

**OPEN RECORD PERIOD
APPLICANT SUBMITTAL: Round 2**

BEFORE THE CROOK COUNTY BOARD OF COMMISSIONERS

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);

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 issues before the Board are narrowly tailored to the limited issue of the setback applicable to the Carter residence. The setback for Ms. Adams residence has already been determined with the input of Ms. Adams.

The issue concerning the conflicting uses and determination that the aggregate resource use would be allowed as a 3C compromise of conflicting uses has also already been determined. The 3C determination recognizes that there are conflicts between the aggregate resource use and the

residential use that has developed around the quarry. The County Planning Commission and the Board of Commissioners determined that, based upon all of the evidence and the applicable law, the appropriate path forward is to allow the site as a 3C site pursuant to the ESEE analysis.

The applicant has never denied that there are conflicting issues with the surrounding residential use. The applicant did point out that the neighboring residential use by Carter was developed within the past few years, and accordingly is what is referred to as having “come to the nuisance” that Carter now complains about. The audio and video evidence submitted by Carter are of the quarry that was in full operation when he purchased his property. Accordingly, he weighed the negative consequences of the quarry operation in his economic decision to purchase the property on which to reside. Now he wants the nuisance stopped in favor of his decision to move into the area to reside.

As analyzed in the record, several dwellings were purchased and/or developed while the existing quarry was in full operation. Accordingly, based upon the argument that the property values are diminished due to the quarry, the market value of the property was reflective of the quarry at the time of purchase. Carter submits evidence that generally market values will further decrease due to the quarry, and makes the assumption that the quarry has caused Scott Gilbert’s difficulty in selling his property – without any evidence to support that assumption. However, the presidential election, changes in the stock market, and high federal interest rates all impact the real estate market – conditions which have been unfavorable to purchasing real property in the last 2 years. There are also the specific conditions of the property that effect marketability – specifics of which we know nothing about in the record. More importantly, the issue before the Board only pertains to Carter’s property – not Gilbert’s. The evidence shows that Carter’s property has increased in value and he continues to make substantial improvements to the property – notwithstanding the vicinity to the quarry and the potential effects of the land use proposal at issue herein.

As previously addressed, the County Code 18.144.060 has been used as guidance to determine setbacks. Applying the well accepted statutory interpretation methodology to the code at issue, the language of the code makes clear that subsection (a) applies to “dust sensitive uses” such as residential uses, and (b) applies to other uses like roads and the like. The text and context of (a) are clear that it applies to those uses that are considered “dust sensitive” such as the Carter residence. That section is what has consistently been applied when setting setbacks to residential uses. Applying (b) as advocated by Carter would create ambiguity and is not supported by the context of the code.

The applicant heard Carter’s complaints about the dust at the last hearing and is working to mitigate any dust emission from the property. Notably, the dust in the video submitted by Carter filmed from Ms. Adam’s property appears to be remaining on the quarry site which is consistent with the requirements of operation. Nevertheless, the applicant continues to work to appease the neighbors and comply with the regulatory requirements imposed on the operations.

To confirm, the applicant has agreed to an increased setback from that set forth in CCC 18.144.060(1)(a), to wit: 150' from the Carter dwelling in support of the ESEE analysis.

DATED this 22nd day of April, 2025.

FITCH & NEARY PC

A handwritten signature in blue ink, appearing to read 'Lisa Andrach', with a large loop at the end.

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