



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

### NOTICE OF ADOPTED AMENDMENT

January 30, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment  
DLCD File Number 006-99



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

#### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 9, 2006**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

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 ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist  
Jon Jinings, DLCD Regional Representative  
Paul Blikstad, Deschutes County

<paa> ya

# FORM 2

DEPT OF

## D L C D 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

JAN 23 2006

LAND CONSERVATION  
AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: Deschutes County Local File No.: PA-99-8  
(If no number, use none)

Date of Adoption: January 5, 2000 Date Mailed: 1-17-06  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 11-5-99

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

(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write ASee Attached.≡

Amend ESEE analysis for surface mining site no.  
404.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write ASame.≡ If you did not give notice for the proposed amendment, write AN/A.≡

Same

Plan Map Changed from : \_\_\_\_\_ to \_\_\_\_\_

Zone Map Changed from: \_\_\_\_\_ to \_\_\_\_\_

Location: 19-14, tax lot 100 Acres Involved: 440 acres

Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals: 5

Was an Exception Adopted? Yes: \_\_\_\_\_ No:

DLCD File No.: 006-99  
(10272)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes:  No:

If no, do the Statewide Planning Goals apply. Yes:  No:

If no, did The Emergency Circumstances Require immediate adoption. Yes:  No:

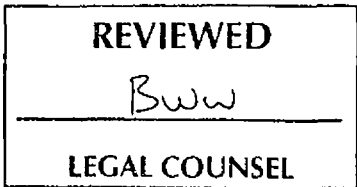
Affected State or Federal Agencies, Local Governments or Special Districts: ODFW

Local Contact: Paul Blikstad Area Code + Phone Number: 541-388-6554  
Address: 117 NW Lafayette City: Bend, OR 97701  
Zip Code+4: 97701 Email Address: paulb@co.deschutes.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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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 copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST.**



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending PL-20, Deschutes \*  
County Year 2000 Comprehensive Plan, \*  
Revising the ESEE Analysis for Surface \*  
Mining Site No. 404, and Declaring an \*  
Emergency. \*

ORDINANCE NO. 00-001

WHEREAS, tax lot 200 in sections 1 and 12 of Township 19 South, Range 14 East, Willamette Meridian (the subject property) encompasses 440 acres zoned Surface Mining (SM) and designated on the Comprehensive Plan map for Surface Mining (SM) and is located within a Wildlife Area (WA) Combining Zone; and

WHEREAS, the subject property is listed as Site No. 404 on the County's inventory of mineral and aggregate resource sites; and

WHEREAS, Howard M. Day has proposed a Plan Amendment to PL-20, the Deschutes County Year 2000 Comprehensive Plan, file number PA-99-8, as modified by file number MA-99-7, to adopt a revised Conflict Analysis and ESEE Findings and Decision for the subject property for the purposes of incorporating revisions to winter operating conditions regarding surface mining operations in a portion of the North Paulina Deer Winter Range; and

WHEREAS, the Deschutes County Hearings Officer, after review conducted in accordance with applicable law, has recommended approval of the proposed Plan Amendment to PL-20, and

WHEREAS, after notice was given and hearing conducted on January 5, 2000, in accordance with applicable law, the Board of County Commissioners has considered the Hearings Officer's recommendation and testimony at the hearing and has entered a decision in PA-99-8 approving the proposed plan amendment; and

WHEREAS, the Oregon Department of Fish and Wildlife had reviewed the subject proposal and is in agreement with the proposal and with this decision;

WHEREAS, in order to amend the Comprehensive Plan and to give effect to the board's approval, it is necessary to adopt the Plan Amendment by an ordinance; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. The Resource Element of PL-20, the Deschutes County Year 2000 Comprehensive Plan, is amended to amend the Conflict Analysis and ESEE Findings and Decision for the subject property, as set forth in the attached Exhibit

"A," incorporated herein by this reference, with additions underlined and deletions in strikethrough.

Section 2. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

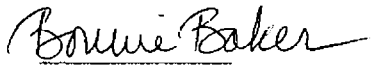
DATED this 5<sup>th</sup> day of January, 2000.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
LINDA L. SWEARINGEN, Chair

  
TOM DEWOLF, Commissioner

ATTEST:

  
Recording Secretary

  
DENNIS R. LUKE, Commissioner

## CONFLICT ANALYSIS AND ESEE FINDINGS AND DECISION

Site No. 404

Site No. 404, occupying tax lot 200 located in Township 19 South, Range 14 E.W.M., portions of Sections 1, 2, and 12 consists of two areas which have been separately considered for inclusion in the County's Goal 5 aggregate inventory.

The first area, consisting of 200 acres, is hereinafter referred to as the "existing surface mining area." It came before the Board of Commissioners (Board) for a hearing on August 7, 1989. On October 17, 1989, the Board made a Preliminary decision on this area. By the adoption of findings and an ESEE decision, the Board confirmed and ratified its preliminary decision for the first area of Site No. 404. The ESEE and findings for the existing surface mining area for Site No. 404 was adopted by the Board on July 16, 1990. (Ord. No. 90-029).

The second area of Site No. 404 consisting of 240 acres is situated immediately south of the existing surface mining area and is hereinafter referred to as "the hard rock area" or "the expansion area." The Deschutes County Hearing's Officer conducted a hearing on May 2, 1995 to determine whether the second area should be made a part of site No. 404, listed on the County's inventory of aggregate sites and classified under the County's comprehensive plan and zoning regulations as SM (Surface Mining). The Hearing's Officer made a Preliminary decision (Findings, Recommendation and Decision; County File No. Pa-95-3 and ZC-95-3) regarding the expansion area. The site came before the Board for hearing on December 20 May 2, 1995. By adoption of these findings and this the ESEE decision included in this document, the Board confirmeds and ratified that recommendation and decision on the expansion area of Site No. 404 and incorporateds the findings and decision on the expansion area in the original ESEE for Site No. 404.

The purpose of the 1995 hearing before the Board was to determine whether the expansion area should be listed on the County's inventory of aggregate sites and should be classified under the County's Comprehensive Plan and zoning regulations as "SM" (Surface Mining). For the reasons given below, the Board determineds that the expansion area should be classified SM.

In 1999, the owner applied to amend the Program to Meet the Goal set forth in this ESEE and the site plan for this site to expand permissible mining activities during the winter months on both the existing site and the expansion areas. Specifically, the applicant sought approval to allow general mining operations (extraction, hauling, stockpiling, washing and screening) in both areas. In addition, the applicant applied for approval to conduct crushing and blasting operations in accordance with recommendations of the Oregon Department of Fish and Wildlife. The Hearing officer approved the revisions to the ESEE Program to Meet the Goal and the revised site plan. The Hearings Officer's decision was not appealed, and on January 5, 2000, the Board held a de novo hearing on the plan amendment. The Board approved the plan amendment, and this ESEE, with revisions to reflect the changes made following the 1999 applications, was amended and adopted by Ordinance 2000-01.

### PRELIMINARY FINDINGS

Site No. 404 comprises approximately 440 acres and is located approximately one mile north of Highway 20 and one and one-half miles north of Horse Ridge. The site is owned by Howard M. Day. The existing surface mining area and the expansion area are currently zoned SM and WA. Most of the surrounding land is owned by the Bureau of Land Management

The existing surface mining area of Site No. 404 was identified as containing aggregate resources in the County's Goal 5 aggregate inventory adopted by the Board on December 6, 1988. Based on the existing surface mining area's inclusion on the inventory, a hearing was held

to determine whether to zone it under Goal 5 to protect the aggregate resource. It was so zoned on July 16, 1990.

Deschutes County has previously determined that an area within one-half mile of a mining site constitutes the impact area surrounding a mining site. This determination has been accepted by the Department of Land Conservation and Development (DLCD) as evidenced by DLCD's acknowledgement of the County's Comprehensive Plan with respect to Goal 5.

Existing or possible uses within this impact area must be considered when determining whether or not any conflicts with mining exist. Uses within the impact area for the subject parcel include those uses permitted in an EFU zone, including farming and grazing. The subject property and surrounding lands lie within a deer winter range that is designated on the County's Comprehensive Plan maps and specifically identified by the Oregon Department of Fish and Wildlife (ODFW) as the Northern Paulina winter deer range. The County is presently studying the feasibility of siting a new solid waste landfill in this area, as the County's Knott Road landfill is nearing capacity. No specific property has been identified as a landfill site.

Geotechnical evidence suggests that the expansion area in Site 404 contains approximately 800,000 - 2,000,000 cubic yards of hard rock, and 1.5 million cubic yards of gravel, topsoil and fill. The Deschutes County Land Use Hearing's Officer has recommended that the expansion area be included on the Deschutes County Goal 5 Mineral and Aggregate inventory. Based upon the site's quantity and quality of an identified source of mineral and aggregate resources, a hearing was held by the Board to determine whether to zone the expansion area on the site under statewide planning Goal 5 to protect the mineral and aggregate resource.

#### **APPLICABLE CRITERIA**

Criteria applicable to this decision are Statewide Planning Goal 5, its implementing rule, OAR 660-16-000, and Deschutes County Ordinance 88-040, revising the Deschutes County Year 2000 Comprehensive Plan regarding surface mining goals and policies.

#### **HEARING AND EXHIBITS**

Prior to the hearings on this site, staff reports and a Conflict Analysis and ESEE Findings and Decision (the "ESEE") were prepared setting forth the site's aggregate resources and conflicting resource and land use values. The reports and the ESEE, which were entered into the record at the hearings before the Board on August 7, 1989, July 12, 1995, and December 20, 1995, and January 5, 2000, set forth the site's aggregate resources and identified conflicting resources and land uses and their impacts and evaluated the economic, social, energy, and environmental consequences of protecting the mineral resource or in the alternative, protecting the conflicting values or uses.

#### **ESEE FINDINGS AND CONCLUSIONS**

1. Inventory. The County's Goal 5 mineral and aggregate inventory adopted by Ordinance 95-025 established that the site contains 193,000 cubic yards of aggregate resource in the existing surface mining area.

The applicant's geotechnical engineer also prepared a report based on an examination of the existing and expansion areas which establishes that the site (both the existing surface mining area and the hard rock area) has 800,000 to 2 million cubic yards of aggregate rock which appear capable of meeting the Oregon Department of Transportation specifications for road base and asphalt rock and approximately 3 million cubic yards of sand, gravel, and topsoil resources.

As a result of ongoing operations, the applicant has determined the availability of an additional 142,000 cubic yards of aggregate resource located in a basaltic rock outcropping on

the existing surface mining area. Based on a report by the applicant's geotechnical engineer, this additional 142,000 cubic yards is a significant resource which can be used to produce a fair quality commercial-based aggregate and a fair quality drain rock.

2. Site Characteristics. The site is part of a working ranch and is essentially level with rock outcroppings. The site is along the northwestern base of Bear Creek Buttes and no other special features have been noted. It consists of natural grazing land with juniper trees, sagebrush and grasses. There are no improvements or utilities on the subject site other than the onsite ranch house. The surrounding area consists of natural range land with no improvements within one-half mile. The site is currently being mined.

### 3. Conflicts Analysis

#### A. Resource Conflicts.

(a) Wildlife. The Department of Fish and Wildlife (ODFW) has identified this site for deer winter range. The resource element of the County's comprehensive plan shows the site to fall within the North Paulina deer winter range.

The County finds that winter wildlife habitat for deer is a significant Goal 5 resource, in conflict in certain instances with zoning for surface mining. Full protection of the deer winter habitat resource could preclude zoning for surface mining operations as surface mining results in the destruction of deer winter habitat, alters the topography to create deep holes where deer may become trapped by predators, and causes noise, dust emissions and an increased human presence which make the area less suitable for use as deer habitat.

In other surface mining sites in the County located within deer winter range areas, the Board has determined, with advice from ODFW, that surface mining conflicts with deer winter range were of such magnitude as to require closure of such surface mining sites during winter months. With regard to this site, the Board finds, based upon a study conducted by ODFW in 1995, that the conflicts between wintering deer and surface mining activities in the northwesterly area of the North Paulina WA zone (where this site is located) are such that a blanket restriction need not apply to sites falling within that area. The ODFW findings are set forth in a document entitled "ODFW Proposed Changes to Surface Mine Operating Guidelines in Zoned Big Game Winter Ranges." (referred to hereafter as "1995 study").

In the 1995 study, ODFW analyzed the conflicts with surface mining presented by wintering deer in a subarea of the North Paulina deer winter range east of Highway 97 and the Bend Urban Area, south of the Redmond Urban Area and north of Highway 20, as set forth in the map attached hereto as Exhibit A. The subject site falls in the southwesterly corner of that area.

ODFW concluded, as set forth in testimony before the Planning Commission on September 28, 1995 and in its written report submitted to the Planning Commission and this Board, that conflicts between deer and surface mining activity in this area are less severe in the winter months than conflicts in other deer winter range areas in the County. This is due to a combination of: (1) lower development pressures and lower expected development densities in this area than in other designated winter deer ranges; and (2) less frequency of use by deer of this portion of the North Paulina deer winter range in good weather, as measured against the management objective for each area. In particular, ODFW concluded that unlike other deer winter ranges in the County, deer are usually present in this portion of the North Paulina range only when winter weather conditions become severe.

These factors enabled ODFW to recommend to the County in the 1995 study that conflicts between surface mining and deer winter range in this northwesterly area of the North Paulina deer winter range could be managed under a plan that prohibited mining activities only when weather factors indicate that deer will need to use the areas or that such numbers of deer are observed using the area that suspension of mining activities is warranted.



Following four winters of operations under the 1995 revisions to the Program to Meet the Goal, the applicant requested further flexibility in the winter operating restrictions at the site. Based upon its observations and its experience in monitoring this site under the winter restrictions adopted in 1995, ODFW determined: (1) that general mining operations at the site, including extraction, hauling, stockpiling and washing and screening of rock would have minimal adverse effects on the wintering deer population and could therefore be conducted without restriction in the winter months; and (2) that drilling, blasting and crushing activities could occur within certain limitations, as set out in a letter dated October 22, 1999 without adversely impacting wintering deer.

The Board adopts as its findings the findings of ODFW ~~set forth~~ referenced above. Further discussion of the specific program for balancing the conflicting uses will be set forth in Section of this ESEE document entitled "Program to Meet the Goal."

### Resource Conflicts

#### Protection of Aggregate Resource

5. Economic Consequences. The County finds that the economic consequence of protecting the aggregate conflicts with other natural resources is difficult to measure, given that deer habitat does not have any economic values attached to it. Deer winter habitat does not have any economic value attached to it. Deer generate indirect economic benefits to the County when hunters travel to hunt the deer and when tourists travel to the County to hunt deer. Additionally, a few tourists or local residents might travel to the subject property to view wildlife. Economic consequences would tend to be of a secondary nature, such as a reduction in tourists who would come to the site to view.

