds their wheat crop in September-November – seed is hauled in on big trucks. Philippi fertilizes its wheat ground with Anhydrous Ammonia (Nh3). Nh3 is delivered daily on three-axle trucks with 2,500 gallon tanks - two to three loads a day until they finish seeding. Nh3 delivery trucks always use Quinton Canyon Road because they come from Biggs. Being forced to use Heritage Lane adds an hour to deliveries that come from or go to Biggs. The up to a 1.5 hour trip (minimum) if ODOT gets its way will either cause the Nh3 vendor to refuse to continue to serve Philippi’s farm or they will charge Philippi a lot more – adding to the cost of that accepted farming practice of preparing the wheat field with Nh3. The Nh3 vendors are extremely busy. They don’t need the grief of an extra 1.5 hour trip. It is likely they will just refuse to serve Philippi if ODOT is approved.

Philippi takes on average 100,000 bushels of wheat annually to Arlington or Biggs Elevators. To be required to have their trucks rerouted or delayed just 5 or 10 minutes every load could cost them a lot of money as well as weeks of harvest. Philippi takes

100-140 loads every harvest to Arlington and Biggs. When Philippis haul wheat to Biggs and if forced to go around through Heritage would add a minimum of an hour or more to every single load and that would have devastating results to their livelihood. ODOT has no plan or requirement to do anything to improve or maintain Heritage Lane, rather ODOT just expects farmers and residents to rely on the only other road in the area - Heritage Lane, which is wholly inadequate. In winter Heritage Lane washes out. Heritage is often impassable due to snow drifts. Heritage is dangerous due to ice. Heritage is too narrow for two 18-wheelers to pass each other for significant parts of its length. It is not the most direct route in or out in case of fire. Grain fires burn hot and fast. ODOT's proposal could literally kill farmers, their employees and the families who live in the area and who depend on Quinton Canyon Road. Heritage Lane is not a practical, reasonable or achievable alternative Quinton Canyon Road. Predominantly a Single lane gravel road winding with poor visibility. Narrow ... 18 wheelers cannot pass. Slick when wet or icy. Covered with cattle from Feb to June. Has flooded and washed three times since 1996.

**ODOT Fails to Comply with ORS 215.296 Farm Impact Standards:** ODOT is required to prove that its proposal will not force a significant change in, or significantly increase the cost of, accepted farm practices on surrounding EFU zoned land. Cannot and has not carried that burden and should be denied. Noise: ODOT Fails to Meet Required Noise Standards – Expert Report from Kerrie Standlee dated 8.15.18 in Record: Noise expert Report Highlights: *“I conclude Ms. Posegate’s letter is inadequate to demonstrate compliance with OAR 340-035-0035 and as a consequence, the Goal 5 rule.” “To comply with the Goal 5 rule, ODOT must demonstrate that activities at the quarry will comply with DEQ’s noise rules. The Posegate letter does not address noise levels expected at the Meece residence or any other residences in the valley relative to the limits specified in DEQ’s noise rules (OAR 340-035-0035). Accordingly, it does not provide a basis for establishing compliance with DEQ’s noise rules.”*

*“The Posegate letter does not address the impact of quarry related noise at the noise sensitive receivers surrounding the quarry (Meece residence and Philippi residence) during nighttime hours when noise level limits specified in OAR 340-035-0035 are reduced.”*

*“The noise map presented in the Posegate letter depicts only the rock crushing operation noise that will radiate from the quarry site. It does not include noise that will be generated by equipment that will be used for two to the three weeks at a time to prepare for blasting (such a dozer and rock drill - two sources that will be at higher elevations on the site than the crushing operation and hence have less shielding by the topography between the quarry and residences south of the quarry).”*

*“The noise map presented in the Posegate letter does not include noise that will be generated by the asphalt batch plant in the quarry during road construction*



*projects, likely during nighttime hours when the DEQ noise limits are reduced for noise-sensitive receivers such as residences. Asphalt plant noise is not even discussed in the Posegate letter. Asphalt plants are typically one of the loudest noise generators in a quarry when one is present and operating within the quarry.”*

*“The County Contract Land Use Planner, Mr. Nick Kraemer, has incorrectly concluded That the Goal 5 rule requires noise impacts to be considered only at residences located Within 1,500 feet of the quarry boundary. As shown in the staff report (Section 8.190 Step 3) the Goal 5 rule says, ‘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.’ DSA has conducted numerous Goal 5 noise studies for mining operations throughout Oregon and has routinely looked out beyond 1,500 feet to ensure that the noise radiating from the quarry operations will be in compliance with DEQ’s noise rules - OAR 340-035-0035. Factual information in the noise contour map establishes that noise levels at the Meece residence is a “significant potential conflict beyond” the distance of 1500 feet from the quarry. The noise contour map submitted in the Posegate letter shows noise levels high enough near the Meece residence to conclude that it is possible if not likely that The loudest hour noise levels would exceed the DEQ nighttime hour noise limits at the residence during those times when the quarry is in a 20-hour operation mode.”*

**ODOT claims it observes a setback to Wildcat Creek.** This is false. Fails to Address Other Goal 5 Resources: ODOT’s 2007 Oregon Historic letter is meaningless – tells you nothing about what OHPS was approving – none of the background documents are in the record. Unquestionably there are historic resources – native corrals, market wagon roads, wildlife, wildcats, peregrine falcon, bighorns. 9000 BP historic site at mouth of Wildcat Creek.

