PRELIMINARY FINDINGS OF FACT CONDITIONAL USE REQUEST CUP-N-329 ASSOCIATED WITH COMPREHENSIVE PLAN AMENDMENT REQUEST AC-117-18

REQUEST: To allow by conditional use request mining and processing of aggregate resources associated with an amendment the Comprehensive Plan to add a locally significant aggregate site to Morrow County's Inventory of Natural Resources – Aggregate and Mineral Resources.

APPLICANT:

Aaron Heideman

33999 River View Dr. Hermiston, OR 97838

PROPERTY OWNER:

Same

PROPERTY DESCRIPTION:

Tax Lots 2801 and 2807 of Assessor's Map 1N 26

Sections 20 and 21

PROPERTY LOCATION:

Southeast of Lexington on Kemp Lane.

FINDINGS OF FACT:

I. BACKGROUND INFORMATION:

The subject quarry location is zoned Exclusive Farm Use. The proposed aggregate quarry is being developed as a result of the desire for the applicant to provide aggregate materials for production and sales for road use, base rock, concrete, and asphalt. The proposed quarry is estimated to produce less than 500,000 tons of aggregate material.

II. COMPLIANCE WITH MORROW COUNTY ZONING ORDINANCE SECTIONS 3.010(C)(13)(14)(15), 6.020, 6.030 and 6.050(I). The requirements for approval are listed below in **bold type**, followed by a response in standard type.

Section 3.010(C). Conditional Uses. The following uses are permitted subject to county review, any specific standards for the use set forth in Section D, Article 6, the general standards for the zone, and any other applicable standards and review process in the ordinance:

- 13. Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
- 14. Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
- **15.** Processing of other mineral resources and other subsurface resources. The proposal will include mining and processing of aggregate resources and is allowed as a conditional use in the Exclusive Farm Use Zone based on the standards set forth in Article 6. Please see the below criteria.

SECTION 6.020. GENERAL CRITERIA. In judging whether or not a conditional use proposal shall be approved or denied, the Commission shall weigh the proposal's appropriateness and desirability, or the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met or can be met by observance of conditions.

A. The proposal will be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies and regulations of the County.

The quarry is located on land zoned for Exclusive Farm Use wherein mining and mining activities are allowed as a Conditional Use. The mining activity and location is in the process of being included in the County's list of significant aggregate sites as required by OAR 660-023-0180. The amendment to the Comprehensive Plan will be presented before the Planning Commission and Board of Commissioners as AC-117-18 and when the mining activity and location have been properly added and when the proposed mining activity meets the conditions and requirements of this Staff Report, the quarry will be consistent with the Comprehensive Plan and objectives of the Zoning Ordinance and other applicable policies and regulations of Morrow County.

- B. If located within the Urban Growth Boundary of a city, that said city has had an opportunity to review and comment on the subject proposal. This requirement does not apply as the proposed quarry is not located within the Urban Growth boundary of any city.
- C. The proposal will not exceed carrying capacities of natural resources or public facilities.

The proposed quarry is within non-prime farmland that is not currently being farmed. The quarry location is located within the Butter Creek Critical Groundwater Area. This Critical Groundwater Area is designated due to groundwater quantity issues by the Oregon Department of Water Resources. The applicant will not need an industrial water well on the proposed site; if water is needed it will be hauled in. Oregon Water Resources Department has been notified of the proposal and it is recommended and listed as a condition of approval that the applicant comply with any recommendations of the Oregon Water Resources Department. The quarry site is within the Heppner Rural Fire Protection District and the District has been provided with the preliminary Staff Report. The applicant has stated that electrical utilities are available in the area but will not be needed. There is no current sewage disposal method at the site and the applicant proposes to use portable lavatories.

SECTION 6.025. RESOURCE ZONE STANDARDS FOR APPROVAL.

A. In the Exclusive Farm Use zone a conditional use may be approved only when the County finds that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Planning staff find that the proposed aggregate facility, being permitted at a level to not exceed 500,000 tons, would not force a significant change in or significantly increase the cost of accepted farm practices. Aggregate facilities sited on farmland tend to have limited use or are used for specific projects with a specific time line. As an example if this proposed aggregate facility were used for development of a nearby wind or solar farm the activity would be short lived, most likely constrained to a single growing season. While there would be impacts during that time, when viewed over the life of the permit, there would be minimal or limited impacts. The same would be true if the Morrow County Public Works Department identified this as a source for road project rock; the amount mined in any one year would not be excessive and should not create impacts that would be detrimental. It could also be argued that rock used for road projects would be beneficial to area farmers and could positively impact the cost of farming.