6. Social Consequences. The County finds that the social consequences of protecting the mineral resource over the other natural resources would be negative. Surface mining would have negative impacts on wildlife. Given that few people live in the area, the social consequences would be felt primarily by those travelling Highway 20 who might be deprived of wildlife viewing opportunities.

7. Environmental Consequences. The County finds that allowing surface mining activities would have adverse environmental consequences on deer habitat. Surface mining activities would reduce the available cover and forage at the site, which would cause increased competition among deer for the remaining forage and cover. Some wildlife would be forced to leave the area to find other food sources and cover, thus adding more competition in other areas for these resources. Increased truck traffic associated with mining activities could increase the mortality rate for the area's wildlife.

In some cases over the long term, surface mining can be beneficial to environmental values in that it gives an opportunity for a site already desecrated by the actions of man or otherwise lacking in natural values to be improved as part of the reclamation process. There is no evidence to suggest that this is one of those instances.

8. Energy Consequences. The County finds that the energy consequences of protecting the mineral resource over the other natural resources would be to increase the energy consumption at the site due to fuel expenditures needed to run the heavy equipment and processing equipment as well as the fuel expended in transportation of the product to its end use. Such energy use would be bound to occur in any event. Aggregate is a resource that is needed in the County and failure to protect the mineral resource at this site would only mean that such energy use would occur elsewhere. This site is conveniently located near the rapidly growing eastside of Bend, where most fill material will be needed. Travel from this location to the eastside of Bend may occur without passing through the center of Bend, as presently done by trucks from

mines located to the west of Bend. This fact will enable trucks to conserve energy as they will not be required to stop and start for the numerous traffic lights in the Bend community. The County finds generally that the energy consequences of not allowing mining of sites convenient to highway construction and maintenance sites such as this one would be greater than if such mining were not allowed, due to the greater distances involved in transporting aggregate to the point of use.

#### Protection of Conflicting Goal 5 Resources

9. Economic Consequences. Protection of the natural resources would preclude mining at the site. Deer winter habitat is in limited supply and the proposed surface mine would cause displacement of wildlife and increased competition in remaining unaffected areas.

The County finds that, as reflected in the goals and policies statement of the County comprehensive plan, the County consumes 2 million cubic yards of aggregate materials each year. Under the laws of supply and demand, failure to protect sufficient amounts of aggregate for the 20-year planning cycle will result in an increased cost in aggregate resources. Increases in mineral and aggregate costs would in turn result in increased construction costs. To the extent that aggregate would need to be hauled in from outside the area, the cost of aggregate would be increased by haulage costs, which the Board finds to be at a rate of 22 cents per cubic yard per mile.

The County finds there to be a total of 73,538,000 cubic yards of sand, gravel and rock in the County, accounting for the inventoried amount of sand, gravel and rock and the amount of those materials located at sites within the urban growth boundary.

The County finds that virtually all sites have either resource or land use conflicts with surface mining. Consequently, if more than 46% of the aggregate sites were to be eliminated due to resource conflicts, the County would not have preserved sufficient aggregate to meet its needs. The County finds that this particular site standing alone is not essential to meeting the County's aggregate needs; however it also recognizes that if enough other sites are eliminated due to conflicts, it could be. Furthermore, the County recognizes the importance of preserving aggregate resources for highway maintenance and construction and finds that failure to protect such sites located along Highway 20 would result in increased costs for maintenance and construction on Highway 20 east of Bend.

The County finds that aggregate resources are a commodity with a market value. Failure to allow mining of such resources would prevent the value of such resources being realized by the local economy. Although the number of jobs represented by the local aggregate industry is small in number, manufacturing and construction jobs tend to pay at higher rates than those found in the service sector and are an important part of the local economy.

Finally, the County finds that the economic impacts of failing to preserve sufficient aggregate reserves is not readily mitigated. Mineral resources are locationally dependent and are finite resources.

10. Social Consequences. Preserving the conflicting natural resources at the site could have negative effects on the general welfare of the County if insufficient amounts of aggregate are preserved. Regardless of the amount of supply readily available, there will always be a demand for aggregate resources. The County's roads would still need improvement and maintenance. A deterioration of the County's roads and streets would negatively impact the livability and quality of life in Deschutes County. The County also recognizes the social consequences of increased building costs that can result from a shortage of readily available aggregate resources.

11. Environmental Consequences. Protection of the conflicting natural resource would

preclude mining at the site. The noise, traffic, human presence and disruption of habitat associated with surface mining is inimicable to the protection of deer habitat. Therefore, protection of the natural resources by precluding mining would have positive environmental consequences. As with the mineral and aggregate resource, wildlife resources are limited by locational factors. Wildlife habitat is continually shrinking in the face of increased development.

12. Energy Consequences. As mentioned above, the energy consequences of protecting the natural resource values of this site and others like it along the Highway 20 corridor would likely involve increased haul distances. The County finds that protection of natural resource values at the site would have negative energy consequences.

13. Relative Values of the Conflicting Resources and Aggregate Use. The County finds that the natural resources and the aggregate resource are important relative to one another. Both aggregate resources and the conflicting natural resource of deer winter habitat are finite resources and locationally dependent. Aggregate resources are in limited supply in the County and there is a need for the aggregate resources along the Highway 20 corridor for highway maintenance and to construction sites. Deer habitat is continually being lost to new development. Therefore, the County finds that both the aggregate resource and the conflicting natural resources should be protected. Accordingly the County finds that under OAR 660-16-010(3) protection of the aggregate resource shall be limited by protection of the natural resources.

### Conflicting Uses

#### Protection of Aggregate Resource

14. Economic Consequences. The economic consequences of protecting the aggregate resource relates to the impacts of surface mining on adjacent uses, the value of aggregate resources as a commercial commodity and the impacts of protecting employment in the mining industry and the development opportunities foregone by development of the site. Cattle ranching by itself could not sustain commercial values.

While the impacts of surface mining may in individual cases have a short term impact on property values of surrounding properties, trend analysis from the tax assessor's records of specific parcels either adjacent to or within one-half mile of both existing and potential surface mines indicates that there were no drastic fluctuations in these property values. This same analysis shows that there has been no appreciable decline in sales of these or similar types of properties.

The impact to surrounding property owners would be if regulations to protect the mineral resource were enacted that would make surrounding properties unbuildable.

One potential cost to the community at large is the cost of road repairs necessitated by increased heavy truck traffic on public roads. This is not viewed as a major problem in this case, due to the fact that the site is to be used as a source for public road projects and would not involve everyday transit of trucks to and from the site as would be the case with commercial sites.

Allowing surface mining activities at this site could have some short-term negative impacts on the ability to utilize this property for other uses. However, nothing indicates that such uses are likely to occur in this case, given the remoteness of the site and nothing indicates that such uses would have a higher economic value than use of this site for surface mining. There is no shortage of land in the County available for development for the uses allowed in the EFU zone, while the supply of aggregate resources in the County is limited. Furthermore, surface mining is a transitional use, and after reclamation the land surface would then become available for other uses.

15. Social Consequences. Preserving this site for the production of mineral and aggregate

resources would have a major impact on the quality of life associated with the other land uses in the area. The negative impacts of noise, fugitive dust emissions, and increased truck traffic would contribute to the impact on the livability, scenic quality and compatibility of other uses in the vicinity of the project. Such impacts may be mitigated, however, through environmental controls on the mining operation.

The County finds that the social consequences of mining activity are low in this case due to the fact that there are few existing land use conflicts and likely to be few such conflicts in the future due to the zoning and public ownership of surrounding lands.

16. Energy Consequences. The County finds that preserving this site for the production of aggregate resources would have overall positive energy consequences. As stated above, the energy consumed on site by mining equipment is likely to occur at some mining site in any event, as there is a basic need for such resources. Haul distances to Highway 20 repair jobs in the area would be minimized. To the extent that surface mining would preclude or discourage development of the surrounding rural lands, the energy consequences would likewise be positive.

17. Environmental Consequences. The County finds that protecting the site for mining would have negative environmental consequences for the same reasons given under paragraph 15 above. The County further finds that such impacts can be mitigated.

#### Protection of Conflicting Land Uses

18. Economic Consequences. With the exception of geothermal development and farm and forest uses, all uses in the surrounding zoning designations are classed as noise sensitive uses for purposes of DEQ noise regulations. Farms uses may be noise sensitive uses in certain situations, such as with livestock operations. Protection of such surrounding conflicting uses can have the effect of precluding or limiting surface mining activity due to noise regulations. Likewise, dust, traffic and aesthetic impacts place constraints on surface mining operations amongst conflicting land uses.

While the elimination of part or all of any one site (except R.L. Coats's site No. 308 in 17-12-18 of 10 million cubic yards) would not significantly impact the total supply of aggregate in Deschutes County, if every site with conflicting uses were eliminated for that reason, Deschutes County would be unable to meet its aggregate needs. Almost every aggregate site has some degree of conflict with surrounding land uses. In light of that fact, each aggregate site takes on importance, as cumulatively, individual sites with conflicts could be eliminated and prevent the County from meeting its aggregate needs.

19. Social Consequences. The County finds that the social consequences of allowing incompatible development to preclude the use of all or part of this site would be the same as those under the Goal 5 discussion above.

20. Environmental Consequences. The environmental consequences of protecting surrounding land uses is mixed. Protecting the conflicting land uses could well preclude mining at the site. This would have positive environmental consequences in that the noise, dust, traffic, and aesthetic impacts associated with surface mining would be prevented. However, protecting the conflicting land uses, especially in a site such as this that is largely undeveloped, can also have negative environmental impacts. Thus, if surrounding areas become developed, they, too, can have a detrimental impact on wildlife habitat, reducing the overall supply of food and cover and increasing competition for adjoining undeveloped habitat.

21. Energy Consequences. Allowing development that would preclude or curtail mining at this and other sites along the Highway 20 corridor would create greater energy consumption because the mineral and aggregate resources for upkeep and improvement of Highway 20 would have to come from sites located further away. Furthermore, increased development at this

remote site would increase energy use from those living in or patronizing the allowed uses. Such development would likely lead to a long term energy commitment because of the life span of such development.

22. Relative Values of Aggregate Use and Conflicting Uses. Based upon the analysis of the ESEE consequences of protecting the identified conflicting uses and protecting the aggregate resource and the relative weight of the conflicting uses and aggregate resource, the County finds that with respect to existing development both the aggregate resource and the conflicting resources and uses are important relative to one another. The aggregate has importance due to its limited availability in the County and its location near its point of use, Highway 20, and on the east site of Bend. Existing conflicting uses, if any, are important in that they represent an economic commitment to development of individual pieces of private property with economic value and expectations. Accordingly, the Board finds that pursuant to OAR 660-16-010 it will limit the use of the aggregate resource at the site in favor of the conflicting resources.

Potential development in the impact area is not significant enough to be considered to be a use that would limit the use of the aggregate resource at this site.

#### Program to Meet the Goal

23. The County finds that in order to protect both the aggregate resource and the conflicting resources and uses, the site will be zoned for surface mining, subject to the following ESEE conditions:

- (a) Setbacks shall be required for potential conflicting residential and other development;
- (b) Noise and visual impacts shall be mitigated by buffering and screening;
- (c) Hours of operation shall be consistent with DEQ standards and applicable county ordinances;
- (d) The site shall not be operated from December 1 through April 30, except only in conformance with the provisions set out below.
  - ~~(1) All surface mining operations, as defined in DCC Chapter 18.52, must shut down during the period December 1 through April 30 unless the operator demonstrates that the following criteria are each continually satisfied:~~
    - ~~A) The snow depth, as measured in compliance with the procedures set forth in Subparagraphs (d) (2) and (d)(4) does not exceed the following:~~
      - (1) From December 1 through April 30, extraction, hauling, stockpiling, washing rock, and screening of rock shall be allowed without restriction.
      - (2) From December 1 through January 31, blasting (for the purposes of these conditions, the term "blasting" shall be viewed as including drilling activities) and crushing shall be allowed during any period of 14 consecutive days if the standard set forth in this subsection can be met. Applicant shall cause the ODFW-prescribed transects to be surveyed for the presence of deer at least once during the seven (7) days prior to the period for which crushing and/or blasting is desired. If any survey conducted during that time period shows the presence of 20 deer or more, blasting and/or crushing shall not be allowed. If applicant desires to crush and/or blast for up to an additional 14-day time period, a new finding must be made in accordance with this section.

(3) From February 1 through April 30, blasting and crushing shall be allowed during any period of 14 consecutive days if one of the alternative standards of this subsection (a) or (b) below can be met. If crushing is allowed, the crusher shall in all cases be located in the "lower pit" (as depicted on the attached map) and crushing activities shall not take place elsewhere. If applicant desires to conduct blasting and/or crushing operations beyond this 14-day period, new findings shall be made in accordance with this subsection (3).

a. Applicant shall cause the ODFW-prescribed transects to be surveyed at least twice for the presence of deer during the seven (7) days prior to the period for which crushing and/or blasting is desired. If the average of any two deer surveys conducted during that time period shows the presence of 20 deer or more, blasting and/or crushing shall not be allowed.

b. Applicant shall cause the ODFW-prescribed transects to be surveyed at least once and shall conduct one snow survey according to the requirements listed below during the 7 days prior to the period for which crushing and/or blasting is desired. If the deer count for any one survey conducted during that time period shows the presence of 20 deer or more and the snow is of a depth of more than the snow threshold listed below, blasting and/or crushing shall not be allowed.

(4) Snow measurements shall be measured against the closest first of month or mid-month threshold at the time of measurements. The first of month and mid-month standards are as follows:

First of Month:

December	6.8 inches
January	11.0 inches
February	14.4 inches
March	9.3 inches
April	4.2 inches

Mid-Month:

November	5.1 inches
December	9.1 inches
January	12.7 inches
February	11.9 inches
March	7.0 inches
April	2.2 inches

~~B) Deer counts, as carried out in accordance with subparagraph (d) (3) and (d) (4) do not exceed 20 deer.~~

~~If no such showing is made, the operator must shut down surface mining operations without the necessity of receiving notice of shut down from the County. Such shutdown shall occur within 48 hours of observance of conditions requiring shutdown.~~

~~(2) Operator shall measure snow depths in the immediate vicinity of the Hungry Flat Snow Course (off Century Drive) maintained by SNRCS on the days as prescribed above, first and 15th day of every month for the time period November 15 through April 15. Measurements shall be submitted to the County and ODFW~~

by 4:00 p.m. on the day the measurements are taken.

