



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

December 27, 2007

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Crook County Plan Amendment
DLCD File Number 007-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT OR DEADLINE TO APPEAL: January 3, 2008

This amendment was not submitted to DLCD for review prior to adoption. Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Bill Zelenka, Crook County

<paa>

FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DEPT OF

DEC 14 2007

LAND CONSERVATION AND DEVELOPMENT
For DLCD Use Only

Jurisdiction: **Crook County**

Local file number: **C-CPA-007-05** *Bartels*

Date of Adoption: **10/3/2007**

Date Mailed: **12/11/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one**Date:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Comprehensive Plan Amendment to place site in the mineral and aggregate inventory and adopt an ESEE analysis to allow surface mining of 10 acres w/in RRM5 zone.

Does the Adoption differ from proposal? Please select one

no

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location: **S on Juniper Canyon Rd, Milepost 7 on West side**

Acres Involved: **10**

Specify Density: Previous:

16 16 12 400

New:

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD #007-07 (NOA)

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

DOGAMI, Crook County Road Department, DEQ

Local Contact: **Bill Zelenka**

Phone: **(541) 447-8156** Extension:

Address: **300 NE Third Street**

Fax Number: - -

City: **Prineville**

Zip: **97754-**

E-mail Address: **bill.zelenka@co.crook.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.



STATE OF OREGON } ss 2006233
COUNTY OF CROOK }

I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 17th DAY OF
August, 2006 AT 10:40 A.M.
AND RECORDED IN CJRT

RECORDS OF SAID COUNTY MF NO. 2006-233

DEANNA E. BERMAN, CROOK COUNTY CLERK

BY Jody Jones DEPUTY

n/c

IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK

AN ORDINANCE AMENDING THE
CROOK COUNTY COMPREHENSIVE
PLAN TO ADD A SITE TO THE
MINERAL AND AGGREGATE
INVENTORY AND ADOPTING AN
ESEE ANALYSIS TO ALLOW MINING

Ordinance No. 179

Amendment to Appendix A
Crook County Goal 5 Mineral &
Aggregate Elements

WHEREAS, Oregon's Statewide Planning Goal 5 establishes a State policy to protect, among others, natural resources; and

WHEREAS, Goal 5 provides that in conjunction with the Inventory or Mineral and Aggregate Resources, sites for removal and processing of such resources should be identified and protected; and

WHEREAS, the Goal 5 Administrative Rule (OAR 660-16-0000 to 660-16-0025) was designed to carry out the requirements of Goal 5 for all types of resources, including mineral and aggregate resources; and

WHEREAS, Crook County has identified the site owned by Richard Bartels as an inventoried Goal 5 aggregate resource site based upon the location, quantity and quality of the aggregate material located thereon; and

WHEREAS, the County has determined that based upon the conflicts and the Economic, Social, Environmental and Energy (ESEE) Analysis the resource is sufficiently important relative to conflicting uses that a mining operation on the site would not negatively affect the conflicting uses and will provide positive economic, social, environmental and energy contributions; and

///

WHEREAS, based upon the ESEE Analysis, Crook County may determine that the conflicting uses can continue and the Goal 5 resource may also be utilized;

NOW, THEREFORE, the County Court of Crook County, Oregon, ORDAINS as follows:

Section 1. Impact Area. The County adopts as the impact area for the subject site an area extending 1500 feet from the subject property, which site is more particularly described as Township 16 South, Range 16 East Willamette Meridian, Northeast One Quarter, Section 12 Tax lot 400.

Section 2. Adoption of Conflicts Analysis, ESEE Analysis and ESEE Decision. The County amends the Goal 5 Mineral and Aggregate element of its Comprehensive Plan by adopting the Conflicts Analysis, ESEE Analysis and ESEE Decision attached hereto as "Exhibit A" and by this reference incorporated herein.

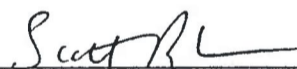
Section 3. Findings. The Crook County Court adopts the ESEE and the findings attached hereto as "Exhibit A" and by this reference incorporated herein as its findings in support of its Decision.

