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Crook County
Community Development

**OPEN RECORD PERIOD
APPLICANT SUBMITTAL: Round 2 (Rebuttal)**

BEFORE THE CROOK COUNTY PLANNING DEPARTMENT

FILE NO.: 217-24-000070-PLNG

APPLICANT/: GREENBAR EXCAVATION, LLC
OWNER 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);

In support of the application, the applicant submits the following:

1. Transfer Permit process has already been started with DOGAMI.

The applicant is working with DOGAMI through the transfer permit process. He had his pre-application meeting in March and has compiled and filed the application materials required per that meeting. According to DOGAMI, the transfer process takes 8 to 12 months to complete. While Greenbar Excavation LLC has been operating the quarry for some time pursuant to a sale contract agreement with Bartels, the applicant only recently acquired fee title to the property, and commenced the transfer of the permit process in accordance with that acquisition.

2. Truck Loads

The opposition has alleged that because Greenbar Excavation LLC works in other counties that the product from the quarry is delivered to other counties. However, that is not true.

While it is true that the excavation work done by Greenbar Excavation LLC may be in other counties, when working on a job in another county it is most economical and efficient to purchase product from a local source for that job, not to haul it from Juniper Canyon in Crook County.

As stated at the hearing, the deliveries from the quarry remain in the county, and the applicant does not haul the aggregate from their quarry to other job sites outside of the county.

The opposition also believes that we need to confirm a truck delivery rate to establish the significance of the resource. That argument is in error.

The applicant operates within the limitations of the land use approval from 2017 (217-17000374-PLNG) and does not exceed the 5-15 truck trips per day permitted by that decision. The rate of sale of the product is not a factor in determining the significance of the resource. The rate of sales is going to fluctuate with the management of the quarry, the construction season and as demand requires. The location, quantity, and quality of the resource is significant, notwithstanding the rate of sale. The economic analysis for the resource site, as set forth by the County Court in Ordinance 179, has not changed, and in fact has been proven as correct by the plethora of sales to the surrounding community.

3. Opposition wants total protection of conflicting uses

Because aggregate as a resource is valuable to the State of Oregon, the laws have created protections for that resource to ensure its availability to the citizens and economy of the state. A valuable resource is to be inventoried on the County's Aggregate Inventory. In furtherance of this prioritization, the state adopted a conflicting use analysis which looks at the effect of uses in the impact area on the resource site when determining how to achieve the state's objectives.

To clarify the criteria of the analysis, a conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Here, the Goal 5 resource site is the aggregate site. (OAR 660-016-0005(1)(see also Staff Report, Page 14)) The analysis is whether the conflicting uses – residential uses- could negatively impact the aggregate site. There is no evidence that the surrounding residential uses have negatively impacted the Goal 5 aggregate resource site consistent with the adopted rule. The operations have not been negatively interfered with such that the aggregate site operations are negatively impacted or precluded by the surrounding uses.

Once the resource is found to be significant, the ESEE analysis weighs whether the resource should be protected over the conflicting (residential) use, whether the residential use should be protected over the resource, or whether there should be a balanced approach where both uses can continue. The County Court took the 3rd approach when adding the site to the inventory, and the evidence supports that the mining and the residential uses have been able to develop concurrently since then.

Here, the opposition argues that the impacts on the residential use in the area should supersede the state's interests, so that the residential uses would be wholly protected, and the aggregate resource should not be available to the public. However, the evidence and the law do not support this argument.

There is no evidence that the Goal 5 resource has negatively interfered with the residential uses such that it has interfered with the continuing residential use of the surrounding area. Here, the evidence supports that, notwithstanding the existing quarry operation, the residential development of the surrounding area has been prominent.

A review of the Bartels decision 217-17-000374-PLNG (2017), Attachment A, shows that Bartels owned a majority of the surrounding lots of Phase 2 of the subdivision, and that only the lot owned by Griffin was developed. Therefore, the balance of the subdivision development was done after the 2017 approval. In fact, Krau is just finishing development of their residence which is going to be added to the 2024 county tax roll this year as a new residence.

So while the opposition complains that they do not like the resource site, the evidence does not support that it has so negatively impacted the conflicting use such that the residential use is not feasible and the conflicts are so great as they cannot be balanced. The facts show otherwise.

Notably, the County Ordinance 43 only set the necessary impact area for conflict analysis at 500'. Here, there are now **6 dwellings** within the 500' impact area. (See Staff Report Table 1) Notably, **3** of the dwellings were built since the 2017 decision, to wit in: **2019, 2022, 2023**.

There are an additional **5 dwellings** within the larger 1500' impact area (between 500' – 1500'). According to records, the ownership and development was as follows:

<u>Owner</u>	<u>Purchase</u>	<u>Built</u>
Holmes,	2018	2020
Gilbert,	2018	2020
Tillery,	2018	2019
Myers Trust,	2019	2018

(Table 1 shows dwellings for Bartels TL 409, Belcaster TL 103, Greenbar Excavation LLC TL 400, Nelson TL 2100, Wiegele TL 2500, but the county tax assessor records show no dwellings for these properties)

The 1500' impact area was proposed by the applicant, Bartels, and adopted by the County Court for Ordinance 179, even though the County ordinance only requires a 500' impact area. As determined by the Court therein, the uses within either the 500' or the larger 1500' impact area were not so detrimental to the site that they trump approval of the site under the applicable laws.