- (35) Operator shall take deer counts ~~as prescribed above on the first and fifteenth day of each month from November 15 through April 30~~ at four one-mile transects as have been or may be established in consultation with ODFW within a two-mile radius of the surface mining site. The threshold would be reached by sighting 20 deer at any combination of the four transects. Counts shall be taken at the transects from a vehicle within one and a one-half hours of sunrise. Counts shall be taken and verified as accurate by a wildlife biologist acceptable to the Oregon Department of Fish and Wildlife. Animal presence data shall be provided to ODFW and the County by 12:00 PM on the day the data is gathered.
- ~~(4) Data required by subsection (d)(l) shall be collected for the entire period November 15 through April 15 if operator wishes to be able to operate during any portion of the period between December 1 and April 30.~~
- (56) Notwithstanding the measurement times set forth in ~~(d) (2-5) and (d) (3)~~ above, ODFW may in response to sudden weather changes or major deer movements take measurements at times other than those specified herein. If ODFW determines that the snow depth or animal presence criteria set forth ~~above in subsection (d) (1)~~ have been exceeded, ODFW may notify the County that the criteria have been exceeded. The County shall then notify the operator that all surface mining operations at the site must be shut down within 48 hours of the notification by the County.
- ~~(67) The conditions set forth in this subsection (d) 23 shall be made a condition of approval for any site plan or revised site plan approved for the site plan of Site 404. The deer presence numerical criterion condition as set forth in subparagraph (d) (1) above may be adjusted to account for changing conditions without requiring an amendment to the ESEE. Such adjustments shall be considered to be a modification of the site plan under DCC 22.36.040 and upon application by the operator shall be processed as a land use action.~~
- ~~(78) Operator shall provide to ODFW by June 1 of each year a report of all the data collected during the previous winter season. These conditions shall be subject to review after 5 years to evaluate their effectiveness in protecting deer populations.~~

The County finds that processing on site will be allowed from May 1 through November 30 each year in the existing surface mining area and in the expansion or hard rock area. Blasting and drilling will be allowed in both the expansion area and the original permitted surface mining area in order to extract the significant aggregate resources on site. Between the months of December 1 and April 30, ~~continuation with processing, drilling, blasting and crushing-drilling~~ shall be subject to the winter operating guidelines set forth above.

#### Conflicting Resources

24. The County finds that surface mining use of the site will be limited by conflicting Goal 5 resource considerations by the provisions for screening and buffering to mitigate noise and visual impact. The County finds that the screening and buffering ESEE requirements are met by the screening and buffering requirements in the Deschutes County zoning ordinance.

The Board finds that the ODFW has proposed a program allowing for winter blasting and crushing operations at the site when certain snow conditions and/or certain deer presence indicators have not been exceeded. Those criteria are summarized in the conditions set forth above as part of the Program to Meet the Goal. The Board finds that the numerical criteria are based upon a historical relationship between snowfall and use of the subject portion of the North

Paulina deer winter range and ODFW's management objective for wintering deer in the area. The Board finds that it is appropriate to allow for surface mining sites, such as Site 404, located in the northwestern portion of the North Paulina Deer Winter Range to operate blasting and crushing in the wintertime when the specified indicators have not been exceeded. As was discussed in the conflicts section of this ESEE, the Board finds that the circumstances surrounding this portion of the North Paulina range are such that the deer population can be protected in the winter without requiring a blanket shutdown of mining operations. Hauling, stockpiling, washing rock and screening rock has minimal effects on mule deer and can be allowed in the winter months. Blasting and crushing can have impacts on wintering deer, and Sshutdown of blasting and crushing will be required, however, when the ODFW criteria have been exceeded.

The County finds that such mitigation will not prevent the County from achieving its goal, since the site will be allowed to be mined.

### Aggregate Resource

25. The County will protect the mineral or aggregate resource by zoning the site SM to allow for surface mining activities. The County finds that the Deschutes County Zoning Ordinance allows mining activities such as extraction, processing, crushing, batching, and other mining-dependent uses as permitted or conditional uses and activities in the zone. Conflicting uses, such as residential uses that would irretrievably commit surface area to other uses and otherwise conflict with surface mining are not allowed uses in the zone. Agricultural and forest uses are allowed in recognition that such uses can occur without irretrievably committing the property to uses other than surface mining. In this manner the surface area of the mineral or aggregate resource is protected against establishment of uses that would prevent mining of the aggregate resources in the future. Such protection advances the goal of protection of sufficient aggregate resources to meet the County's aggregate needs.

26. The County finds that imposition of a Surface Mining Impact Area (SMIA) combining zone as a one-half mile buffer surrounding the SM zone, as set forth in The Deschutes County Zoning Ordinance, will further protect the aggregate resource and the County so zones the one-half mile area surrounding the SM zone. The County finds that the SMIA zone limits conflicting uses as follows:

- (a) New conflicting "noise-sensitive and dust-sensitive" uses, such as single-family dwellings, may be sited closer than one-half mile to a SM zone only if the applicant has signed a waiver of remonstrance easement precluding protest of any allowed surface mining activities; and
- (b) In all cases new conflicting "noise sensitive and "dust sensitive" uses are prevented from locating any closer than 250 feet to an SM zone or one-quarter mile from a processing site, whichever is further.

The County finds that these provisions satisfy the ESEE condition that residential and other development be subject to setbacks. The County finds that such a provision is sufficient to protect the aggregate resource from conflicting future development.

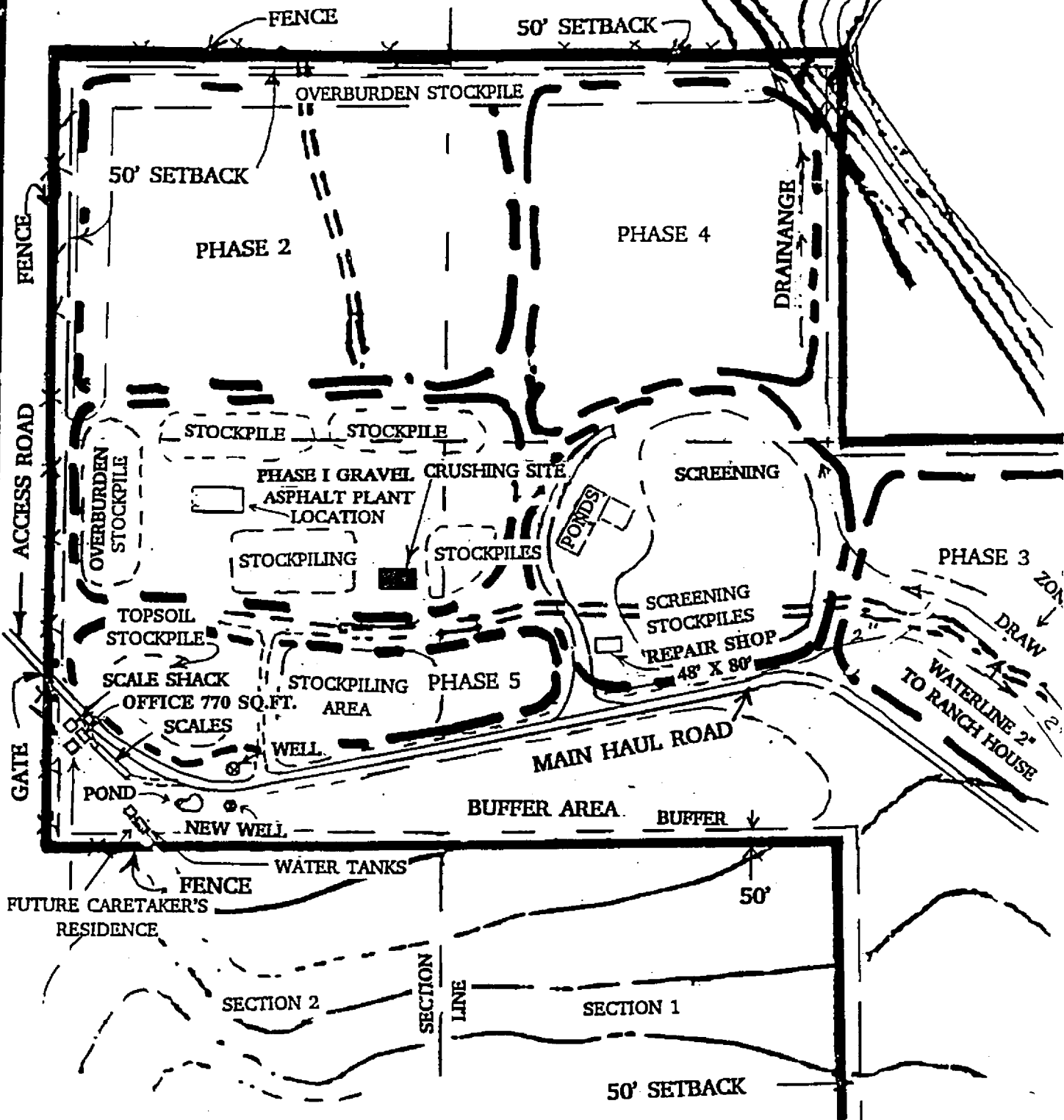
27. The County finds that, in combination with the action taken on other aggregate sites, zoning the site for surface mining and protecting the site from future surrounding conflicting land uses, the County's goal of preserving sufficient aggregate resources to meet the needs of the County has been met.

### Land Uses

28. Existing conflicting land uses are protected by the requirement that newly sited surface mines or expansion of existing surface mines meet screening requirements, setback



requirements, noise standards, adhere to limits on maximum area of surface disturbance and other limitations set forth in the Program to meet the Goal and the Deschutes County Zoning Ordinance.



*lower pit  
crushing area*

**STAGING AREA**  
**MOON MINING OPERATION**  
 PORTION OF  
 SECTION 1, 2 & 12, T 19S, R 14E, W.M.  
 DESCHUTES COUNTY, OREGON

REVISED 11/30/95

FIGURE 2

Approximate Scale  
 1" = 470'



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES  
COUNTY, OREGON

In the Matter of a Plan Amendment to Amend the ESEE )  
and Revisions to the Site Plan for Surface Mining Site 404. )

PA-99-8, MA-99-7,  
SP-99-52

FINDINGS AND DECISION

APPLICANT/  
PROPERTY OWNER:

Howard M. Day  
Hooker Creek Ranch  
65525 Gerking Market Road  
Bend, OR 97701

REQUEST:

The applicant is requesting approval of a plan amendment to amend the ESEE analysis for Surface Mining Site 404 and a revision to the approved surface mining site plan to modify the winter operating limitations for the site.

STAFF CONTACT:

Paul Blikstad, Associate Planner  
Catharine Tilton, Associate Planner

I. Background Findings.

The findings set forth in this document are intended to supplement the findings set forth in the Hearings Officer's decision dated December 20, 1999, on these applications, and where noted, to supplant those findings.

The subject property is Surface Mining Site 404, located on Highway 20, approximately 18 miles east of Bend, as further described in the Hearings Officer's decision, the findings of which are incorporated in this decision by reference. Applicant wishes to relax the winter-time restrictions imposed on the mining operations on the site imposed through the site-specific ESEE for this site. Accordingly, applicant applied for a Plan Amendment to amend the ESEE winter-time operating restrictions for the site and to amend the site plan permit in accordance with proposed revisions to the ESEE.

The Hearings Officer heard both the ESEE amendment and the site plan amendment applications. On December 20, 1999, she issued a decision recommending approval of the plan amendment and a decision approving the site plan modification.

Because the plan amendment application concerns land for which no exception has been taken from either Goal 3 or Goal 4, it was necessary for the Board to hold a denovo hearing on the plan amendment. The Hearings Officer has the authority to make a final decision on the site plan. However, because under the terms of the ESEE, the site plan needs to reflect the ESEE conditions, it was necessary for purposes of the hearing before the Board to treat the site plan as if it were not yet final.

On January 5, 2000, the Board held a de novo hearing on the revisions to the proposed winter-time operating restrictions. The Board heard from representatives of the applicant and from the Oregon Department of Fish and Wildlife. Staff presented some revisions to the proposed ESEE document, including changes to the ESEE conditions in the Program to Meet the Goal. Those changes included changes to clarify that ordinary extraction activities (those not requiring blasting) were to be allowed during the winter

months without restriction; that blasting activities were regarded as including drilling activities; clarifications to the deer count survey requirement and clarifications to achieve internal consistency. Those changes were acceptable to the parties, and the Board approved both the plan amendment and the site plan modification in accordance with the revisions set forth at the Board hearing.

II. Findings.

The Board adopts as its own findings the findings of the Hearings Officer, attached hereto as Exhibit B and incorporated herein by reference, as to both the plan amendment and the site plan amendments, as supplemented herein and except as modified by the revised ESEE document attached hereto as Exhibit A and incorporated herein by reference and the ESEE conditions set forth in the Program to Meet the Goal.


III. Decision.

Based on the foregoing, the Board hereby approves the plan amendment, as set forth in the ESEE document attached hereto as Exhibit A (referred to hereinafter as "the ESEE document") and approves the modification of the site plan permit to include the revised ESEE conditions as set forth in Condition 23 on pages 8-10 of the ESEE document.<sup>1</sup> This decision shall not become effective until such time as the effective date of a County ordinance adopting the amended ESEE document as part of the County Comprehensive Plan.

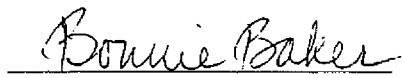
Dated this 5<sup>th</sup> day of January, 2000.


BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
LINDA SWEARINGEN, Chair

  
TOM DeWOLF, Commissioner

ATTEST:

  
Recording Secretary

  
DENNIS R. LUKE, Commissioner

<sup>1</sup> Additions to the ESEE text are set forth as underlined text. Deleted text has been struck out by a line that passes through the text to be deleted.

## CONFLICT ANALYSIS AND ESEE FINDINGS AND DECISION

### Site No. 404

Site No. 404, occupying tax lot 200 located in Township 19 South, Range 14 E.W.M., portions of Sections 1, 2, and 12 consists of two areas which have been separately considered for inclusion in the County's Goal 5 aggregate inventory.

The first area, consisting of 200 acres, is hereinafter referred to as the "existing surface mining area." It came before the Board of Commissioners (Board) for a hearing on August 7, 1989. On October 17, 1989, the Board made a Preliminary decision on this area. By the adoption of findings and an ESEE decision, the Board confirmed and ratified its preliminary decision for the first area of Site No. 404. The ESEE and findings for the existing surface mining area for Site No. 404 was adopted by the Board on July 16, 1990. (Ord. No. 90-029).

The second area of Site No. 404 consisting of 240 acres is situated immediately south of the existing surface mining area and is hereinafter referred to as "the hard rock area" or "the expansion area." The Deschutes County Hearing's Officer conducted a hearing on May 2, 1995 to determine whether the second area should be made a part of site No. 404, listed on the County's inventory of aggregate sites and classified under the County's comprehensive plan and zoning regulations as SM (Surface Mining). The Hearing's Officer made a Preliminary decision (Findings, Recommendation and Decision; County File No. Pa-95-3 and ZC-95-3) regarding the expansion area. The site came before the Board for hearing on December 20-May-2, 1995. By adoption of these findings and this the ESEE decision included in this document, the Board confirmeds and ratifieds that recommendation and decision on the expansion area of Site No. 404 and incorporateds the findings and decision on the expansion area in the original ESEE for Site No. 404.