B. In the Forest Use Zone a conditional use may be approved only when requirements that are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands are met. A conditional use may be approved only when the County finds that the use will not:

- 1. Force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- 2. Significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
- 3. A written statement recorded with the deed or written contract with the County is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules. (MC OR-1-2013)

These criteria are not applicable as the location is not in the Forest Use Zone.

SECTION 6.030. GENERAL CONDITIONS.

In addition to the standards and conditions set forth in a specific zone, this article, and other applicable regulations; in permitting a new conditional use or the alteration of an existing conditional use, the Commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the County as a whole. These conditions may include the following:

A. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.

The aggregate site is proposed to be located in an area isolated from residential uses. The nearest residence is over a mile away. The application does not state how environmental effects such as noise, vibration, air pollution, glare and odor will be minimized. The site is in an isolated area, however the applicant should be aware that the site would be operated according to the applicable noise standards required by the Department of Environmental Quality (DEQ).

The operator shall submit verification from the DEQ that the discharges of contaminants and dust created by the mining operation comply with the applicable DEQ ambient air quality and emissions standards. This is listed as a condition of approval.

B. Establishing a special yard or other open space or lot area or dimension.

The application indicates that there will be a berm around the pit. An aggregate site of 20 acres will be sufficient to accommodate open space around the mining activity. This criterion is met.

- **C.** Limiting the height, size or location of a building or other structure. The applicant has indicated that there are no plans for a permanent structure at the mining site. If a structure is found to be needed, whether temporary or permanent, a zoning permit will be required for any building or structure larger than 100 square feet in area.
- D. Designating the size, number, location and nature of vehicle access points.

Public road access is from Kemp Lane and Beach Lane, which serve only the surrounding properties. Planning staff would not place any restrictions on vehicle access points however the applicant will need to work with Morrow County Public Works for any necessary access permits or requirements.

- 1. Where access to a county road is needed, a permit from Morrow County Public Works department is required. Where access to a state highway is needed, a permit from ODOT is required.

 Planning Staff would recommend and list as a Condition of Approval that the applicant provide evidence that the access(es) to be used are properly permitted by Morrow County Public Works for the new use. Additionally, if any new accesses are necessary, Access Permits need to be obtained from Morrow County Public Works.
- 2. In addition to the other standards and conditions set forth in this section, a Traffic Impact Analysis (TIA) will be required for all projects generating more than 400 passenger car equivalent trips per day. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and mitigation of the impacts. If the corridor is a State Highway, use ODOT standards.(MC-C-8-98)

According to the application the proposed use will generate less than 400 passenger car equivalent trips per day. Identified road impacts are addressed below. No TIA is deemed necessary.

E. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way.

Kemp Lane and Beach Lane are 40-foot rights of way, providing sufficient access. The applicant will need to work with Morrow County Public Works regarding any improvements necessary with this proposal. Any necessary improvements are the responsibility of the applicant and/or operator of the proposed quarry.

1. It is the responsibility of the land owner to provide appropriate access for emergency vehicles at the time of development. (MC-C-8-98)

The subject site is in the Heppner Rural Fire Protection District, which has been provided a copy of the Preliminary Staff Report. Given the open nature of aggregate operations, access for emergency vehicles should be available.

F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or loading area.

The applicant has determined no need for screening, drainage, surfacing or other improvement of a parking or loading area. Given the remote nature of this site, Planning staff would concur but remind the applicant that the site must be operated according to DEQ requirements for dust and storm water.

G. Limiting or otherwise designating the number, size, location, height, and lighting of signs.

According to the applicant there will be no signs used for the aggregate site other than those for safe operations. If signs other than safety signs are installed they must comply with Morrow County Zoning Ordinance Sign Regulations.

H. Limiting the location and intensity of outdoor lighting and requiring its shielding.

The application states that outdoor lighting will only be used for safe operation and employee safety as needed. It is expected that, when needed, lights may be used during hours of operation. Lighting must also be limited during non-operating hours.

I. Requiring diking, screening, landscaping or another facility to protect adjacent or nearby property and designating standards for its installation and maintenance.

The application states that diking, screening, landscaping or other facilities will not be installed to protect adjacent property. Such facilities are not expected to be necessary in this site because of its remote location. This criterion is met.

J. Designating the size, height, location and materials for a fence.

The application states that fencing is not needed. Planning staff remind the applicant that any fence 6 feet in height or taller will need to be approved with a zoning permit.

K. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.

The aggregate quarry is proposed to disturb no more than 17 acres of land for mining and 3 acres for staging and equipment. There are no existing trees, vegetation, water resources, evidence of wildlife habitat or other significant natural resources at the site. This preliminary Staff Report will be provided to Oregon Department of Fish and Wildlife (ODFW) and Oregon Water Resources Department.