First Reading and Hearing: August 2, 2006.

Second Reading and Hearing: August 14, 2006.

Dated this 14 day of August, 2006.

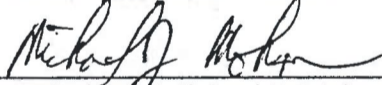
CROOK COUNTY COURT



Judge Scott R. Cooper



Commissioner Mike McCabe



Commissioner Michael J. Mohan

EXHIBIT A ESEE FINDINGS

COMPLIANCE WITH GOAL 5

Applicable Goal 5 Rule

The Court finds that the version of Goal 5 and its Administrative Rules applicable to this application is the version that is implemented through the Division 16 Rules of the Oregon Administrative Rules.

Inventory

The Court finds that the site satisfies the requirements for inclusion on the county's Inventory of Goal 5 Mineral and Aggregate Sites and was made a part of the Inventory pursuant to Crook County Ordinance 172.

Identification of Conflicting Uses

OAR 660-016-005 requires identification of uses that conflict with a listed Goal 5 Resource Site. OAR 660-016-0005 states:

“It is the responsibility of local government to identify conflicts with Inventoried Goal 5 Resource Sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 Resource Site. Where conflicting uses have been identified, Goal 5 Resource Sites may impact those uses.”

During the second step of the process (identifying conflicting uses), the local government “may consider only other allowable uses that have a negative impact *on* the Goal 5 Resource”.

Identification of Impact Area

The applicant identified a 1500 foot area surrounding the resource site as the Impact Area. The applicant submitted evidence that the 1500 foot area is standard under current Division 23 Rules of the Department of Environmental Quality and that moving for a consistent standard would serve the public interest, unless compelling circumstances (such as protection of another Goal 5 Resource, such as scenic value) are implicated. The applicant further submitted evidence that given the current configuration of the resource site the parties most likely to be affected would those within the 1500 foot area (due in part to the existing excavated nature of the resource area) especially with respect to noise and dust impacts. The County Road which bisects the proposed Impact Area and which would provide the access point to the aggregate operation is the most significant portion of that roadway in terms of impact.

The Planning Commission decided that the Impact Area should be one half mile surrounding the resource. The basis for this determination was the conclusion that since the area is zoned for outright residential use, the Impact Area should include a substantial amount of residences and that the study area should include those who might conceivably be affected by the proposed use. Finally, the Planning Commission determined that the topography favored the larger Impact Area because sound from the mining operation would be directed toward residential lots outside of the 1500 foot area. One opponent testifying before the Court added that the County has decided upon much larger Impact Area in other parts of the County (and that same opponent opined that perhaps a 500 foot Impact Area should be utilized given the County's Ordinance 41) and noted that noise can travel outside the 1500 foot distance necessitating a noise study before determining the correct Impact Area.

The Court has considered the various issues raised above. In order to adequately address these issues, the Court conducted a site visit and gained personal understanding of the topography of the land, its vegetation and situation with respect to other properties and uses. The Court further reviewed three aerial photographs, which are part of the record, showing different ranges of potential Impact Area: specifically showing areas of 1500, 2500 and 5000 respectively from the resource. Based upon its review of these sources of information, the Court found, and confirms, its decision to utilize a 1500 foot Impact Area. The Court finds that existing screening vegetation, the topography of the land and need to set a standard that remains consistent with State standards, in the absence of compelling reasons to deviate from the standard, all militate in favor of the 1500 measure. The allowance of an aggregate mining and processing facility is specifically allowed as a conditional use in the RR(M)-5 zone and there must be a balance between those more distant property owners and those more likely (by virtue of greater proximity) to be adversely affected by the use. The Court has earlier determined that the County is not bound by the 500 foot distance contained in obsolescent law and finds the greater distance (2500 feet or greater) is not justified.

Conflicting Uses

The Court finds that the primary conflicting uses consist of existing residential use in the area and the potential impact on recreational uses.