The existence of the pit dates back to the 1960s. While its historic use may have been exempt from the DOGAMI permit requirements, there was still an operational pit. The quarry existed when a majority of the neighbors purchased their property and built their homes. They came to the pit and knew of its existence when they made their lifestyle choice to move within the impact area of the pit.

In fact, the following sales and development have occurred since the 2017 decision:

<u>Owner</u>	<u>Purchase</u>	<u>Built</u>
1. Adam and Shauna Schmidlin (Exhibit 2) (Exhibit 2)	2022	2022
2. Robby & Brenda Carter (Exhibit 1, et al) (Carter did not purchase this directly from Bartels so it is not clear what his testimony at the hearing concerning statements made by Dick Bartels was about)	2022	2019
3. Blake and Kristine Hamilton, (located over 2,500' from the proposed site)	2020	2022
4. Anthony and Michelle Krau (Exhibit 3)	2018	2023
5. Timothy & Lisa Tillery (Signatories to Exhibit 5)	2018	2019
6. Scott and Mary Myers, of the Myers Famil Revocable Living Trust, (dwelling is over 900' from the border of the proposed aggregate site, and at least 1800' from the rock crusher)	2019	2018

Please note that the following opponents have dwellings outside of the 1500' impact area:

Owner	Dwelling Distance to:	Proposed Site	Crusher
1. Steve and Mary Bryant (Exhibit 7 et al), 11518 SE View Top Ln (submitted a substantial number of comments in the record).		2,557.33'	3,400'
2. Deanna and Darrel Robinson (Exhibit 16) 11902 SE Meadowlark Ct		2,900'	3,300'
3. Troy and Stephanie Doty , 11670 SE View Top Ln,		2,800'	3,600'
4. Lisa Binning (Exhibit 8) 5351 SE Sunny Hills Ct (does not live in the Cimarron Hills development)		5,100'	6,000'
5. Leos and Jodie Zepeda (Exhibit 10), 6323 SE Cedar Hills Ct		1,800'	2,500'
6. Gary and Donna Watson , (Exhibit 9) 6400 SE Cedar Hills Ct		1,600'	2,500'
7. Belen Moran (Sp?) (Exhibit 5) (Signed letter from Cimarron Hills subdivision, does not match any real property owner records for the subdivision or surrounding area.		?	?

The State adopted regulations are implemented by DOGAMI. The regulations have established a 100' setback from a dwelling for mining activity. The thorough analysis by the state in adopted the setback found justification for 100' to balance the dwelling/mining conflict and protect each of the uses within the requirements of the law. The existing mine already adheres to the 100' setback for the dwelling to the north, as shown on applicant's Exhibit 24. The other nearest dwelling (Carter/ Lot 14) is approximately 800' from the 50' setback required by DOGAMI for the site, and 8 times the 100' DOGAMI setback for the Carter dwelling. (See Exhibit 24)

While the opponents do not like the proposal, the basalt rock is a protected, valuable state resource pursuant to Goal 5, and the site warrants being included on the county inventory as such. The mine is subject to compliance with the DOGAMI and DEQ regulations, and as such, the residential and mining uses can co-exist.

4. Dust Abatement

The surrounding area is primarily dry, unirrigated, unimproved open space with sparse juniper trees and natural high desert vegetation. Farming also occurs within the surrounding area. There are multiple sources of dust within the area from the stirring up of dry soil. While the short blasting event that occasionally occurs may cause dust, or the crushing that takes place for a short period of time after a blast may cause dust, the operation of the pit outside of those short, isolated events does not generally cause dust emissions. The floor of the pit is hard basalt rock as are the walls and stockpiles of crushed material. The applicant testified that he already does dust abatement and is continuing to improve on dust abatement practices. The use of water for dust abatement is a reasonable balance pursuant to the ESEE analysis.

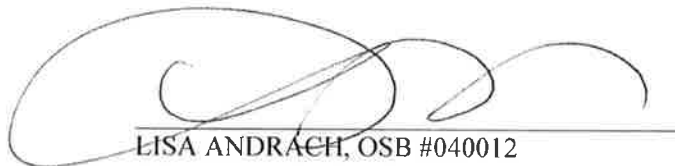
5. Wildlife Protection

The evidence supports that the wildlife are not so negatively impacted by the site that they have abandoned their use of the area. While turkey are not the subject of the wildlife overlay, the evidence shows that the deer have not been deterred by the surrounding new residential uses, and the continued quarry use. Residential uses are also considered a conflict to wildlife, yet the deer have adjusted to the intrusion of residential uses into their habitat.

The applicant agrees to consult ODFW as suggested in the staff report, to develop a plan to continue to minimize conflicts with the wildlife and the mining operation.

DATED this 7th of August, 2024.

FITCH & NEARY PC



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Jennifer Orozco

From: Lisa Andrach <lisa@fitchandneary.com>
Sent: Wednesday, August 7, 2024 3:16 PM
To: Plan
Cc: Tanner Brown; Wendy Smith
Subject: Greenbar Excavation LLC - Open Record, Round 2
Attachments: Open Record Round 2.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Attached is the Applicant's Rebuttal for Open Record, Round 2.

Lisa Andrach, Attorney



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