The County has been established as a Weed Control District and has identified noxious weeds to be controlled by local landowners. It is the duty of the landowner to destroy or prevent the establishment and spread of the listed noxious weed species. It is therefore recommended and listed as a Condition of Approval that the landowner make diligent and practical effort to eradicate weeds at the aggregate site that have been listed as "weeds of economic importance" and to prevent their spread. This list is provided as an attachment to this Staff Report.

L. Other conditions necessary to permit the development of the County in conformity with the intent and purpose of this Ordinance and the policies of the Comprehensive Plan.

A mining operation in the State of Oregon needs to obtain an Operating Permit from DOGAMI when it will mine over 5,000 cubic yards of material per year and disturb more than one acre of land. Since this operation will extract more than 5,000 cubic yards of material, an Operating Permit will be required. It is recommended and listed as a Condition of Approval that the operator provide evidence to the Planning Department that a DOGAMI operating permit has been obtained prior to any excavation, and yearly thereafter until closed and reclaimed.

This approval as a Conditional Use is contingent on the owner and operator not mining more than the maximum amount of aggregate material specified under subsection (4)(a) of OAR 660-023-0180. This maximum amount is 500,000 tons of aggregate material over the life of the mining activity. This is recommended and listed as a Condition of Approval.

SECTION 6.050. STANDARDS GOVERNING CONDITIONAL USES.

A conditional use shall comply with the standards of the zone in which it is located and with the standards set forth in this subsection.

Local Permit Approval Criteria: An application for mineral or aggregate mining must address provisions found in Article 6 Conditional Uses Section 6.020 General Criteria, Section 6.025 Resource Zone Standards for Approval when in a Farm or Forest Zone, and the following:

- 1. Proposed hours and/or days of operation. The conditions as to when the mining and processing would be restricted to specific hours of operation or days when mining operations would be limited. For operations conducted after dark, limiting the location and intensity of outdoor lighting and requiring its shielding. See above discussion under Criteria 6.030(A) and 6.030(H).
- 2. Limiting or otherwise designating the number, size, location, height, and lighting of signs. Signs other than safety signs must comply with the sign requirements in Section 4 of the Zoning Ordinance.

See above discussion under Criterion 6.030(G).

3. A rock crusher, washer or sorter shall not be located within 500 feet from a residential or commercial use unless it can be established that the use will meet DEQ performance standards for noise and not be expected to cause a noise nuisance at nearby residential or commercial uses. In farm or forest use zones the processing of rock, aggregate or minerals shall not be within one-half mile of a noise sensitive area if the operation operates more than nine hours per day or for more than five days per week. (ORS 467.120(2).

The nearest residential or commercial use is more than one mile away. This criterion is met.

4. All water necessary for the proposed operation shall be appropriated and legally available to the site.

Water will be brought in with trucks. If any other water is needed it is listed as a condition of approval that the applicant comply with any recommendations of Oregon Water Resources Departement, which has been identified as an affected agency and has been provided a copy of the Preliminary Findings of Fact.

5. The discharge of airborne contaminants and dust created by mining shall comply with applicable DEQ ambient air quality and emissions standards, or approval shall be conditioned to ensure that such standards will not be violated.

The application states that all regulations from EPA, DEQ, and MSHA will be followed. It is recommended that the applicant provide verification from DEQ that the mining operation complies with applicable DEQ ambient air quality and emissions standards. This is recommended and listed as a condition of approval.

- 6. A Reclamation Plan approved by DOGAMI will be required for mining operations. When reviewing an applicant's submittal regarding a proposed reclamation plan, Morrow County will review the plan against the following criteria:
 - a. A description of the present land use and planned beneficial use of the site following the mining activity. The applicant must demonstrate that the planned beneficial use is compatible with the Comprehensive Plan and Zoning Ordinance.
 - b. Provisions for the backfilling, recontouring, topsoil replacement, seedbed preparation, mulching, fertilizing, selection of plant species, seeding or planting rates, and schedules:
 - c. Provisions for adequate setbacks and slopes to protect adjacent property and public safety;
 - d. A proposed time schedule for surface mining and reclamation procedures for the removal or disposal or all equipment, refuse, structures, and foundations from the permit area except permanent structures that are part of an approved Reclamation Plan.

The applicant is working with DOGAMI and will complete a DOGAMI approved Reclamation Plan. The applicant shall provide evidence to the Planning Department that a DOGAMI operating permit has been obtained prior to any excavation, and yearly thereafter. This is listed as a condition of approval.