The Record of this case contains public testimony regarding primarily the economic, social and environmental impacts of these uses on the resource site and of the resource on the conflicting uses. Less testimony is present in the record regarding impacts on recreational use but the use is one of the very reasons for creation of the zone (*Recreational Residential Mobile Zone*) and certainly might conflict with and have an impact on the resource use.

ESEE Consequences of Allowing Conflicting Uses

The conflicting uses are identified as residential uses and recreational activities. Goal 5 and its implementing Rule require sufficient analysis of the consequences of

allowing conflicting uses on the site and in the impact area as contrasted with the consequences of permitting the aggregate mining to justify a decision on whether to allow, limit or preclude conflicting use.

Some of the ESEE consequences of allowing the conflicting uses are generic, as set forth in the Generic ESEE included in the county's Mineral and Aggregate Element. The most likely economic and social consequences of allowing these conflicting uses would be limitation or prohibition on mining of the resource site, and inability to satisfy a perceived "need" for additional aggregate resulting in the possibility of less competition and higher costs for aggregate "needed" for local or regional demand. An additional potential consequence of allowing the conflicting uses would be litigation and complaints involving enforcement against the resource due to incompatibility with the use, such as nuisance or violation of conditions of approval of the use or complaints that the use decreases the value of residential property; all to the detriment of the resource. One opponent raised the prospect that residential uses would be particularly sensitive to noise and dust.

The Court finds that the record clearly establishes a need for the aggregate resource in the Juniper Canyon area. This area is one of the fastest developing areas in the County and the demand for aggregate resources is and will remain high. Limiting access to this resource will negatively affect the development of the entire area. The conflicting uses will be beneficiaries of the resource in that material will be available for the support and development of the conflicting uses for road, foundation and other purposes.

The Court finds that the likelihood of complaints and enforcement issues is remote given the lack of objection by those affected within the Impact Area to the resource use and the commitment of virtually all property owners within the Impact Area (by means of waivers of remonstrance) to not challenge the use. The conflicting uses, while potentially having an impact on the site, will not significantly affect the use of the site.

ESEE Consequences of Allowing Mining Use

Goal 5 and its implementing Rule suggest that the consequences of allowing the Goal 5 use must then be contrasted with the consequences of allowing the conflicting uses.

Economic Consequences

Typical impacts of mining are noise, dust, truck traffic to and from the site, consumption of water, either from wells on-site or off-site or from irrigation ditches, employee traffic to and from the site, and other consequences that might inhibit the operation of conflicting uses within the impact area. The negative economic consequences of such impacts are typically expressed as the potential for loss in property values of nearby land uses and the wear and tear on the roads over which the aggregate is transported. These are largely the objections raised with respect to the subject site; the objection of nearby property owners (outside of the Impact Area).

The Court accepts applicant's evidence that approval of the application will lead to well-paying employment at the resource site itself and will contribute to the continuation of jobs at local development and construction sites. The Court further finds that this particular resource is located such as to provide nearby resources in an underserved part of the County in terms of commercial aggregate material and that such material is essential to the existing demand for growth and development in the area. The Court further finds that, consistent with applicant's testimony, the existence of a resource at the subject resource site will contribute to a competitive rate for material cost to those who need the resource. The Court does not accept testimony that the use of this resource will negatively affect the County Road system, since the use will occur in any event on Juniper Canyon Road, whether the material originates from applicant's site or some other.

Social Consequences

The negative social consequences relate chiefly to quality of life impacts suffered by residents of the area. The Planning Commission identified truck traffic (with attendant noise, visual and vehicular congestion, and potential affect on recreational bicycling); the process of extraction and processing itself; and potential conflict with other RR(M)-5 uses (private parks, campgrounds, etc.), as negative consequences of allowing the resource use. The Planning Commission also identified the limitations that applicant is willing to agree to (limited days/hours of operations, including limits on blasting); and the limited utility of the resource site for public or commercial recreational activities; which all, in the Planning Commission's decision, militate in favor of approval.