**Denial is the right thing to do:** ODOT Fails to meet the required standards ODOT has plenty of alternatives. The financial and operational harm ODOT will cause commercial farming, residences, emergency services, and wind farms cannot be mitigated and are not worth the small added convenience to a state agency with a lot of options.

**Other Gilliam County Comprehensive Plan Goal #5 resources are compromised by this application.**

The life safety issues for county landowners and the public cannot be mitigated. The PowerPoint presentation also included a number of maps, photos, graphs and other visual elements.

Meece commented that he has concern about the relationship between Tenneson Engineering and the County. He said ODOT has said there is no contract between

ODOT and Tenneson, so if that's the case, "we have to assume that Gilliam County Paid for the applicant's work." He said if he was a developer coming in with a site plan, "I can't imagine you doing my work for me."

Kraemer explained that map shows the area proposed for a significant resource overlay -- the area that would be applied to the comprehensive plan map. He said it isn't a site plan and there is no work being done. The County did pay Tenneson to produce the map that would eventually go in the zoning ordinance to show where the site is, and where the zone is. He said that like a staff report, the purpose is for the Court to review, and they will choose whether to adopt the findings. Meece commented that would be the applicant's work and Kraemer said he is acting as County staff.

Meece's presentation, which also includes maps and other visual elements, has been entered into the record, along with his written testimony.

At this point, legal counsel Ruben Cleaveland reminded Meece that this isn't the setting for a back-and-forth exchange and that Kraemer had answered the questions presented. He clarified that Kraemer prepared the map not for ODOT, but on the County's behalf so the Court can see what's going on and what the project entails.

#### Brian Meece Reply

Meece said he would like to see the issue moved to a larger discussion of Goal 5 resources in Gilliam County so the matter can be weighed in a situation with a timeline "with our back against the wall."

#### Opponent Testimony

##### Blake Philippi, President, Philippi Ranches

Philippi explained that he is a fifth generation farmer and hopes to hand the ranch down to his children and grandchildren. He made the following points:

Farmers run on a tight margin and time is sensitive. Even after blasting and the road is open, they won't pave until the project is done. This will continue for 100 years, or four or five more generations.

The road is narrow and presents a dangerous situation, even for cars. It's impossible for two trucks to pass on the road, even during the summer. Heritage Lane is further from markets. It also washes out in the winter and becomes unpassable with snow drifts.

The project will have a considerable impact on cow-calf operations. Quinton Canyon Road is used year round and on a daily basis. Cattle are hauled in during January and

remain until mid- to late June. Continued access is a necessity. Heritage Lane isn't a viable option because of the additional length of time and the risk of having cattle held up in construction, which risks the cows dying or suffering. What ODOT wants is not humane.

Cow-calf operations are indeed sensitive to loud noises and lights at night. Pregnant cows will be frightened and may miscarry. Calves are also easily frightened and may be harmed if they try to run away. Cattle may overgraze areas that feel safer. ODOT doesn't know what they're talking about when they claim blasting and other sudden noises, vibrations and bright lights won't scare cows and calves.

Quinton Canyon Road is used year round for farming operations, from spraying in January or February, chemicals delivered in trailers throughout the year and fuel delivered monthly. He said trucks can't navigate Heritage Lane during the winter when the narrow road is slick and icy or blocked by snow drifts. Harvest involves extremely long hours and the necessity to get crops to town as soon as possible.

Fire is always a great concern and quick response could be the difference between saving or losing a house, or somebody's life being at risk. Minutes count.

Philippi takes 100,000 bushels of wheat per year to elevators at Arlington or Biggs. Even an additional five or 10 minutes per load could cost a lot of money, as well as weeks of harvest. Hauling wheat to Biggs via Heritage Lane would add a minimum of an hour and a half to every load, which would have devastating impact on farmers' livelihoods.

Seeding takes place in September through November depending on weather. This is also the time for fertilizing with anhydrous ammonia (NH<sub>3</sub>). The fertilizer is delivered daily on three-axle trucks, sometimes two or three loads per day. If forced to take Heritage Lane, providers may opt not to deliver, and there are no other providers.

Philippi also provided a rundown of financial losses resulting from the ODOT proposal, including cost of delays down Quinton Canyon Road or via Heritage land, expense involved in potentially hiring another truck and trailer or buying a new or used trucks.

In summation, Philippi stated that the ideas that you can add conditions to mitigate ODOT's significant adverse impacts on farms and homes is wrong. He said the harms aren't mitigable and "no conditions dreamed up so far will help. The fact is that ODOT's proposal causes significant adverse impacts on accepted farming practices and the costs of accepted farming practices and should be denied."

Philippi's written testimony has been entered into the record.