7. In accordance with the Transportation System Plan, the requirements of the Public Works Department or the Oregon Department of Transportation shall be complied with regarding the minimization of potential conflicts to local roads used for access and egress to the mining site.

The applicant shall work with the Morrow County Public Works regarding access as discussed above under Criterion 6.030(D).

- 8. Designating the size, number, location and nature of vehicle access points.
 - a. Where access to a county road is needed, a permit from Morrow County Public Works department is required. Where access to a state highway is needed, a permit from ODOT is required.

See above discussion under Criterion 6.030(D).

b. In addition to the other standards and conditions set forth in this section, a Traffic Impact Analysis (TIA) will be required for all projects generating more than 400 passenger car equivalent trips per day. A TIA will include: trips generated by the project, trip distribution for the project, identification of intersections for which the project adds 30 or more peak hour passenger car equivalent trips, and level of service assessment, impacts of the project, and mitigation of the impacts. If the corridor is a State Highway, use ODOT standards.(MC-C-8-98)

See above discussion under Criterion 6.030(D).

- 9. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way. It is the responsibility of the land owner to provide appropriate access for emergency vehicles at the time of development. (MC-C-8-98)
- See above discussion under Criterion 6.030(E).
- 10. An application for a mining operation contiguous to an existing operation approved under this section shall be evaluated in conjunction with the existing site when it appears the sites will be managed and operated as one.

This criterion is not applicable as this application is not contiguous to an existing operation.

11. Ensuring adequate space for parking and loading.

The applicant states that there is only a need for a loading area and adequate space will be ensured as it is inherent to the activity. This criterion is met.

12. Approvals for or that include operations that batch and blend mineral and aggregate into asphalt cement may not be authorized

within two miles of a planted vineyard.(one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed).

This criterion is not applicable as the subject property is not within two miles of a planted vineyard.

13. A plan for the control of noxious weeds. (MC OR-1-2013) The applicant shall provide to the Morrow County Weed Coordinator/Inspector a weed plan for the control of noxious weeds and "weeds of economic importance." This shall include a pre-mining weed survey. This is listed as a condition of approval.

- III. LEGAL NOTICE PUBLISHED: Heppner Gazette-Times and the East-Oregonian March 7, 2018
- IV. AGENCIES NOTIFIED: Linda Hayes-Gorman and Don Butcher, Department of Environmental Quality; Phil Stenbeck, Department of Land Development and Conservation; Heppner Rural Fire Protection District; Dave Pranger, Weed Coordinator; Mike Gorman, County Assessor; Matt Scrivner, Public Works Director; Ben Mundie, DOGAMI; Greg Silbernagel, Watermaster; Steve Cherry, Oregon Department of Fish and Wildlife; Janet Greenup, Morrow County Soil and Water Conservation District.
- V. PROPERTY OWNERS NOTIFIED: March 7, 2018
- VI. HEARING DATE: March 27, 2018

Port of Morrow Riverfront Center

Boardman, Oregon

VII. DECISION OF PLANNING COMMISSION:

Recommendation of staff is to approve the application subject to the following CONDITIONS OF APPROVAL:

- 1. Provide evidence that the access(es) to be used are properly permitted by Morrow County Public Works for the new use. Additionally, if any new accesses are necessary, Access Permits need to be obtained from Morrow County Public Works.
- 2. The applicant shall provide to the Morrow County Weed Coordinator/Inspector a weed plan for the control of noxious weeds and "weeds of economic importance." This shall include a pre-mining weed survey.
- 3. Provide evidence to the Planning Department that a DOGAMI operating permit has been obtained prior to any excavation, and yearly thereafter.
- 4. The owner and operator shall not mine more than 500,000 tons of aggregate material from the subject aggregate quarry over the life of its mining activity.
- 5. Provide verification from DEQ that the mining operation complies with applicable DEQ ambient air quality and emissions standards.

- 6. Comply with any recommendations of the Oregon Water Resources Department.
- 7. This Conditional Use Permit is not valid until AC-117-18 Comprehensive Plan Amendment is approved by the Morrow County Board of Commissioners.