The Court received opponent testimony describing the potential loss in value of real property values due to the requested permitted use. The Court also received testimony from the significant property owner in the Impact area that all properties sold or for offer in the Area have agreed to a "waiver of remonstrance" (prohibiting objection to the existence of the mining operations). The Court finds that there is no evidence that additional truck traffic will occur as a result of its approval of the application (given the fact that the use will result in a substitution of current traffic with traffic from the resource site). The Court also finds that there is no evidence to support a conclusion that there will be a negative affect upon the residential properties within the Impact Area in terms of property values. No property owner in the Impact Area has objected to the application and all properties within applicant's prior ownership have agreed to a "waiver of remonstrance". The evidence before the Court establishes that there will be no scenic loss as a result of approval and that existing vegetative material exists to protect neighbors from any unsightliness associated with the mining effort. Blasting will be limited to a few days a year and crushing activities to no more than three weeks per year. The supply of aggregate material is a positive result of approval because one result is an ample supply of material for additional residential development.

The Court finds that within the Impact Area there is no one who objects to this approval. The only residential property owners have either supported or not responded to these proceedings. Any property owners who might wish to develop property in the

future will be required to have property owners acknowledge the existence of the resource and waive any objection to such use. There is no evidence of a negative impact on any recreational resource or intended plan.

Since adoption of Ordinance No. 43, Goal 5 Mineral and Aggregate Elements in 1990, the county has consistently approved quarry sites in locations that are visually obscured from roadways and the valley floor. This site is obscured from public view. Therefore, the ability to mitigate the visual impact to surrounding uses in this case meets prior County requirements.

Environmental Consequences

Environmental consequences of allowing mining generally are recognized in the county's Generic ESEE, including the following:

“Many if not most of the consequences of allowing mining activities might have a negative impact on the environment. The reclamation projects which follow the mining activity [are] designed to mitigate such deleterious effects on the environment. Surface mining may reduce available cover and forage which may cause increased competition among wildlife species for the remaining forage and cover.”

Social and environmental consequences also include the impacts of noise and dust associated with mining. The consequences of noise and dust are felt primarily by inhabitants of nearby land uses. The Court received and has considered the evidence offered by opponents to the effect that approval of the application will lead to heavier truck traffic and air pollution. The Court finds that truck traffic will not be increased as the traffic generated from applicant's site will be serving as substitution traffic which would otherwise have to come from at least seven miles away to serve this area's demand. Air pollution from vehicular sources will likely be decreased due to shorter transit times.

The generation of dust from the site can be mitigated through a dust management program. Applicant has explained that dust will be mitigated through such a program. The Court finds that applicant's plan is sufficient, certainly in the absence of any evidence that the plan will not adequately address the concern.

There is also a positive environmental consequence in that the applicant has provided evidence that he will operate only pursuant to a permit from the Department of Geology and Mining Industries. Such a permit will require reclamation of the land and will improve upon the current unreclaimed mining area.

The Court finds that while some negative consequences will result from use of the resource, such consequences can be mitigated and that the overall impact of the use will be environmentally beneficial.

Energy Consequences

Energy consequences of allowing mining are also recognized in the County's Generic ESEE, including the following:

"Increase in energy consumption might also apply to the fact that more of the transportation system might need upgrading and rehabilitating."

The location of this Goal 5 Resource is uniquely situated to positively affect energy consequences. The record reflects that the Juniper Canyon area is one of, if not the, most rapidly developing areas in Crook County. Currently aggregate material must be hauled at least seven miles to reach applicant's resource. Other sources of aggregate are located even farther from the demand area. Use of applicant's source will significantly decrease trip mileage of loaded trucks on at least this seven mile section of County Road and will decrease burden on other County Roads over which more distant source materials would be transported. Decreasing loaded traffic will help sustain the life of County Roads and decrease the need to consume energy in their repair.

The relative proximity of the applicant's resource to the sites currently under development in the Juniper Canyon area will allow for decreased travel time, leading to less fuel consumption and achieve a positive energy result by such conservation. The Court agrees and finds that, as did the Planning Commission, that no negative impact occurs with respect to energy consequences.