The purpose of the 1995 hearing before the Board was to determine whether the expansion area should be listed on the County's inventory of aggregate sites and should be classified under the County's Comprehensive Plan and zoning regulations as "SM" (Surface Mining). For the reasons given below, the Board determineds that the expansion area should be classified SM.

In 1999, the owner applied to amend the Program to Meet the Goal set forth in this ESEE and the site plan for this site to expand permissible mining activities during the winter months on both the existing site and the expansion areas. Specifically, the applicant sought approval to allow general mining operations (extraction, hauling, stockpiling, washing and screening) in both areas. In addition, the applicant applied for approval to conduct crushing and blasting operations in accordance with recommendations of the Oregon Department of Fish and Wildlife. The Hearing officer approved the revisions to the ESEE Program to Meet the Goal and the revised site plan. The Hearings Officer's decision was not appealed, and on January 5, 2000, the Board held a de novo hearing on the plan amendment. The Board approved the plan amendment, and this ESEE, with revisions to reflect the changes made following the 1999 applications, was amended and adopted by Ordinance 2000-01.

### PRELIMINARY FINDINGS

Site No. 404 comprises approximately 440 acres and is located approximately one mile north of Highway 20 and one and one-half miles north of Horse Ridge. The site is owned by Howard M. Day. The existing surface mining area and the expansion area are currently zoned SM and WA. Most of the surrounding land is owned by the Bureau of Land Management

The existing surface mining area of Site No. 404 was identified as containing aggregate resources in the County's Goal 5 aggregate inventory adopted by the Board on December 6, 1988. Based on the existing surface mining area's inclusion on the inventory, a hearing was held

to determine whether to zone it under Goal 5 to protect the aggregate resource. It was so zoned on July 16, 1990.

Deschutes County has previously determined that an area within one-half mile of a mining site constitutes the impact area surrounding a mining site. This determination has been accepted by the Department of Land Conservation and Development (DLCD) as evidenced by DLCD's acknowledgement of the County's Comprehensive Plan with respect to Goal 5.

Existing or possible uses within this impact area must be considered when determining whether or not any conflicts with mining exist. Uses within the impact area for the subject parcel include those uses permitted in an EFU zone, including farming and grazing. The subject property and surrounding lands lie within a deer winter range that is designated on the County's Comprehensive Plan maps and specifically identified by the Oregon Department of Fish and Wildlife (ODFW) as the Northern Paulina winter deer range. The County is presently studying the feasibility of siting a new solid waste landfill in this area, as the County's Knott Road landfill is nearing capacity. No specific property has been identified as a landfill site.

Geotechnical evidence suggests that the expansion area in Site 404 contains approximately 800,000 - 2,000,000 cubic yards of hard rock, and 1.5 million cubic yards of gravel, topsoil and fill. The Deschutes County Land Use Hearing's Officer has recommended that the expansion area be included on the Deschutes County Goal 5 Mineral and Aggregate inventory. Based upon the site's quantity and quality of an identified source of mineral and aggregate resources, a hearing was held by the Board to determine whether to zone the expansion area on the site under statewide planning Goal 5 to protect the mineral and aggregate resource.

#### **APPLICABLE CRITERIA**

Criteria applicable to this decision are Statewide Planning Goal 5, its implementing rule, OAR 660-16-000, and Deschutes County Ordinance 88-040, revising the Deschutes County Year 2000 Comprehensive Plan regarding surface mining goals and policies.

#### **HEARING AND EXHIBITS**

Prior to the hearings on this site, staff reports and a Conflict Analysis and ESEE Findings and Decision (the "ESEE") were prepared setting forth the site's aggregate resources and conflicting resource and land use values. The reports and the ESEE, which were entered into the record at the hearings before the Board on August 7, 1989, July 12, 1995, and December 20, 1995, and January 5, 2000, set forth the site's aggregate resources and identified conflicting resources and land uses and their impacts and evaluated the economic, social, energy, and environmental consequences of protecting the mineral resource or in the alternative, protecting the conflicting values or uses.

#### **ESEE FINDINGS AND CONCLUSIONS**

1. Inventory. The County's Goal 5 mineral and aggregate inventory adopted by Ordinance 95-025 established that the site contains 193,000 cubic yards of aggregate resource in the existing surface mining area.

The applicant's geotechnical engineer also prepared a report based on an examination of the existing and expansion areas which establishes that the site (both the existing surface mining area and the hard rock area) has 800,000 to 2 million cubic yards of aggregate rock which appear capable of meeting the Oregon Department of Transportation specifications for road base and asphalt rock and approximately 3 million cubic yards of sand, gravel, and topsoil resources.

As a result of ongoing operations, the applicant has determined the availability of an additional 142,000 cubic yards of aggregate resource located in a basaltic rock outcropping on

the existing surface mining area. Based on a report by the applicant's geotechnical engineer, this additional 142,000 cubic yards is a significant resource which can be used to produce a fair quality commercial-based aggregate and a fair quality drain rock.

2. Site Characteristics. The site is part of a working ranch and is essentially level with rock outcroppings. The site is along the northwestern base of Bear Creek Buttes and no other special features have been noted. It consists of natural grazing land with juniper trees, sagebrush and grasses. There are no improvements or utilities on the subject site other than the onsite ranch house. The surrounding area consists of natural range land with no improvements within one-half mile. The site is currently being mined.

### 3. Conflicts Analysis

#### A. Resource Conflicts.

(a) Wildlife. The Department of Fish and Wildlife (ODFW) has identified this site for deer winter range. The resource element of the County's comprehensive plan shows the site to fall within the North Paulina deer winter range.

The County finds that winter wildlife habitat for deer is a significant Goal 5 resource, in conflict in certain instances with zoning for surface mining. Full protection of the deer winter habitat resource could preclude zoning for surface mining operations as surface mining results in the destruction of deer winter habitat, alters the topography to create deep holes where deer may become trapped by predators, and causes noise, dust emissions and an increased human presence which make the area less suitable for use as deer habitat.

In other surface mining sites in the County located within deer winter range areas, the Board has determined, with advice from ODFW, that surface mining conflicts with deer winter range were of such magnitude as to require closure of such surface mining sites during winter months. With regard to this site, the Board finds, based upon a study conducted by ODFW in 1995, that the conflicts between wintering deer and surface mining activities in the northwesterly area of the North Paulina WA zone (where this site is located) are such that a blanket restriction need not apply to sites falling within that area. The ODFW findings are set forth in a document entitled "ODFW Proposed Changes to Surface Mine Operating Guidelines in Zoned Big Game Winter Ranges." (referred to hereafter as "1995 study").

In the 1995 study, ODFW analyzed the conflicts with surface mining presented by wintering deer in a subarea of the North Paulina deer winter range east of Highway 97 and the Bend Urban Area, south of the Redmond Urban Area and north of Highway 20, as set forth in the map attached hereto as Exhibit A. The subject site falls in the southwesterly corner of that area.

ODFW concluded, as set forth in testimony before the Planning Commission on September 28, 1995 and in its written report submitted to the Planning Commission and this Board, that conflicts between deer and surface mining activity in this area are less severe in the winter months than conflicts in other deer winter range areas in the County. This is due to a combination of: (1) lower development pressures and lower expected development densities in this area than in other designated winter deer ranges; and (2) less frequency of use by deer of this portion of the North Paulina deer winter range in good weather, as measured against the management objective for each area. In particular, ODFW concluded that unlike other deer winter ranges in the County, deer are usually present in this portion of the North Paulina range only when winter weather conditions become severe.

These factors enabled ODFW to recommend to the County in the 1995 study that conflicts between surface mining and deer winter range in this northwesterly area of the North Paulina deer winter range could be managed under a plan that prohibited mining activities only when weather factors indicate that deer will need to use the areas or that such numbers of deer are observed using the area that suspension of mining activities is warranted.

Following four winters of operations under the 1995 revisions to the Program to Meet the Goal, the applicant requested further flexibility in the winter operating restrictions at the site. Based upon its observations and its experience in monitoring this site under the winter restrictions adopted in 1995, ODFW determined: (1) that general mining operations at the site, including extraction, hauling, stockpiling and washing and screening of rock would have minimal adverse effects on the wintering deer population and could therefore be conducted without restriction in the winter months; and (2) that drilling, blasting and crushing activities could occur within certain limitations, as set out in a letter dated October 22, 1999 without adversely impacting wintering deer.

The Board adopts as its findings the findings of ODFW set forth referenced above. Further discussion of the specific program for balancing the conflicting uses will be set forth in Section of this ESEE document entitled "Program to Meet the Goal."

### Resource Conflicts

#### Protection of Aggregate Resource

5. Economic Consequences. The County finds that the economic consequence of protecting the aggregate conflicts with other natural resources is difficult to measure, given that deer habitat does not have any economic values attached to it. Deer winter habitat does not have any economic value attached to it. Deer generate indirect economic benefits to the County when hunters travel to hunt the deer and when tourists travel to the County to hunt deer. Additionally, a few tourists or local residents might travel to the subject property to view wildlife. Economic consequences would tend to be of a secondary nature, such as a reduction in tourists who would come to the site to view.

6. Social Consequences. The County finds that the social consequences of protecting the mineral resource over the other natural resources would be negative. Surface mining would have negative impacts on wildlife. Given that few people live in the area, the social consequences would be felt primarily by those travelling Highway 20 who might be deprived of wildlife viewing opportunities.

7. Environmental Consequences. The County finds that allowing surface mining activities would have adverse environmental consequences on deer habitat. Surface mining activities would reduce the available cover and forage at the site, which would cause increased competition among deer for the remaining forage and cover. Some wildlife would be forced to leave the area to find other food sources and cover, thus adding more competition in other areas for these resources. Increased truck traffic associated with mining activities could increase the mortality rate for the area's wildlife.

In some cases over the long term, surface mining can be beneficial to environmental values in that it gives an opportunity for a site already desecrated by the actions of man or otherwise lacking in natural values to be improved as part of the reclamation process. There is no evidence to suggest that this is one of those instances.

8. Energy Consequences. The County finds that the energy consequences of protecting the mineral resource over the other natural resources would be to increase the energy consumption at the site due to fuel expenditures needed to run the heavy equipment and processing equipment as well as the fuel expended in transportation of the product to its end use. Such energy use would be bound to occur in any event. Aggregate is a resource that is needed in the County and failure to protect the mineral resource at this site would only mean that such energy use would occur elsewhere. This site is conveniently located near the rapidly growing eastside of Bend, where most fill material will be needed. Travel from this location to the eastside of Bend may occur without passing through the center of Bend, as presently done by trucks from



mines located to the west of Bend. This fact will enable trucks to conserve energy as they will not be required to stop and start for the numerous traffic lights in the Bend community. The County finds generally that the energy consequences of not allowing mining of sites convenient to highway construction and maintenance sites such as this one would be greater than if such mining were not allowed, due to the greater distances involved in transporting aggregate to the point of use.

#### Protection of Conflicting Goal 5 Resources

9. Economic Consequences. Protection of the natural resources would preclude mining at the site. Deer winter habitat is in limited supply and the proposed surface mine would cause displacement of wildlife and increased competition in remaining unaffected areas.

The County finds that, as reflected in the goals and policies statement of the County comprehensive plan, the County consumes 2 million cubic yards of aggregate materials each year. Under the laws of supply and demand, failure to protect sufficient amounts of aggregate for the 20-year planning cycle will result in an increased cost in aggregate resources. Increases in mineral and aggregate costs would in turn result in increased construction costs. To the extent that aggregate would need to be hauled in from outside the area, the cost of aggregate would be increased by haulage costs, which the Board finds to be at a rate of 22 cents per cubic yard per mile.

The County finds there to be a total of 73,538,000 cubic yards of sand, gravel and rock in the County, accounting for the inventoried amount of sand, gravel and rock and the amount of those materials located at sites within the urban growth boundary.

The County finds that virtually all sites have either resource or land use conflicts with surface mining. Consequently, if more than 46% of the aggregate sites were to be eliminated due to resource conflicts, the County would not have preserved sufficient aggregate to meet its needs. The County finds that this particular site standing alone is not essential to meeting the County's aggregate needs; however it also recognizes that if enough other sites are eliminated due to conflicts, it could be. Furthermore, the County recognizes the importance of preserving aggregate resources for highway maintenance and construction and finds that failure to protect such sites located along Highway 20 would result in increased costs for maintenance and construction on Highway 20 east of Bend.

The County finds that aggregate resources are a commodity with a market value. Failure to allow mining of such resources would prevent the value of such resources being realized by the local economy. Although the number of jobs represented by the local aggregate industry is small in number, manufacturing and construction jobs tend to pay at higher rates than those found in the service sector and are an important part of the local economy.

Finally, the County finds that the economic impacts of failing to preserve sufficient aggregate reserves is not readily mitigated. Mineral resources are locationally dependent and are finite resources.

10. Social Consequences. Preserving the conflicting natural resources at the site could have negative effects on the general welfare of the County if insufficient amounts of aggregate are preserved. Regardless of the amount of supply readily available, there will always be a demand for aggregate resources. The County's roads would still need improvement and maintenance. A deterioration of the County's roads and streets would negatively impact the livability and quality of life in Deschutes County. The County also recognizes the social consequences of increased building costs that can result from a shortage of readily available aggregate resources.

11. Environmental Consequences. Protection of the conflicting natural resource would

preclude mining at the site. The noise, traffic, human presence and disruption of habitat associated with surface mining is inimicable to the protection of deer habitat. Therefore, protection of the natural resources by precluding mining would have positive environmental consequences. As with the mineral and aggregate resource, wildlife resources are limited by locational factors. Wildlife habitat is continually shrinking in the face of increased development.

12. Energy Consequences. As mentioned above, the energy consequences of protecting the natural resource values of this site and others like it along the Highway 20 corridor would likely involve increased haul distances. The County finds that protection of natural resource values at the site would have negative energy consequences.

13. Relative Values of the Conflicting Resources and Aggregate Use. The County finds that the natural resources and the aggregate resource are important relative to one another. Both aggregate resources and the conflicting natural resource of deer winter habitat are finite resources and locationally dependent. Aggregate resources are in limited supply in the County and there is a need for the aggregate resources along the Highway 20 corridor for highway maintenance and to construction sites. Deer habitat is continually being lost to new development. Therefore, the County finds that both the aggregate resource and the conflicting natural resources should be protected. Accordingly the County finds that under OAR 660-16-010(3) protection of the aggregate resource shall be limited by protection of the natural resources.