Jeff Wenholz, Chair	Date

ATTACHMENTS:

Vicinity Map

Morrow County list of weeds classified as noxious weeds and "weeds of economic importance" Todd Lindsay comment letter dated March 26, 2018 with attached Aromatics Incorporated letter



Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Projection: Lambert Conformal Conic Datum: North American 1983 HARN

1N 26E TL 2801 & 2807

Appendix A

NOXIOUS WEEDS

Rush Skeletonweed
Yellow Starthistle
Tansy Ragwort
Dalmation & Yellow Toadflax
Mediterranean Sage
Leafy Spurge
Spikeweed
Musk Thistle
Scotch Thistle
Purple Loosestrife
Common Crupina
Whitetop
Houndstongue

Appendix B

WEEDS OF ECONOMIC IMPORTANCE

Poison Hemlock Canada Thistle Jointed Goatgrass St. Johnswort Perennial Sowthistle Field Bindweed Cereal Rye Johnsongrass Knapweeds-Russian, Diffuse, Spotted Field Dodder Water Hemlock Medusahead Rye Puncturevine Kochia Perennial Pepperweed Myrtle Spurge

Ventenata

March 26, 2018

Morrow County Planning Department **Planning Commission** P.O. Box 40 Irrigon, OR 97844

Re: CUP-N-329, AC117-18, AC(M) 118-18, AZ(M)-119-18

Dear Planning Commissioners:

My name is Todd Lindsay and I own and operate Turner Ranch Inc. and Turner Lindsay Farm located along Sand Hollow Road. Please submit this letter into the record for Conditional Use Permit CUP-N-329, AC117-18, AC(M) 118-18, AZ(M)-119-18 for consideratio.

I currently operate approximately 1100 acres of irrigated farm land along Sand Hollow Road and north of Baseline Lane. We have approximately 160 ACRES that has a UEBT/UTZ sustainable agriculture certification, specifically mint herbal tea leaf. I am the only farm in the Pacific Northwest and one of very few in the United States to achieve this. To maintain this standard, we will have annual inspections and we have to be very cautious of our farming practices and uses on our property and the influence of neighboring property including drift of chemicals and dust.

I have some concerns about the uses that would be allowed as a result of this request. Airborne contaminates (i.e. dust and emission) have the potential to significantly impact my current farming operations. If my mint were contaminated by airborne emission I could lose my certification and contracts under this certification. In addition contamination of my mint crop could result in loss of any mint leaf contracting ability and failure to provide under current contracts. Section 6.025 of the Morrow County Zoning Ordinance requires the application not force a significant change in accepted farming practices or significantly increase the cost of accepted farming practices. I feel this application has the potential to significantly affect my current farming practices and caus loss of 50% of my net farming income.

In addition the proposed activity is located in a OWRD critical ground water area. The potential water use and ground disturbance may be of concern.

Our farm is located outside the required public notice area and I just recently learned of this application. However I lease property that is in our irrigated crop rotations which is a parcel that neighbors the proposed site and impact area. Therefore, I would like to request that this application be continued to the next Planning Commission meeting or a date agreeable to the applicant to allow us addition time to gather information on the potential impacts to our farming operations.

Thank you for the opportunity to provide comment on this application.

Respectfully.

Todd Lindsay

Turner Ranch Inc. Turner Lindsay Farms



To whom it may concern,

As a customer of Turner Ranches, who grows dried mint leaves for us which are used in herbal teas and distributed globally, we have some concerns about the proposed concrete & asphalt plant that could be built within a mile or two of our mint fields.

As you may or may not know, the food industry must now comply with the Food Safety Modernization Act (FSMA), and the herbal tea industry must now comply with Good Agricultural Practices (GAP), EPA & EU pesticide MRL's (maximum residue limits) and MRL's for things such as Pyrrolizidine Alkaloids, Tropane Alkaloids, Perchlorate and heavy metals, which aren't even pesticides. Turner Ranch's crops are also UEBT/UTZ Certified, which is a sustainability certification that focuses on reducing dependency on pesticides, promoting conservation & biodiversity, protection of pollinators and endangered species, not disturbing natural/pristine habitats & ecosystems and promoting general environmental stewardship.

We (Aromatics, Inc.) currently test every single field for 650 compounds in a standard pesticide screening and have been starting to see things such as Anthraquinone (which isn't even a pesticide) showing up on pesticide reports. Apparently, Anthraquinone is a compound from fossil fuels such as coal fired power plants. It is for these reasons that Aromatics, Inc. on behalf of Turner Ranches would prefer that this concrete/asphalt plant not be built at the proposed site, so close to our mint leaf production. As testing continues to evolve (pesticide & other testing) I can't even begin to imagine what they will continue to find on our mint leaves in the future, but I know they will continue to detect new compounds that are deemed unsafe to human health. Should the proposed plant produce detectable airborne or environmental pollution on our mint leaves, we would most likely need to find another grower/supplier elsewhere where these pollutants are not present.

Sincerely,

Travis Boyd

Manager, Grower/Field Dept

Aromatics, Inc.

230 Center Street

Mesa, WA 99343

(509) 750-9837 - cell

travis@aromaticsbotanicals.com