Opponent Testimony

Laurie Bartlemay

Bartlemay noted that ODOT has already condemned and taken land away from her family, and will now be taking gravel to sell elsewhere. She asked, "When is enough, enough?" She noted that the project does nothing for Gilliam County residents, with the exception of grindings used for roads. Otherwise, it just takes income away from local families.

Bartlemay commented that ODOT doesn't know about the land, cattle operations, springs, etc., and that "you can Google all you want, but you don't know." She said that Heritage Lane doesn't wash out and become impassable, and that the Road Department can't be everywhere at once. She said drifts, fog and white-out conditions are common, which will create problems in emergency situations. Although ODOT claims they will repair the road, she is concerned about the timing and quality of repairs. She noted that the detour will take much longer than an estimated eight minutes, and passage may become impossible during the winter months.

Bartlemay expressed concerned about a possible conflict of interest with Tenneson Engineering.

She also discussed the importance of the Missoula Outcroppings, and potential interruptions to farming practices. She asked the County to deny the proposal.

Bartlemay's written testimony has been entered into the record.

At this point, Ruben Cleaveland clarified that his intent in stopping an earlier discussion regarding conflict of interest wasn't to prevent a testimony, but to stop a back-and-forth discussion between Brian Meece and Nick Kraemer. He urged Meece to continue his comments.

Brian Meece responded, noting a lack of required citizen involvement required by Oregon land use laws. He said discussions with residents should take place from the beginning of the process, not when the proposal is presented. He said opponent landowners have spent many thousands of dollars in attorney's fees, and that a discussion and involvement of Goal 5 resources would have been significant. He said landowners feel that the directives, especially being told to ignore references to basalt cliffs, don't register. He reiterated that Tenneson Engineering and ODOT are "too close."

He said that he is assuming that ODOT will provide rebuttal, and asked that his request for a seven-day continuance be entered into the record so opponents have an opportunity to respond.

Opponent Testimony  
Connie Anderson, Heritage Lane

Connie Anderson commented that there are too many negatives involved in the project, including the effect on bighorn sheep, water sources, and basalt outcroppings from the Missoula Flood. She said that she believes Goal 5 provides for protection. She also made the following comments:

- Condemnation removes land from the tax base.
- Closure will affect wheat harvest for farmers who already operate on a thin profit margin. She said it's unfair to ask them to absorb this loss.
- Heritage Lane isn't designed for this purpose and is often impassable. She said it's impossible to make the detour in eight minutes.
- The project isn't necessary, as other sources have an ample supply of gravel. She said the State is undercutting private owners.
- ODOT has already applied and previous applications have been denied. Anderson asked the Court to deny the application and "put a stop to endless reapplications."

Agency Testimony  
Amanda Punton, DLCD

Sandy McKay provided the following document for entry into the record: Response to Concerns over the Potential Effect of Mining Activity on Neighboring Cattle Operations. In summation, the information stated that "It is reasonable to conclude that grazing cows will not be significantly affected by vibrations caused by the Philippi Canyon mining activity.

Brian Meece Reply

At this point, Brian Meece asked to clarify that ODOT didn't address springs in the area. He noted that the water system is fragile and springs come from the canyon. He said ODOT's information about springs is totally wrong.

--- Break ---

Applicant Rebuttal: ODOT

Robert Townsend, ODOT Area Manager  
Stacy Posegate, Department of Justice, Salem, representing ODOT

Townsend commented that it isn't ODOT's goal to be adversarial, and noted that he wouldn't respond to comments about condemnation, which is outside of the purpose of

this hearing. He noted that some concerns, including basalt cliffs and bighorn sheep, aren't Goal 5-related.

Regarding road issues, Townsend clarified that he would meet with the Roadmaster at completion of the project to ensure roads are left in the same or better condition.

Regarding agriculture, he said that the main closure will be November to March.

Townsend also said ODOT is willing to allow a seven-day continuance.

Posegate advised the Court to be sure there is adequate time for the seven-day continuance, and urged use of a calendar to figure it out. She also noted that discussions could "go on forever," and that the matter needs to close at some point. ODOT wants to ensure the Court has time to consider all the information provided thus far. Judge Shaffer agreed and said he isn't sure any additional information is needed at this point.

After continued discussion regarding dates and times, the Court agreed to continue the public hearing to Aug. 29 at 9 a.m. in Condon. This will be for deliberation and no further testimony will be taken at that time. The written record will remain open for seven days to allow participants to submit new testimony, closing at Aug. 22 at 5 p.m. The applicant will then have up to seven days to respond to any new testimony which was submitted. ODOT offered to waive the seventh day in order to maintain the August 29 schedule and allow the Court an opportunity to review any response from them prior to reconvening the hearing.

With no (further) public comments, at 5:10 p.m. Judge Shaffer continued the Public Hearing to August 29<sup>th</sup> at 9:00 a.m. There was no further discussion.

#### GILLIAM COUNTY COURT

By \_\_\_\_\_

Steve Shaffer, Judge

By \_\_\_\_\_

Michael Weimar, Commissioner

By \_\_\_\_\_

Leslie Wetherell, Commissioner

Mary H. Dyer/Recorder