### Conflicting Uses

#### Protection of Aggregate Resource

14. Economic Consequences. The economic consequences of protecting the aggregate resource relates to the impacts of surface mining on adjacent uses, the value of aggregate resources as a commercial commodity and the impacts of protecting employment in the mining industry and the development opportunities foregone by development of the site. Cattle ranching by itself could not sustain commercial values.

While the impacts of surface mining may in individual cases have a short term impact on property values of surrounding properties, trend analysis from the tax assessor's records of specific parcels either adjacent to or within one-half mile of both existing and potential surface mines indicates that there were no drastic fluctuations in these property values. This same analysis shows that there has been no appreciable decline in sales of these or similar types of properties.

The impact to surrounding property owners would be if regulations to protect the mineral resource were enacted that would make surrounding properties unbuildable.

One potential cost to the community at large is the cost of road repairs necessitated by increased heavy truck traffic on public roads. This is not viewed as a major problem in this case, due to the fact that the site is to be used as a source for public road projects and would not involve everyday transit of trucks to and from the site as would be the case with commercial sites.

Allowing surface mining activities at this site could have some short-term negative impacts on the ability to utilize this property for other uses. However, nothing indicates that such uses are likely to occur in this case, given the remoteness of the site and nothing indicates that such uses would have a higher economic value than use of this site for surface mining. There is no shortage of land in the County available for development for the uses allowed in the EFU zone, while the supply of aggregate resources in the County is limited. Furthermore, surface mining is a transitional use, and after reclamation the land surface would then become available for other uses.

15. Social Consequences. Preserving this site for the production of mineral and aggregate

resources would have a major impact on the quality of life associated with the other land uses in the area. The negative impacts of noise, fugitive dust emissions, and increased truck traffic would contribute to the impact on the livability, scenic quality and compatibility of other uses in the vicinity of the project. Such impacts may be mitigated, however, through environmental controls on the mining operation.

The County finds that the social consequences of mining activity are low in this case due to the fact that there are few existing land use conflicts and likely to be few such conflicts in the future due to the zoning and public ownership of surrounding lands.

16. Energy Consequences. The County finds that preserving this site for the production of aggregate resources would have overall positive energy consequences. As stated above, the energy consumed on site by mining equipment is likely to occur at some mining site in any event, as there is a basic need for such resources. Haul distances to Highway 20 repair jobs in the area would be minimized. To the extent that surface mining would preclude or discourage development of the surrounding rural lands, the energy consequences would likewise be positive.

17. Environmental Consequences. The County finds that protecting the site for mining would have negative environmental consequences for the same reasons given under paragraph 15 above. The County further finds that such impacts can be mitigated.

#### Protection of Conflicting Land Uses

18. Economic Consequences. With the exception of geothermal development and farm and forest uses, all uses in the surrounding zoning designations are classed as noise sensitive uses for purposes of DEQ noise regulations. Farms uses may be noise sensitive uses in certain situations, such as with livestock operations. Protection of such surrounding conflicting uses can have the effect of precluding or limiting surface mining activity due to noise regulations. Likewise, dust, traffic and aesthetic impacts place constraints on surface mining operations amongst conflicting land uses.

While the elimination of part or all of any one site (except R.L. Coats's site No. 308 in 17-12-18 of 10 million cubic yards) would not significantly impact the total supply of aggregate in Deschutes County, if every site with conflicting uses were eliminated for that reason, Deschutes County would be unable to meet its aggregate needs. Almost every aggregate site has some degree of conflict with surrounding land uses. In light of that fact, each aggregate site takes on importance, as cumulatively, individual sites with conflicts could be eliminated and prevent the County from meeting its aggregate needs.

19. Social Consequences. The County finds that the social consequences of allowing incompatible development to preclude the use of all or part of this site would be the same as those under the Goal 5 discussion above.

20. Environmental Consequences. The environmental consequences of protecting surrounding land uses is mixed. Protecting the conflicting land uses could well preclude mining at the site. This would have positive environmental consequences in that the noise, dust, traffic, and aesthetic impacts associated with surface mining would be prevented. However, protecting the conflicting land uses, especially in a site such as this that is largely undeveloped, can also have negative environmental impacts. Thus, if surrounding areas become developed, they, too, can have a detrimental impact on wildlife habitat, reducing the overall supply of food and cover and increasing competition for adjoining undeveloped habitat.

21. Energy Consequences. Allowing development that would preclude or curtail mining at this and other sites along the Highway 20 corridor would create greater energy consumption because the mineral and aggregate resources for upkeep and improvement of Highway 20 would have to come from sites located further away. Furthermore, increased development at this

remote site would increase energy use from those living in or patronizing the allowed uses. Such development would likely lead to a long term energy commitment because of the life span of such development.

22. Relative Values of Aggregate Use and Conflicting Uses. Based upon the analysis of the ESEE consequences of protecting the identified conflicting uses and protecting the aggregate resource and the relative weight of the conflicting uses and aggregate resource, the County finds that with respect to existing development both the aggregate resource and the conflicting resources and uses are important relative to one another. The aggregate has importance due to its limited availability in the County and its location near its point of use, Highway 20, and on the east site of Bend. Existing conflicting uses, if any, are important in that they represent an economic commitment to development of individual pieces of private property with economic value and expectations. Accordingly, the Board finds that pursuant to OAR 660-16-010 it will limit the use of the aggregate resource at the site in favor of the conflicting resources.

Potential development in the impact area is not significant enough to be considered to be a use that would limit the use of the aggregate resource at this site.

#### Program to Meet the Goal

23. The County finds that in order to protect both the aggregate resource and the conflicting resources and uses, the site will be zoned for surface mining, subject to the following ESEE conditions:

- (a) Setbacks shall be required for potential conflicting residential and other development;
- (b) Noise and visual impacts shall be mitigated by buffering and screening;
- (c) Hours of operation shall be consistent with DEQ standards and applicable county ordinances;
- (d) The site shall not be operated from December 1 through April 30, except only in conformance with the provisions set out below.
  - (1) ~~All surface mining operations, as defined in DCC Chapter 18.52, must shut down during the period December 1 through April 30 unless the operator demonstrates that the following criteria are each continually satisfied:~~
    - A) ~~The snow depth, as measured in compliance with the procedures set forth in Subparagraphs (d) (2) and (d)(4) does not exceed the following:~~
      - (1) From December 1 through April 30, extraction, hauling, stockpiling, washing rock, and screening of rock shall be allowed without restriction.
      - (2) From December 1 through January 31, blasting (for the purposes of these conditions, the term "blasting" shall be viewed as including drilling activities) and crushing shall be allowed during any period of 14 consecutive days if the standard set forth in this subsection can be met. Applicant shall cause the ODFW-prescribed transects to be surveyed for the presence of deer at least once during the seven (7) days prior to the period for which crushing and/or blasting is desired. If any survey conducted during that time period shows the presence of 20 deer or more, blasting and/or crushing shall not be allowed. If applicant desires to crush and/or blast for up to an additional 14-day time period, a new finding must be made in accordance with this section.

(3) From February 1 through April 30, blasting and crushing shall be allowed during any period of 14 consecutive days if one of the alternative standards of this subsection (a) or (b) below can be met. If crushing is allowed, the crusher shall in all cases be located in the "lower pit" (as depicted on the attached map) and crushing activities shall not take place elsewhere. If applicant desires to conduct blasting and/or crushing operations beyond this 14-day period, new findings shall be made in accordance with this subsection (3).

a. Applicant shall cause the ODFW-prescribed transects to be surveyed at least twice for the presence of deer during the seven (7) days prior to the period for which crushing and/or blasting is desired. If the average of any two deer surveys conducted during that time period shows the presence of 20 deer or more, blasting and/or crushing shall not be allowed.

b. Applicant shall cause the ODFW-prescribed transects to be surveyed at least once and shall conduct one snow survey according to the requirements listed below during the 7 days prior to the period for which crushing and/or blasting is desired. If the deer count for any one survey conducted during that time period shows the presence of 20 deer or more and the snow is of a depth of more than the snow threshold listed below, blasting and/or crushing shall not be allowed.

(4) Snow measurements shall be measured against the closest first of month or mid-month threshold at the time of measurements. The first of month and mid-month standards are as follows:

First of Month:

December	6.8 inches
January	11.0 inches
February	14.4 inches
March	9.3 inches
April	4.2 inches

Mid-Month:

November	5.1 inches
December	9.1 inches
January	12.7 inches
February	11.9 inches
March	7.0 inches
April	2.2 inches

~~B) Deer counts, as carried out in accordance with subparagraph (d) (3) and (d) (4) do not exceed 20 deer.~~

~~If no such showing is made, the operator must shut down surface mining operations without the necessity of receiving notice of shut down from the County. Such shutdown shall occur within 48 hours of observance of conditions requiring shutdown.~~

~~(2) Operator shall measure snow depths in the immediate vicinity of the Hungry Flat Snow Course (off Century Drive) maintained by SNRCS on the days as prescribed above, first and 15th day of every month for the time period November 15 through April 15. Measurements shall be submitted to the County and ODFW~~

by 4:00 p.m. on the day the measurements are taken.

- (35) Operator shall take deer counts as prescribed above on the first and fifteenth day of each month from November 15 through April 30 at four one-mile transects as have been or may be established in consultation with ODFW within a two-mile radius of the surface mining site. The threshold would be reached by sighting 20 deer at any combination of the four transects. Counts shall be taken at the transects from a vehicle within one and a one-half hours of sunrise. Counts shall be taken and verified as accurate by a wildlife biologist acceptable to the Oregon Department of Fish and Wildlife. Animal presence data shall be provided to ODFW and the County by 12:00 PM on the day the data is gathered.
- ~~(4) Data required by subsection (d)(1) shall be collected for the entire period November 15 through April 15 if operator wishes to be able to operate during any portion of the period between December 1 and April 30.~~
- (56) Notwithstanding the measurement times set forth in ~~(d) (2-5) and (d) (3)~~ above, ODFW may in response to sudden weather changes or major deer movements take measurements at times other than those specified herein. If ODFW determines that the snow depth or animal presence criteria set forth above in subsection (d) (1) have been exceeded, ODFW may notify the County that the criteria have been exceeded. The County shall then notify the operator that all surface mining operations at the site must be shut down within 48 hours of the notification by the County.
- (67) The conditions set forth in this ~~subsection (d) 23~~ shall be made a condition of approval for any site plan or revised site plan approved ~~for the site plan of Site 404~~. The deer presence numerical criterion condition ~~as set forth in subparagraph (d) (1) above~~ may be adjusted to account for changing conditions without requiring an amendment to the ESEE. Such adjustments shall be considered to be a modification of the site plan under DCC 22.36.040 and upon application by the operator shall be processed as a land use action.
- ~~(78) Operator shall provide to ODFW by June 1 of each year a report of all the data collected during the previous winter season. These conditions shall be subject to review after 5 years to evaluate their effectiveness in protecting deer populations.~~

The County finds that processing on site will be allowed from May 1 through November 30 each year in the existing surface mining area and in the expansion or hard rock area. Blasting and drilling will be allowed in both the expansion area and the original permitted surface mining area in order to extract the significant aggregate resources on site. Between the months of December 1 and April 30, ~~continuation with processing, drilling, blasting and crushing-drilling~~ shall be subject to the winter operating guidelines set forth above.

#### Conflicting Resources

24. The County finds that surface mining use of the site will be limited by conflicting Goal 5 resource considerations by the provisions for screening and buffering to mitigate noise and visual impact. The County finds that the screening and buffering ESEE requirements are met by the screening and buffering requirements in the Deschutes County zoning ordinance.

The Board finds that the ODFW has proposed a program allowing for winter blasting and crushing operations at the site when certain snow conditions and/or certain deer presence indicators have not been exceeded. Those criteria are summarized in the conditions set forth above as part of the Program to Meet the Goal. The Board finds that the numerical criteria are based upon a historical relationship between snowfall and use of the subject portion of the North

Paulina deer winter range and ODFW's management objective for wintering deer in the area. The Board finds that it is appropriate to allow for surface mining sites, such as Site 404, located in the northwestern portion of the North Paulina Deer Winter Range to operate blasting and crushing in the wintertime when the specified indicators have not been exceeded. As was discussed in the conflicts section of this ESEE, the Board finds that the circumstances surrounding this portion of the North Paulina range are such that the deer population can be protected in the winter without requiring a blanket shutdown of mining operations. Hauling, stockpiling, washing rock and screening rock has minimal effects on mule deer and can be allowed in the winter months. Blasting and crushing can have impacts on wintering deer, and Sshutdown of blasting and crushing will be required, however, when the ODFW criteria have been exceeded.

The County finds that such mitigation will not prevent the County from achieving its goal, since the site will be allowed to be mined.

#### Aggregate Resource

25. The County will protect the mineral or aggregate resource by zoning the site SM to allow for surface mining activities. The County finds that the Deschutes County Zoning Ordinance allows mining activities such as extraction, processing, crushing, batching, and other mining-dependent uses as permitted or conditional uses and activities in the zone. Conflicting uses, such as residential uses that would irretrievably commit surface area to other uses and otherwise conflict with surface mining are not allowed uses in the zone. Agricultural and forest uses are allowed in recognition that such uses can occur without irretrievably committing the property to uses other than surface mining. In this manner the surface area of the mineral or aggregate resource is protected against establishment of uses that would prevent mining of the aggregate resources in the future. Such protection advances the goal of protection of sufficient aggregate resources to meet the County's aggregate needs.

26. The County finds that imposition of a Surface Mining Impact Area (SMIA) combining zone as a one-half mile buffer surrounding the SM zone, as set forth in The Deschutes County Zoning Ordinance, will further protect the aggregate resource and the County so zones the one-half mile area surrounding the SM zone. The County finds that the SMIA zone limits conflicting uses as follows:

(a) New conflicting "noise-sensitive and dust-sensitive" uses, such as single-family dwellings, may be sited closer than one-half mile to a SM zone only if the applicant has signed a waiver of remonstrance easement precluding protest of any allowed surface mining activities; and

(b) In all cases new conflicting "noise sensitive and "dust sensitive" uses are prevented from locating any closer than 250 feet to an SM zone or one-quarter mile from a processing site, whichever is further.

The County finds that these provisions satisfy the ESEE condition that residential and other development be subject to setbacks. The County finds that such a provision is sufficient to protect the aggregate resource from conflicting future development.

