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Sent: Tuesday, April 15, 2025 2:38 PM
To: Hannah Elliott
Cc: John Eisler
Subject: Greenbar Excavation - Open Record submittal by applicant: Round 1
Attachments: Applicant Open Record Round 1.pdf

Received by CCD 4/15/2025
During open record period on
limited issue

Please see the attached for the record.

Thank you.

Lisa Andrach, Attorney



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**OPEN RECORD PERIOD
APPLICANT SUBMITTAL: Round 1**

BEFORE THE CROOK COUNTY BOARD OF COMMISSIONERS

FILE NO.: 217-24-000070-PLNG

**APPLICANT/
OWNER:** GREENBAR EXCAVATION, LLC
Tanner Brown
P.O. Box 7
Prineville, Oregon 97754

ATTORNEY: Lisa Andrach
Fitch & Neary P.C.
210 SE 5th St., Suite 2
Redmond, Oregon 97756

**GEOTECHNICAL
ENGINEER:** Watkins Testing & Inspection
19061 Choctaw Road
Bend, Oregon 97702

REQUEST: An Application to modify the Crook County Basalt Resource Inventory to add basalt aggregate volume located on tax map 161612, Lot 500 to the Mineral and Aggregate Inventory of the County Comprehensive Plan, Appendix 5.3, and to make the ESEE findings to allow mining of the additional resource. The Bartels Site was added by Ordinance 172 of the Crook County Court (2006-162);

SINGLE ISSUE BEFORE THE COMMISSION DURING REOPEN RECORD:

The setback for the mining operation to the dwelling on tax lot 501/Lot 14 of the Cimmaron Hills Subdivision owned by Carter.

The Board of Commissioners held a public hearing on the issue on April 8, 2025. The following is submitted by the applicant during the Open Record Period – Round 1:

The applicant has proposed a 150' setback measured from the Carter dwelling, which allows for preservation of the viewshed from the Carter property, and is 50' more than the setback in the county code used as guidance on this issue herein CCC 18.144.060(1).

The difference between the 200' setback advocated by Carter, and the 150' setback agreed to by the applicant is 50'. Within that 50' difference is substantial economic impact to the applicant. State law requires that the ESEE analysis balance the impacts between the conflicting uses. The proposal is to include the site as a 3C site which requires a balancing of the impacts between the residential use and the protection of the very valuable, high-quality resource. That analysis follows:

The quantity and economic impact of the different setbacks is set forth in Exhibit 51 in the record, and attached hereto and incorporated herein by this reference. Specifically, the impact is as follows:

150' Setback: 5,206 Cubic Yards, or 8,798 hard yards of ¾" formation = **\$167,162**
200' Setback: 38,409 Cubic Yards, or 64,947 hard yards of ¾" formation = **\$1,233,993.00**

<u>Volume Impact</u>	<u>Economic Impact</u>
38,409 cubic yards/ 64,947 hard yards	\$1,233,933
- 5,206 cubic yards / 8,798 hard yards	- 167,162
33,203 cubic yards / 56,149 hard yards	\$1,066,771

The resulting impact of an economic loss of **\$1,066,771** to the applicant, and **56,149** hard yards of quality material to the State and County is substantial. Such a result must be justified to support exaction of an additional 50' setback beyond what the applicant has proposed.

Here, the evidence in the record includes photographs of the area at issue, and a video shown from the perspective of the dwelling, all which clearly demonstrate that there are large juniper trees within the setback area that obscure any visual impact of the quarry from the residence. The applicant also submitted Exhibit 51 which demonstrates a line of sight for an individual 6' tall standing in the home. The evidence supports that there is minimal, if any, visual impact as result of the 150' proposed setback, and an additional 50' setback would not be beneficial.

The Planning Commission recommendation and proposed decision (page 28) include a requirement that the dwellings within 300 feet of any blasting shall have an opportunity to have a pre-blast survey and seismic reading recorded during blasting. Therefore, any damage to the residence because of the blast would be established and the insurance and bond of the blaster would pay for the damage. Therefore, Carter is protected from economic impact if there should be any damage to the residence. As a result, the financial risk and impact to Carter is minimal if any, and does not support the resulting impact set forth above if the setback is increased an additional 50'.

The burden on the County to justify the additional 50' setback is even more arduous because the County Code does not have any identified applicable setback criteria that applies directly to the application. Therefore, applying a setback more than what the applicant is proposing must pass scrutiny under the land use law of the state, as well as constitutional review for any exaction. This is an extremely difficult burden to meet.