COMPLIANCE WITH OTHER STATEWIDE PLANNING GOALS

ORS 197.175(2)(a) requires that Plan Amendments be adopted in compliance with Statewide Planning Goals. The Goal 5 Rule alludes to consideration of Planning Goals as part of the analysis of the consequences of allowing conflicting uses to the Goal 5 Resource use. Therefore, the Goals provide independent standards against which to assess the propriety of the Plan Amendment.

Goal 1: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Goal 1 requires local governments to adopt and administer programs to assure citizen involvement in the land use planning process. In this application process, the opponents and applicant attended several public meetings. The public was provided notice of the earlier Planning Commission and County Court meetings and testimony was received at all hearings held.

Goal 2: Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 requires that Crook County establish a factual basis for its decisions and ensure that such decisions are coordinated with the appropriate governmental agencies. The county's Comprehensive Plan is consistent with the Statewide Planning Goals and has been acknowledged by the Land Conservation and Development Commission (LCDC). Notice and coordination with appropriate governmental agencies has occurred according to the county's Comprehensive Plan and its implementing Ordinances and Regulations.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands.

This Goal requires Comprehensive Plans to provide for the preservation and maintenance of agricultural lands. The site and the surrounding area is zoned RR(M)-5 and, therefore, Goal 3 is not applicable. There is adjacent land within the Impact Area that is used for agricultural purposes, but the owner of that property has no objection to the use of the resource. The Court finds that no Goal 3 values are adversely affected.

Goal 4: Forest Lands

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest trees species as the leading use in forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

There are no forestlands on or near the subject site.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources

To conserve open space and protect natural and scenic resources.

Goal 5 requires plans to conserve open space and protect natural and scenic resources. The Court finds that the only Goal 5 Resource listed for this site is the listing for mineral and aggregate resources. The Court further finds that the rim rock set back requirements to do not apply to this parcel, nor is there any evidence in the record establishing that the this property is adjacent to Juniper Canyon or is in any way affected by any scenic resources identified in County inventories or maps. There is evidence that the property is in the General Deer Winter Range, but applicant has provided testimony that the subject parcel is not irrigated; consists of largely disturbed ground by virtue of

the prior mining and is not used by wildlife. The applicant testified, without contravention, that the Oregon Department of Fish and Wildlife was contacted and that the agency had no objection to the use of the resource.

The Court does not believe adequate evidence exists in the record to refute applicant's evidence and further finds that allowing use of the resource will not negatively affect Goal 5 values.

Goal 6: Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 raises the issue of whether the proposed mining operation would violate or threaten to violate applicable State or Federal Environmental Quality Statutes, Rules and Standards. Specifically, the Court considered the impact of the mine in regards to noise, air and water pollution. The Court has noted that the applicant must comply with State and Federal Regulations including, Department of Environmental Quality; Oregon Department of Fish and Wildlife; Oregon Department of Water Resources; and DOGAMI. DOGAMI issues the applicable State Regulatory Permits to authorize mining activities. DEQ issues the Erosion Control Permit under the National Pollution Discharge Elimination System. DEQ also issues the Air Contaminant Discharge Permit. These permits must be obtained from the appropriate agencies.

Noise must also be considered and has been addressed as a part of the Goal 5 Analysis above. To the extent legally required, Applicant will be required to comply with DEQ Noise Standards and will be subject to the imposition of appropriate mitigation measures, including monitoring the site to assure ongoing compliance. Compliance with all applicable regulatory requirements is a condition of conditional use permit approval.

Goal 7: Areas Subject To Natural Disasters and Hazards/NOT APPLICABLE

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the citing of necessary recreational facilities, including destination resorts.

Goal 8 requires local governments to plan for the recreational needs of its citizens. The proposed mine site does not include existing recreational facilities. In addition, there are no public recreational facilities known within the impact area.

Goal 9: Economic Development/NOT APPLICABLE

Goal 10: Housing

To provide for the housing needs of citizens of the state.