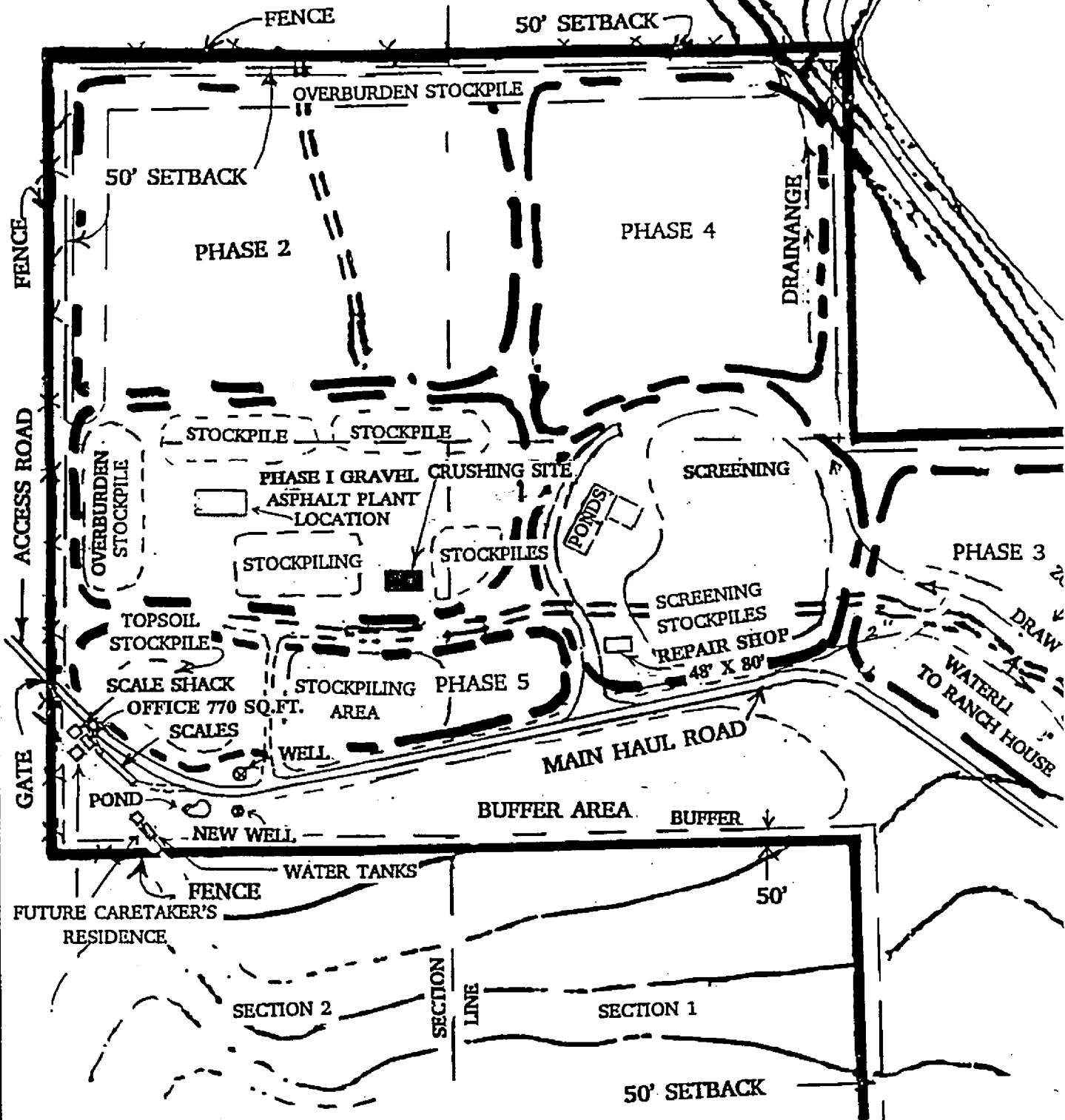
27. The County finds that, in combination with the action taken on other aggregate sites, zoning the site for surface mining and protecting the site from future surrounding conflicting land uses, the County's goal of preserving sufficient aggregate resources to meet the needs of the County has been met.

#### Land Uses

28. Existing conflicting land uses are protected by the requirement that newly sited surface mines or expansion of existing surface mines meet screening requirements, setback

requirements, noise standards, adhere to limits on maximum area of surface disturbance and other limitations set forth in the Program to meet the Goal and the Deschutes County Zoning Ordinance.





*lower pit  
crushing area*

**STAGING AREA**  
**MOON MINING OPERATION**  
 PORTION OF  
 SECTION 1, 2 & 12, T 19S, R 14E, W.M.  
 DESCHUTES COUNTY, OREGON

REVISED 11/30/95

FIGURE 2

Approximate Scale  
 1" = 470'

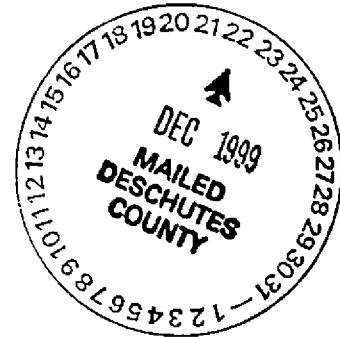


EXHIBIT "B"

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: PA-99-8, MA-99-7, SP-99-52

APPLICANT/  
PROPERTY OWNER: Howard M. Day  
Hooker Creek Ranch  
65525 Gerking Market Road  
Bend, Oregon 97701



ATTORNEY: Nancy Craven  
Ball Janik LLP  
One Main Place  
101 Southwest Main Street, Suite 1100  
Portland, Oregon 97204-1058  
Attorney for Applicant

PROPOSAL: The applicant is requesting approval of a plan amendment to amend the ESEE analysis for Surface Mining Site 404, and a revision to the approved surface mining site plan, to modify the winter operating limitations for the site.

STAFF REVIEWERS: Paul Blikstad, Associate Planner  
Cathy Tilton, Associate Planner

HEARING DATE: December 7, 1999

RECORD CLOSED: December 8, 1999

**I. APPLICABLE STANDARDS AND CRITERIA:**

**A. Title 18 of the Deschutes County Code, Deschutes County Zoning Ordinance**

**1. Chapter 18.52, Surface Mining Zone**

**\* Section 18.52.040, Uses permitted Outright Subject to Site Plan Review**

**\* Section 18.52.050, Conditional Uses Permitted**

**\* Section 18.52.070, Site Plan Review**

**\* Section 18.52.090, Minimum Use Setbacks**

**\* Section 18.52.110, General Operation Standards**

2. Chapter 18.88, Wildlife Area Combining Zone

\* Section 18.88.030, Uses Permitted Outright

\* Section 18.88.040, Uses Permitted Conditionally

B. Deschutes County Year 2000 Comprehensive Plan

C. Oregon Administrative Rules (OAR) Chapter 660, Division 23, Procedures and Requirements for Complying With Goal 5

1. OAR 660-023-0180, Mineral and Aggregate Resources

II. FINDINGS OF FACT:

A. **Location:** The subject property has an assigned address of 26300 Highway 20 East, Bend, and is located approximately 18 miles east of Bend near Horse Ridge. The property is further identified as Tax Lot 200 on Deschutes County Assessor's Map 19-14. It is also identified as Surface Mining Site 404 on the county's comprehensive plan inventory of significant mineral and aggregate resource sites.

B. **Zoning and Plan Designation:** The subject property is zoned and designated Surface Mining (SM). It is also zoned Wildlife Area Combining (WA) because it is located within the North Paulina deer winter range. The property is surrounded by a Surface Mining Impact Area (SMIA) Combining Zone covering all property within one-half mile of the surface mining site.

C. **Site Description:** The subject property encompasses 440 acres, is irregular in shape and is located in three sections. It is developed with several buildings including a "ranch" house/ caretaker's residence near the southeast corner of the site and an office near the southwest corner of the site. The perimeter of the site is fenced and access is controlled by a locked gate near the office. The site has been mined in accordance with a permit issued by the Department of Geology and Mineral Industries (DOGAMI) and prior county land use approvals. The property has access to U.S. Highway 20 from a paved road through adjacent federal land managed by the Bureau of Land Management (BLM). Much of the site has been cleared of native vegetation for mining activity. The site includes a number of excavated areas as well as areas where overburden, topsoil and gravel are stockpiled and equipment is stored. Several previously-mined areas have been reclaimed and re-seeded.

D. **Surrounding Zoning and Land Uses:** The subject property is surrounded by federal land managed by the BLM and zoned Exclusive Farm Use-Horse Ridge Subzone (EFU-HR) and WA. Adjacent to the subject property are two other surface mining sites -- Site 496 owned by Hap Taylor and Sons and Site 600 owned by Ron Robinson.

E. **Procedural History:** The subject property is an active surface mining site that has received a number of county land use approvals, beginning 1988 with the first site plan approval SP-88-56. In 1995, the Deschutes County Board of Commissioners (board) adopted three ordinances establishing the Goal 5 conflict analysis, economic, social environmental and energy (ES EB) analysis and findings, and program to achieve the goal for Site 404. The conflict analysis identified the North Paulina deer winter range as a conflicting resource with the mineral and aggregate resource on the site. In order to balance these conflicting resources, the board adopted as part of the program to achieve the goal winter operating limitations for Site 404 recommended by the Oregon Department of Fish and Wildlife (ODEW). The ESEE findings were adopted by Ordinance 95-081. Subsequently, the county issued an administrative decision approving a conditional use permit (CU-95-29) and site plan (SP-95-22) to allow crushing on Site 404.

On September 10, 1999, the applicant and the owners of the adjacent SM Sites 496 and 600 submitted an application for a plan amendment to further modify the winter operating limitations for the three sites (PA-99-8). On October 29, 1999, the applicant submitted an application to modify the previously-filed plan amendment application in order to eliminate Sites 496 and 600 from consideration (MA-99-7). The applicant also requested an amendment to the surface mining site plan for Site 404 to modify the winter operating limitations (SP-99-52). The record indicates these applications were accepted by the county as complete on November 1, 1999.

Under ORS 215.428(6), the 150-day period for issuance of a final local land use decision does not apply to applications to amend an acknowledged comprehensive plan. Because the site plan application cannot be approved without approval of the requested plan amendment, the Hearings Officer finds the 150-day period under ORS 215.428 also does not apply to the site plan application. However, under the Goal 5 administrative rules, Oregon Administrative Rules (OAR) 660-023-0180(4), the county must complete the local land use process for a post-acknowledgment plan amendment concerning a significant mineral and aggregate resource site - i.e., a site listed on the county's comprehensive plan mineral and aggregate resource site inventory - within 180 days of the date the plan amendment application was deemed complete. Therefore, the Hearings Officer finds the 180-day period applies, that it began to run on November 1, 1999, and that it expires on April 28, 2000.

A public hearing on the applications was held on December 7, 1999. At the public hearing the Hearings Officer received testimony and evidence, left the written evidentiary record open through December 8, 1999, and the applicant waived the 7-day period for final argument pursuant to ORS 197.763. The record closed on December 8, 1999. As of the date of this decision there remain 124 days in the 180-day period.

F. **Proposal:** The applicant is requesting approval to amend the comprehensive plan ESEE findings and the surface mining site plan for Site 404 to modify the winter operating

limitations in accordance with the recommendations of ODFW. Specifically, the applicant is seeking approval to allow general mining operations throughout the winter months and to allow drilling, blasting and crushing during the winter months consistent with specific criteria and reporting requirements recommended by ODFW related to deer counts and snow levels.

- G. Public/Private Agency Comments:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the Deschutes County Road Department (road department) and Property Address Coordinator; ODFW; and the Oregon Department of Environmental Quality (DEQ). These comments are set forth verbatim at pages 2-4 of the Staff Report and are addressed in the findings below. The following agencies had no comment or did not respond to the notices: the Deschutes County Assessor and Sheriff; the Oregon Department of Water Resources, Watermaster-District 11; DOGAMI; the Oregon Department of Transportation (ODOT); the Oregon Department of Land Conservation and Development (DLCD); the BLM; Cascade Natural Gas Company; Central Electric Cooperative; and Pacific Power and Light.
- H. Public Notice and Comments:** The Planning Division mailed notice of the applicant's proposal and the public hearing to the owners of all property located within 250 feet of the subject property. In addition, notice of the public hearing was published in the "Bend Bulletin" newspaper and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed the county had received no letters from the public in response to these notices. In addition, no members of the public testified at the public hearing.
- I. Lot of Record:** The Staff Report states the county recognizes the subject property as a legal lot of record for purposes of land use review.

**III. CONCLUSIONS OF LAW:**

**A. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance**

**1. Chapter 18.52, Surface Mining Zone**

- a. Section 18.52.040, Uses Permitted Outright Subject to Site Plan Review**
- b. Section 18.52.050, Conditional Uses Permitted**

**FINDINGS:** These sections establish the uses permitted outright and conditionally in the SM Zone. As discussed above, the subject property is zoned SM and has been operating as a surface mine for some time, including the extraction, stockpiling, processing and sale of aggregate material. The proposed amendments to the ESEE findings and site plan for Site 404 do not propose any change in the types of uses allowed on the site but rather on their location and timing. The applicant

proposes to modify the ESEE findings and site plan allowing general mining operations throughout the winter months and drilling, blasting and crushing during the winter months consistent with specific criteria and reporting requirements related to deer counts and snow levels, discussed in detail in the findings below. The applicant also proposes to move the location of the crushing operation during a portion of the winter operating season to the "lower" crushing site near the southwest corner of Site 404. The locations of these two crushing sites are shown on site maps included in the record as Hearing Exhibit 1. The Staff Report states, and the Hearings Officer concurs, that no additional conditional use approval is required to move the winter crushing location to the "lower" site since crushing previously was approved for Site 404 at this location.

c. **Section 18.52.070, Site Plan Review**

**Site plan review and final approval of a site plan shall be required before commencement of any use which requires site plan review under section 18.52.040 and 18.52.050(B), and before any expansion of a preexisting or nonconforming site under section 18.52.160.**

d. **Section 18.52.080, Site Plan Application**

**The applicant shall submit the following information for site plan review and approval:**

. . .

- E. **A description of all potential impacts of the mining activities identified by the ESEE analysis for the specific site and how those impacts are addressed.**

**FINDINGS:** Sections 18.52.040 and 18.52.050 require site plan review for all of the surface mining activities that have been approved for Site 404, including extraction, stockpiling and storage, screening, washing and sizing, sale and crushing of mineral and aggregate resources. Site 404 has an approved site plan governing all of these activities, including the winter operating limitations the applicant proposes to modify through these applications. The applicant has proposed to amend the site plan for Site 404 consistent with the proposed amendments to the ESEE findings related to winter operating limitations, discussed in detail in the findings below.

e. **Section 18.52.090, Minimum use setbacks**

**FINDINGS:** This section establishes a 250-foot setback for all surface mining activities, and a quarter-mile setback for storage and processing of mineral and aggregate material, from nearby noise- and dust-sensitive uses in order to assure that mining operations can be conducted in

compliance with DEQ's noise standards.' The record indicates the only dwelling in the vicinity of the subject is the "ranch" house/caretaker's residence on Site 404. The 250-foot setback does not apply to dwellings located on the surface mining site. With respect to the quarter-mile setback for processing, a 1995 noise analysis for Site 404 included in the record indicates the "lower" crushing site proposed to be used during the winter operating season is located 6,500 feet from the dwelling, therefore satisfying this criterion.