It is true that the Crook County Code 18.144.060 addresses setbacks for aggregate operations, however, that Code provision does not directly apply to this application. That is why the code is not an identified applicable criterion in the decision proposed for the County Board of Commissioner's approval (Page 9), or the Planning Commission Recommendation or related material in the record. The Code doesn't directly apply because the express language of that Code limits its application to aggregate sites within the EFU and Forest (F1) zones. (CCC 18.144.020) Here, the subject site is zoned Recreation Residential Mobile Zone (RR(M)-5).

While CCC 18.144.060 does not apply to this aggregate site specifically to regulate the setbacks, the applicant and the county have used the regulation as a guideline in the ESEE analysis to balance the impacts. The County's setback pertaining to dust sensitive uses is set forth in CCC 18.144.060(1)(a), which provides a 100' setback from an existing noise or dust sensitive use.

Here, the applicant agrees that the Carter residence is considered a dust sensitive use. A dust sensitive use is one that is used for residential, school, church, or hospital or similar use. The code specifically excludes industrial or agricultural uses from being dust sensitive under usual circumstances. The code does not address commercial use. Carter testified that he manufactures equipment for a company in the shop. This would be a use for either industrial or commercial purposes outside of the residence. The county assessor did not have any record of any home occupation or other permit for the use, so the applicant's limited knowledge of the use is based upon Carter's testimony.

There is minimal case law defining "dust sensitive use" for purposes of measuring setbacks, but Deschutes County has a nearly identical code, and its interpretation of the provision was affirmed on appeal. Deschutes County concluded that, for purposes of setback requirements, the term refers to a structure on real property normally used as residence, school, church, or similar use, and did not include grounds around the structure or outbuildings. *Hoffman v. Deschutes County*, 237 Or.App. 531 (2010) Therefore, setback measurement is taken from the exterior of the structure to the property line. Applying the same interpretation here, the setback measurement arguably applies only to the residence. Accordingly, the applicant's proposed 150' setback measurement was intended to apply to the residence.

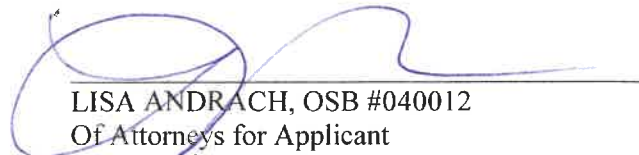
In response to staff's question concerning subsection (b), the County Code 18.144.060(1)(a) clearly addresses any setback applicable for dust sensitive uses, with the balance of the code provision applying to setbacks for roads. The text of (b) addressing road setbacks - which is not

an issue in this case – is distinguishable and not relevant when the text of (a) specifically and clearly addresses setbacks to dust sensitive uses. The 2 provisions apply to different issues.

In sum, the applicant has agreed to a 150' setback, which is a 50' increase from the 100' setback in CCC 18.144.060(a). The applicant makes this concession in support of the ESEE analysis which requires that there be a balancing of the conflicts between the uses. The result is significant financial impact (**\$167,162**) to the applicant in favor of a compromise that is for the benefit of residential use. The applicant requests that the Board of Commissioners impose the 150' setback measured from the residence.

DATED this 15th day of April, 2025.

FITCH & NEARY PC



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Kelso Land Surveying, LLC

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VOLUMETRIC ANALYSIS OF SETBACKS FROM THE RESIDENCE LOCATED AT 6404 SE RIVERDANCE RD. FOR THE BENEFIT OF GREENBAR EXCAVATION. W.O. 1591

120 FEET SETBACK – No impact on excavation volumes. This setback falls within the minimum 50.00 feet setback from property boundaries.

150 FEET SETBACK-

Grid	5216
Composite	5212
Average End Area (x)	5212
Average End Area (y)	5216
Prismoidal (x)	5212
Prismoidal (y)	5137
Average Area =	5206 Cubic Yards

*hard yards
3/4" formation 8,798 @ 19.00
\$ 167,162.00*

200 FEET SETBACK-

Grid	38,430
Composite	38,430
Average End Area (x)	38,429
Average End Area (y)	38,433
Prismoidal (x)	38,429
Prismoidal (y)	38,300
Average Area =	38,409 Cubic Yards

*hard yards
3/4" formation 64,947 @ 19
\$ 1,233,993.00*

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON 11/14/24
JANUARY 21, 1897
GREGORY S. KELSO
2796

RENEW 6/30/25