The Court finds that the proposed mining site is not suitable for housing and is not “buildable land”. Use of the site for mining will, therefore, not reduce the areas available for housing.

Goal 11: Public Facilities and Services/NOT APPLICABLE

Goal 12: Transportation

To provide and encourage a safe, convenient and economic transportation system.

The Court identified safety issues on Juniper Canyon road caused by additional traffic using the subject site for access to the road, including site distances. The Court finds that the traffic entering and exiting the site will not increase the traffic on the road itself, as the traffic will be in substitution of traffic that would otherwise be present. The Court must determine whether an application approval will result in a “safe and adequate” transportation system. Development of a traffic plan can mitigate safety issues and is part of the requirements of conditional use approval. Approval of the application will decrease heavy truck traffic on Lower Juniper Canyon Road, thereby decreasing deterioration of that part of the roadway and will cause shorter transportation distances in the delivery of heavy aggregate to sites where its use is required, leading to a safer, more convenient and economic transportation system.

Goal 13: Energy Conservation

To conserve energy.

Goal 13 requires that land and uses developed on the land be managed and controlled to maximize the conservation of all forms of energy. As indicated above, due to the shortening of travel distances for trucks hauling aggregate materials to construction and development sites, and decreased heavy truck travel on the approximately seven miles of County Road leading from Prineville to the site, which will lead to a decrease in the need to expend energy for road construction and road improvements on Juniper Canyon Road, approval of the application will lead to energy conservation.

Goal 14: Urbanization/Not Applicable

Goal 15: Willamette River Greenway/Not Applicable

Goal 16: Estuarine Resources/Not Applicable

Goal 17: Coastal Shore Land/Not Applicable

Goal 18: Beaches and Dunes/Not Applicable

Goal 19: Ocean Resources/Not Applicable

Resolution of Conflicts, Development of Program to Achieve the Goal

OAR 660-016-0010 requires that based upon the ESEE consequences, a jurisdiction must develop a program to meet the Goal. The jurisdiction can decide to either protect the resource site fully, to allow the conflicting uses fully (by denying the mining site) or to attempt to strike a balance between the conflicting uses by limiting both the conflicting uses and the proposed mining operation.

After reviewing on an individualized basis, the potential economic, social, environmental and energy consequences the Court finds from the ESEE Analysis that the identified conflicts are of a nature that the resource may be used despite conflicting uses in the following ways:

1. The operational standards of mining the resource shall limit the days and hours of operation. As part of the necessary conditional use permitting process, conditions shall be imposed requiring mitigation of mining operations by means of dust control and addressing noise, vibration road access safety and traffic control.
2. The requirements of Crook County Zone RRM-5, requiring relationship of the proposed conditional use to recreational purposes shall be complied with.
3. Properties within the Impact Area with respect to which additional residential development is planned shall be required to include in such plans conditions running with the land waiving any right of remonstrance with respect to mining operations located within the Impact Area; provided however that such waiver shall extend only to mining operations conducted in compliance with any conditions imposed as part of a conditional use permit issued to allow mining on applicant's property.

For the reasons set forth above, the Court finds that both the resource site and conflicting uses are important relative to each other and that the conflicting uses can be allowed in a limited way in order to protect the resource site to a limited extent. The uses that are allowed are limited to mining and resource development activities, subject to the conditions imposed under Crook County Code Section 18.144 (Aggregate Resource Sites) for aggregate resource sites and subject further to compliance with the terms and conditions of Crook County Code Section 18.40 (Recreation Residential Mobile Zone, RR(M)-5); and residential use shall be allowed fully, provided, however, that any future development increasing the number of residential sites shall be subject to a requirement that the proposed development be subject to a condition waiving any right to remonstrate


against mining use within the Impact Area; provided that the waiver shall only be binding as long as such use complies with the terms and conditions of a conditional use permit issued to allow for operation of an aggregate resource site.

DATED this 14 day of August, 2006.


CROOK COUNTY COURT



Judge Scott R. Cooper



Commissioner Mike McCabe



Commissioner Michael J. Mohan