**f. Section 18.52.110, General Operation Standards**

**FINDINGS:** This section establishes the operating standards for all surface mining activity on Site 404, including access, screening, air quality, erosion control, streams and drainage, equipment removal, flood plain impacts, noise, hours of operation, drilling and blasting, extraction site size, fish and wildlife protection, surface water management, storage of equipment, security plan and the site's ESEE analysis. As discussed above, the only changes to the operating characteristics of the site proposed by the applicant concern the timing and location of surface mining activities including crushing during the winter operating months. These activities currently are limited under the fish and wildlife protection standard in this section. That standard provides in pertinent part:

**L. Fish and Wildlife Protection**

- 1. Fish and wildlife values and habitat required by the site-specific ESEE analysis to be conserved and protected are conserved and protected by use of methods including, but not limited to: Seasonal operations and access road closures; retention of or creation of vegetative cover and riparian habitat; and erection of fencing or other barriers to protect wildlife from steep extraction site slopes.**

Site 404 is located within the North Paulina deer winter range. The ESEE findings for the site include winter operating limitations to protect wintering deer. The subject applications to amend the ESEE findings and site plan for Site 404 would modify those winter operating limitations in accordance with the recommendations of ODFW. For the reasons set forth in the findings below, incorporated by reference herein, the Hearings Officer finds the applicant's proposed modifications to the winter operating limitations will continue to conserve and protect the identified wildlife values in the deer winter range as required by this section.

---

<sup>1</sup> Sections 18.04.330 and 18.04.775, define "dust-sensitive" and "noise-sensitive uses, respectively, as real property normally used as a residence, school, church, hospital, library and similar uses.

2. **Chapter 18.88, Wildlife Area Combining Zone**

a. **Section 18.88.030, Uses Permitted Outright**

b. **Section 18.88.040, Uses Permitted Conditionally**

**FINDINGS:** The subject property is zoned WA because it is located within the North Paulina deer winter range. These sections provide that the uses permitted outright and conditionally in the underlying SM Zone also are permitted in the WA zone. The applicant does not propose any change to the uses on the subject property -- only to their timing and location. Therefore, the Hearings Officer finds the applicant's proposal is consistent with these sections.

c. **Section 18.88.060, Siting Standards**

d. **Section 18.88.070, Fence standards**

**FINDINGS:** The applicant is not proposing any new dwellings or fences as part of this application. Therefore, the Hearings Officer finds these sections are not applicable.

For the foregoing reasons the Hearings Officer finds the applicant's proposal is consistent with the provisions of the WA Zone.

**B. Deschutes County Year 2000 Comprehensive Plan**

1. **Surface Mining Chapter (Plan, pages 144-155)**

**FINDINGS:** The comprehensive plan contains a surface mining chapter within the resource element which includes goals and policies intended to implement Goal 5, the county's inventory of significant mineral and aggregate resource sites, and the site-specific conflict analyses, ESEE analyses and findings and program to achieve the goal for each inventoried surface mining site. The applicant proposes to amend the comprehensive plan by amending the site-specific ESEE analysis and findings for Site 404 with respect to winter operating limitations. The Hearings Officer finds the proposed plan amendment must be consistent with the following surface mining goals and policies.

**GOAL:** **To protect and utilize appropriately, within the framework established by Statewide Land Use Planning Goal 5 and its implementing administrative rules, the mineral and aggregate resources of Deschutes County, while minimizing the adverse impacts of mineral and aggregate extraction and processing upon the resource impact area.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this goal because the subject property has been designated and zoned SM in order to protect and utilize the mineral and aggregate resource on the site. For the reasons set forth in the findings below,



incorporated by reference herein, I find the proposed amendment to the ESEE findings will minimize adverse impacts on wintering deer in the North Paulina deer winter range from surface mining activities on Site 404.

**POLICIES:**

6. **Land use decisions of the County shall be based upon balanced consideration of the location, availability and value of mineral and aggregate resources, and conflicting resources and uses as designated in the comprehensive plan.**

**FINDINGS:** The county's original decisions to zone Site 404 for surface mining and to allow extraction and processing of mineral and aggregate materials on the site was based upon a site-specific ESEE analysis and findings that balanced consideration of both the mineral and aggregate and wildlife resources. For the reasons set forth in the findings below, incorporated by reference herein, the Hearings Officer finds the applicant's proposed amendment to the ESEE findings concerning winter operating limitations will continue to protect and utilize the mineral and aggregate resource while protecting wintering deer in the North Paulina deer winter range.

11. **The county shall identify and protect sites for the storage, extraction and processing of mineral and aggregate resources within the framework of Goal 5 and its implementing administrative rules.**

**FINDINGS:** The subject property is designated and zoned SM in order to protect the mineral and aggregate resources on the site. The modifications to the ESEE findings proposed by the applicant will allow general mining activity throughout the winter months and drilling, blasting and crushing during the winter months consistent with specific standards related to snow depth and deer numbers. For the reasons set forth in the findings below, incorporated by reference herein, the Hearings Officer finds the proposed modifications will continue to protect wintering deer in the North Paulina deer winter range.

20. **The County may establish additional standards and procedures to minimize visual impact, noise, air and water pollution, natural and operating hazards and other environmental impacts of the extraction and processing of the impact area, where required as a result of a site-specific Goal 5 ESEE analysis. The County shall adopt and apply more stringent operating standards, if required by a site-specific Goal 5 ESEE analysis, where lands in the impact area are zoned residential, landscape management, wildlife or other similar overlay zones, or where such impact area has particularly sensitive resources or uses identified in the comprehensive plan, such as wildlife nesting or spawning sites or intensive recreational uses.**

**FINDINGS:** The ESEE findings for Site 404 include winter operating limitations adopted at the recommendation of ODFW to protect wintering deer in the North Paulina deer winter range. The ESEE findings required the applicant to undertake periodic snow depth and deer count surveys to

determine when and under what circumstances wintering deer use Site 404 and to report the results of those surveys to ODFW on an annual basis. The ESEE findings provided that the winter operating limitations could be reviewed after five years based upon the results of these surveys. The record includes copies of four annual surveys indicating some correlation between snow depth and wintering deer use of Site 404.

Based upon these surveys the applicant has requested, and ODFW has recommended, modifications to the winter operating limitations to better reflect the circumstances under which wintering deer use Site 404 and to give the applicant greater flexibility in operating Site 404 during winter months. In particular, the proposed modifications would allow the applicant to conduct general mining activity including washing, screening and stockpiling material throughout the winter months because these activities do not appear to have any effect on wintering deer. In addition, the applicant proposes to crush mineral and aggregate material on site during winter months when snow depth and deer count surveys conducted in the week prior to the proposed crushing activity indicate wintering deer are not using Site 404 or the vicinity.

The Hearings Officer concurs with staff that it is appropriate to rely on the expertise of ODFW in determining whether the applicant's proposed modifications to the winter operating limitations for Site 404 will adequately protect wintering deer in the North Paulina deer winter range. Based upon ODFW's recommendations, I find the applicant's proposal is consistent with this plan policy.

**2. Fish and Wildlife Chapter (Plan, pages 156-160)**

**FINDINGS:** The county's comprehensive plan contains a fish and wildlife chapter within the resource elements which includes goals and policies also intended to implement Goal 5. The Hearings Officer finds the applicant's proposed amendment to the ESEE findings for Site 404 must be consistent with the following fish and wildlife goals and policies.

**GOALS:**

- 1. To conserve and protect existing fish and wildlife areas.**
- 2. To maintain all species at optimum levels to prevent serious depletion of indigenous species.**
- 3. To develop and manage the lands and waters of this County in a manner that will enhance, where possible, the production and public enjoyment of wildlife.**
- 4. To develop and maintain public access to lands and waters and the wildlife resources thereon.**

5. **To maintain wildlife diversity and habitats that support the wildlife diversity in the County.**

**FINDINGS:** The county has established the WA Zone to implement these goals. The subject property is located within the WA Zone because it lies within the North Paulina deer winter range.

**POLICIES:**

1. **In light of the need to protect deer winter range and to be consistent with plan policies restricting rural sprawl, the Metolius, North Paulina, Tumalo and Grizzly deer winter ranges shall be protected by special zones. The winter ranges shall be designated on the Big Game Habitat-Wildlife Area Combining Zone Map contained in this plan's resource element. . . .**

**FINDINGS:** The North Paulina deer winter range is protected by the WA Zone and the ESEE findings for Site 404 include special winter operating limitations to protect wintering deer within the North Paulina deer winter range.

10. **The County shall notify the Oregon Department of Fish and Wildlife of all land use applications for lands located in the WA Combining Zone or the Sensitive Bird and Mammal Overlay Zone.**

**FINDINGS:** The Planning Division notified ODFW of the applicant's proposals and the record includes comments and recommendations from ODFW.

3. **Site-Specific ESEE Analysis for Site 404**

**FINDINGS:** As discussed above, the conflict analysis, ESEE analysis and findings and program to achieve the goal for Site 404 were adopted by the board by Ordinance 95-081, a copy of which is included in the record. The ordinance includes the following pertinent findings:

**In other surface mining sites in the County located within deer winter range areas, the Board has determined, with advice from ODFW, that surface mining conflicts with deer winter range were of such magnitude as to require closure of such surface mining sites during winter months. With regard to this site, the Board finds, based upon a study conducted by ODFW, that the conflicts between wintering deer and surface mining activities in the northwesterly area of the North Paulina WA zone (where this site is located) are such that a blanket restriction need not apply to sites falling within that area. The ODFW findings are set forth in a document entitled "ODFW Proposed Changes to Surface Mine Operating Guidelines in Zoned Big Game Winter Ranges."**

ODFW analyzed the conflicts with surface mining presented by wintering deer in a subarea of the North Paulina deer winter range east of Highway 97 and the Bend Urban Area, south of the Redmond Urban Area and north of Highway 20, as set forth in the map attached hereto as Exhibit A. The subject site falls in the southwesterly corner of that area.

ODFW concluded, as set forth in testimony before the Planning Commission on September 28, 1995 and in its written report submitted to the Planning Commission and this Board, that conflicts between deer and surface mining activity in this area are less severe in the winter months than conflicts in other deer winter range areas in the County. This is due to a combination of: (1) lower development pressures and lower expected development densities in this area than in other designated winter deer ranges; and (2) less frequency of use by deer of this portion of the North Paulina deer winter range in good weather, as measured against the management objective for each area. In particular, ODFW concluded that unlike other deer winter ranges in the County, deer are usually present in this portion of the North Paulina range only when winter weather conditions become severe.

These factors enabled ODFW to recommend to the County that conflicts between surface mining and deer winter range in this northwesterly area of the North Paulina deer winter range could be managed under a plan that prohibited mining activities only when weather factors indicate that deer will need to use the areas or that such numbers of deer are observed using the area that suspension of such mining activities is warranted.” (Emphasis added.)

The county adopted winter operating limitations for Site 404 that can be summarized as follows. The applicant was not permitted to conduct *any* surface mining operations on Site 404 during winter months unless he could establish through regular snow depth and deer count surveys that wintering deer were not using the site or vicinity. The snow and deer surveys had to be conducted at regular intervals whether or not the applicant proposed to process mineral and aggregate material on site. As discussed in the findings above, the applicant was required to submit annual reports to ODFW summarizing the results of the snow depth and deer count surveys in order for ODEW to assess the effectiveness of these winter operating limitations. The record includes copies of the four annual reports submitted by the applicant to ODFW. In a letter dated October 8, 1999, Steve George, Deschutes District Wildlife Biologist for ODFW, made the following comments:

“The monitoring under the original guidelines was never intended to show a relationship between deer numbers and mining activity. . . Furthermore, the data will never show a relationship to deer activity in relationship to mining activity. There is a tremendous amount of data and research that has proven a negative influence on wintering deer from man’s activity, including the operation of machinery. This means that the operation of a surface mine in a wintering area will negatively effect [sic] wintering mule deer residing in the area. The operation

of trucks and loaders do have a negative effect on deer, however, the operational guidelines which have been established by the County for surface mines in winter ranges minimizes [sic] the effects of surface mining activities on mule deer. Blasting and crushing operations in winter ranges normally pose an unacceptable level of disturbance to wintering deer. These guidelines were developed to allow this type of operation when high levels of wintering deer were not in the area.

We agree with the applicant that stockpiling and hauling of gravel ('general mining activity') could occur throughout the winter with minimal impacts to wintering deer. Furthermore we also agree that crushing and blasting could occur as long as the current guidelines are met."

Mr. George's letter went on to suggest a number of modifications to the current winter operating limitations. The record indicates Mr. George met with the applicant and his representatives on October 20, 1999, to discuss the proposed modifications. By a letter dated October 22, 1999, a copy of which is included in the record, Mr. George recommended that the winter operating conditions for Site 404 set forth in the ESEE findings and decision be amended to read as follows:

- (d) **The site shall be operated from December 1 through April 30 in conformance with the provisions set out below.**
  - (1) **From December through April, hauling, stockpiling, washing rock, and screening of rock have minimal effects on mule deer and are allowed.**
  - (2) **From December through January, blasting and crushing during a two-week period would be allowed if, one deer survey of existing survey routes during the 7 days prior to crushing and/or blasting showed less than 20 deer identified in the current four one-mile transects established in consultation with ODFW within a two-mile radius of the site. If crushing and/or blasting operations needed to extend beyond this two-week period, additional surveys will be required according to the above standard.**
  - (3) **From February through April, blasting and crushing during a two-week period would be allowed if: the crusher is located in the lower pit and one of the following survey methods is used:**
    - a. **Two deer surveys of existing survey routes during the 7 days prior to crushing and/or blasting showed an average of less than the 20 deer (or a total count of less than 40) identified in the required transects. If blasting and/or crushing operations needed to extend beyond this two-week period, additional deer**

surveys shall be required during the 7 days prior to the extended time period.

- b. One deer survey of existing survey routes and one snow survey according to the requirements listed below during the 7 days prior to crushing and/or blasting showed less than 20 deer identified in the survey and less than the snow threshold. If crushing and/or blasting operations need to be extended beyond this two-week period, additional deer and snow surveys shall be required as specified above.

Snow measurements should be measured against the closest first of month or mid month threshold at the time of measurements. The first of month and mid month standards are as follows:

First of Month:

December	6.8 inches
January	11.0 inches
February	14.4 inches
March	9.3 inches
April	4.2 inches

Mid-Month:

November	5.1 inches
December	9.1 inches
January	12.7 inches
February	11.9 inches
March	7.0 inches
April	2.2 inches

If no such showing is made in the months of December through April, no crushing or blasting of minerals shall be allowed on the site during these months.

- (4) Operator shall measure snow depths in the immediate vicinity of the Hungry Flat Snow Course (off Century Drive) maintained by the NRCS on the days as prescribed above. Measurements shall be submitted to the County and ODFW by 4:00 p.m. on the day the measurements are taken.
- (5) Operator shall take deer counts as prescribed above at four one-mile transects established in consultation with ODFW within a two-mile

radius of the surface mining site. The threshold would be reached by sighting 20 deer at any combination of the four transects. Counts shall be taken at the transects from a vehicle within one and one-half hours of sunrise. Counts shall be taken and verified as accurate by a wildlife biologist acceptable to the Oregon Department of Fish and Wildlife. Animal presence data shall be provided to ODFW and the County by 12:00 p.m. on the day the data is gathered.

- (6) Notwithstanding the measurements set forth in (2-4) above, ODFW may in response to sudden weather changes or major deer movements take measurements at times other than those specified herein. If ODFW determines that the snow depth or animal presence criteria set forth above have been exceeded, ODFW may notify the County that the criteria have been exceeded. The County shall then notify the operator that all crushing and blasting operations at the site must be shut down within 48 hours of the notification by the County.
- (7) The conditions set forth in this section shall be made a condition of site plan approval for the site plan for Site 404. The deer presence numerical criterion set forth above may be adjusted to account for changing conditions without requiring an amendment to the ESEE. Such adjustments shall be considered to be a modification of the site plan under DCC 22.36.040 and upon application by the operator shall be processed as a land use action.
- (8) Operator shall provide to ODFW by June 1st of each year a report of all the data collected during the previous winter season.

The County finds that processing on site will be allowed from May 1 through November 30 each year in the existing surface mining area and in the expansion or hard rock area. Blasting and drilling will be allowed in both the expansion area and the original permitted surface mining area in order to extract the significant aggregate resources on site. Between the months of December 1 and April 30, drilling, blasting and crushing shall be subject to the winter operating guidelines set forth above.

These recommended modifications would make the following changes to the applicant's operation of Site 404:

1. the applicant would be allowed to haul, stockpile, wash and screen mineral and aggregate material on Site 404 at any time of the year;
2. the applicant would not be required to conduct deer counts or snow measurements if he does not wish to blast and crush on Site 404 during winter months;

3. if the applicant wishes to blast and crush on Site 404 during December and January he must demonstrate through a deer survey taken in the week prior to the proposed blasting and crushing activity that fewer than 20 deer were counted within a 2-mile radius of the site; and

4. if the applicant wishes to blast and crush on Site 404 during February, March and April, he must crush at the "lower crushing site" as depicted on the site plan map included in the record as Hearing Exhibit 1, *and* he must demonstrate through two deer surveys taken in the week prior to the proposed blasting and crushing activity that fewer than 20 deer were counted within a 2-mile radius of the site, or through one deer survey and a snow depth survey that fewer than 20 deer were counted within a 2-mile radius of the site and that the snow depth did not exceed the depths in the standards set forth above.

Staff and the applicant have recommended that the modifications to the winter operating guidelines for Site 404 recommended by ODFW be adopted. Staff also has recommended that additional amendments to the ESEE findings be adopted to be consistent with ODFW's recommended modifications, as follows with the proposed new language in **bold underline**:

"These factors enabled ODFW to recommend to the County that conflicts between surface mining and deer winter range in this northwesterly area of the North Paulina deer winter range could be managed under a plan that prohibited **blasting and crushing mining activities** only when weather factors indicate that deer will need to use the areas or that such numbers of deer are observed using the area that suspension of **blasting and crushing mining** activities is warranted." (Ordinance 95-081, ESEE Findings and Decision, Page 4, paragraph 4.)

"The Board finds that the ODFW has proposed a program allowing for winter **blasting and crushing** operations at the site when certain snow conditions and/or certain deer presence indicators have not been exceeded. Those criteria are summarized in the conditions set forth above as part of the Program to Meet the Goal. The Board finds that the numerical criteria are based upon a historical relationship between snowfall and use of the subject portion of the North Paulina deer winter range and ODFW's management objective for wintering deer in the area. The Board finds that it is appropriate to allow for surface mining sites, such as Site 404, located in the northwestern portion of the North Paulina Deer Winter Range to operate **blasting and crushing** in the wintertime when the specified indicators have not been exceeded. As was discussed in the conflicts section of this ESEE, the Board finds that the circumstances surrounding this portion of the North Paulina range are such that the deer population can be protected in the winter without requiring a blanket shutdown of mining operations. **Hauling, stockpiling, washing rock and screening rock has minimal effects on mule deer and can be allowed in the winter months. Blasting and crushing can have impacts on wintering deer, and shutdown of blasting and crushing will be required, however, when the ODFW criteria have been exceeded.**" (Ordinance 95-081, ESEE Findings and Decision, Page 13, paragraph 2, item 24.)



Based upon ODFW's recommendations and the evidence in the record, the Hearings Officer finds the winter operating limitations for Site 404, modified as proposed by the applicant, will provide adequate protection for the North Paulina deer winter range resource while also protecting and preserving the mineral and aggregate resource on Site 404, consistent with Goal 5. That is because the record indicates general mining activity during the winter months does not have an effect on wintering deer on or near Site 404, the applicant's decision to crush mineral and aggregate material on Site 404 during winter months will be based on specific data demonstrating whether or not wintering deer are or will need to use Site 404, crushing during the most critical winter period for deer will occur in the "lower" crushing site where impacts will be minimized, and ODFW retains the right to shut down crushing on Site 404 if sudden weather changes or deer movements require such action. Therefore, I find the ESEE findings for Site 404 in the comprehensive plan shall be amended as recommended by staff and ODFW and as set forth above.

**C. Oregon Administrative Rules (OAR) Chapter 660, Division 23, Procedures and Requirements for Complying With Goal 5**

**FINDINGS:** In 1996, the Land Conservation and Development Commission (LCDC) adopted new Goal 5 administrative rules. The new rules are found in OAR 660, Division 23 and replace the rules found in OAR 660, Division 16. OAR 660-023-0250 describes the applicability of the new rules in pertinent part as follows:

- (1) This division replaces OAR 660, division 16, except with regard to cultural resources, and certain PAPAs and periodic review work tasks described in sections (2) and (4) of this rule. Local governments shall follow the procedures and requirements of this division or OAR 660, Division 16, whichever is applicable, in the adoption or amendment of all plan or land use regulations pertaining to Goal 5 resources. The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.**
- (2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, Division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.**
- (3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:
  - (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5; . . .****

The subject plan amendment is a "PAPA" which would amend the comprehensive plan to modify the ESEE findings for the subject property included on the county's inventory of significant mineral and aggregate resource sites. As discussed above, the application was

accepted as complete on November 1, 1999. Therefore, the Hearings Officer find the new Goal 5 administrative rules in OAR 660, Division 23 apply to this application.

The new administrative rules establish standards and procedures for identifying and protecting Goal 5 resources. OAR 660-023-0180 addresses mineral and aggregate resources in particular. Subsection (7) describes the applicability of the new rules to PAPAs as follows:

**Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:**

- (a) Such regulations were acknowledged subsequent to 1989; and**
- (b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review, except as provided under OAR 660-023-0250(7).**

The record indicates the county has not amended its plan or land use regulations to incorporate the new Goal 5 rules. Therefore, the Hearings Officer finds the new rules directly apply to the subject application. However, I find their application is limited because the subject property already is listed in the county's inventory of significant mineral and aggregate resources and the comprehensive plan already contains a conflicting use analysis, ESEE analysis and findings and a program to achieve the goal for Site 404 which include the winter operating limitations at issue in these applications. I find the only provision of OAR 660-023-0180 that is applicable to the applicant's proposal is subsection (4)(e), which provides in pertinent part as follows:

**Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements . . .**

The Hearings Officer finds the "special conditions and procedures regulating mining" that limit winter operations on Site 404 in order to protect the North Paulina deer winter range resource are clear and objective. They describe specific actions the applicant must take in order to be able to crush rock on the site and specific numerical standards for deer counts and snow levels the applicant must establish are met before crushing. In addition, I find including the revised winter operating limitations approved by this decision in the surface mining site plan for Site 404 will not exceed the minimum review or conditions required to assure compliance with Goal 5 and the administrative rules. The revisions will allow the applicant to undertake certain mining activities during the winter operating season that previously were restricted, such as washing and sorting, and will allow the applicant to crush during the winter season if the applicant can demonstrate

such activity will not interfere with wintering deer on or near Site 404. For these reasons, I find the applicant's proposal and the conditions of approval established by this decision are consistent with this administrative rule.

#### **IV. DECISION:**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's proposed amendment to the comprehensive plan ESEE findings and the site plan for Site 404 as follows:

1. The ESEE Findings and Decision for Site 404 attached to Ordinance 95-081 and included in the comprehensive plan, and the site plan for Site 404, shall be amended to include the following language replacing and superseding current winter operating limitation language:

- (1) The site shall be operated from December 1 through April 30 in conformance with the provisions set out below.**
  - (A) From December through April, hauling, stockpiling, washing rock, and screening of rock have minimal effects on mule deer and are allowed.**
  - (B) From December through January, blasting and crushing during a two-week period would be allowed if, one deer survey of existing survey routes during the 7 days prior to crushing and/or blasting showed less than 20 deer identified in the current four one-mile transects established in consultation with ODFW within a two-mile radius of the site. If crushing and/or blasting operations needed to extend beyond this two-week period, additional surveys will be required according to the above standard.**
  - (C) From February through April, blasting and crushing during a two-week period would be allowed if: the crusher is located in the lower pit and one of the following survey methods is used:**
    - a. Two deer surveys of existing survey routes during the 7 days prior to crushing and/or blasting showed an average of less than the 20 deer (or a total count of less than 40) identified in the required transects. If blasting and/or crushing operations needed to extend beyond this two-week period, additional deer surveys shall be required during the 7 days prior to the extended time period.**
    - b. One deer survey of existing survey routes and one snow survey**

according to the requirements listed below during the 7 days prior to crushing and/or blasting showed less than 20 deer identified in the survey and less than the snow threshold. If crushing and/or blasting operations need to be extended beyond this two-week period, additional deer and snow surveys shall be required as specified above.

Snow measurements should be measured against the closest first of month or mid month threshold at the time of measurements. The first of month and mid month standards are as follows:

First of Month:

December	6.8 inches
January	11.0 inches
February	14.4 inches
March	9.3 inches
April	4.2 inches

Mid-Month:

November	5.1 inches
December	9.1 inches
January	12.7 inches
February	11.9 inches
March	7.0 inches
April	2.2 inches

If no such showing is made in the months of December through April, no crushing or blasting of minerals shall be allowed on the site during these months.

- (D) Operator shall measure snow depths in the immediate vicinity of the Hungry Flat Snow Course (off Century Drive) maintained by the NRCS on the days as prescribed above. Measurements shall be submitted to the County and ODFW by 4:00 p.m. on the day the measurements are taken.
- (E) Operator shall take deer counts as prescribed above at four one-mile transects established in consultation with ODFW within a two-mile radius of the surface mining site. The threshold would be reached by sighting 20 deer at any combination of the four transects. Counts shall be taken at the transects from a vehicle within one and one-half hours of sunrise. Counts shall be taken and verified as accurate by a wildlife

biologist acceptable to the Oregon Department of Fish and Wildlife. Animal presence data shall be provided to ODFW and the County by 12:00 p.m. on the day the data is gathered.

- (F) Notwithstanding the measurements set forth in (B through E) above, ODFW may in response to sudden weather changes or major deer movements take measurements at times other than those specified herein. If ODFW determines that the snow depth or animal presence criteria set forth above have been exceeded, ODFW may notify the County that the criteria have been exceeded. The County shall then notify the operator that all crushing and blasting operations at the site must be shut down within 48 hours of the notification by the County.
- (G) The deer presence numerical criterion set forth above may be adjusted to account for changing conditions without requiring an amendment to the ESEE. Such adjustments shall be considered to be a modification of the site plan under DCC 22.36.040 and upon application by the operator shall be processed as a land use action.
- (H) Operator shall provide to ODFW by June 1st of each year a report of all the data collected during the previous winter season.

The County finds that processing on site will be allowed from May 1 through November 30 each year in the existing surface mining area and in the expansion or hard rock area. Blasting and drilling will be allowed in both the expansion area and the original permitted surface mining area in order to extract the significant aggregate resources on site. Between the months of December 1 and April 30, drilling, blasting and crushing shall be subject to the winter operating guidelines set forth above.

2. The ESEE Findings and Decision for Site 404 attached to Ordinance 95-081 and included in the comprehensive plan also shall be amended to include the following language, with the new language in **bold underline**, replacing and superseding the current language:

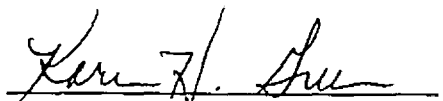
“These factors enabled ODFW to recommend to the County that conflicts between surface mining and deer winter range in this northwesterly area of the North Paulina deer winter range could be managed under a plan that prohibited **blasting and crushing mining activities** only when weather factors indicate that deer will need to use the areas or that such numbers of deer are observed using the area that suspension of **blasting and crushing mining** activities is warranted.” (Ordinance 95-081, ESEE Findings and Decision, Page 4, paragraph 4.)

“The Board finds that the ODFW has proposed a program allowing for winter **blasting and crushing** operations at the site when certain snow conditions and/or certain deer

presence indicators have not been exceeded. Those criteria are summarized in the conditions set forth above as part of the Program to Meet the Goal. The Board finds that the numerical criteria are based upon a historical relationship between snowfall and use of the subject portion of the North Paulina deer winter range and ODFW's management objective for wintering deer in the area. The Board finds that it is appropriate to allow for surface mining sites, such as Site 404, located in the northwestern portion of the North Paulina Deer Winter Range to operate **blasting and crushing** in the wintertime when the specified indicators have not been exceeded. As was discussed in the conflicts section of this ESEE, the Board finds that the circumstances surrounding this portion of the North Paulina range are such that the deer population can be protected in the winter without requiring a blanket shutdown of mining operations. **Hauling, stockpiling, washing rock and screening rock has minimal effects on mule deer and can be allowed in the winter months. Blasting and crushing can have impacts on wintering deer, and shutdown of blasting and crushing will be required, however, when the ODFW criteria have been exceeded.**" (Ordinance 95-081, ESEE Findings and Decision, Page 13, paragraph 2, item 24.)

Dated this 20th day of December, 1999.

Mailed this 22<sup>nd</sup> day of December, 1999.

  
Karen H. Green, Hearings Officer

**THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS  
TIMELY APPEALED.**