



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

05/21/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: Umatilla County Plan Amendment
DLCD File Number 001-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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: Wednesday, June 03, 2009

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: J.R. Cook, Umatilla County
Doug White, DLCD Community Services Specialist
Amanda Punton, DLCD Regional Representative

<paa> YA

2 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



Jurisdiction: Umatilla County Local file number: #T-09-033, #Z-289, #P-097, #C-1148-09
Date of Adoption: 5-12-09 Date Mailed: 5-13-09
Date original Notice of Proposed Amendment was mailed to DLCD: 3-9-09

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

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

Include 1/6 acres on the significant Aggregate Inventory of the Umatilla County Comprehensive Plan. Protect and allow mining of said significant site.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Adopted amendment differs by amount of acres proposed (1/200) vs. amount of acres adopted (1/6)

Plan Map Changed from: North/South County Agriculture to: North/South County Ag/AR

Zone Map Changed from: EFU to: EFU/AR

Location: Map # SN 34, TL # 1400 Acres Involved: 1/2 6

Specify Density: Previous: N/A New: N/A

Applicable Statewide Planning Goals: 3, 5, 6

Was an Exception Adopted? YES NO

DLCD File No.: 001-09 (17415)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

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

BLM, DSL, OURD, DEQ, DOGAMI, DLCD, Klux Rural Fire, Umatilla
County Road

Local Contact: J.R. Cook Phone: (541) 278-6251 Extension: N/A

Address: 216 S.E. 4th street City: Peneltan

Zip Code + 4: 97801 - Email Address: jrcok@umatilla County, Net

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 Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can 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 mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

RECEIVED

MAY 05 2009

THE BOARD OF COMMISSIONERS OF UMATILLA COUNTY

UMATILLA COUNTY
RECORDS

STATE OF OREGON

In the Matter of Amending)	
Comprehensive Plan and)	ORDINANCE NO. 2009-02
Adding Site to Goal 5)	
Aggregate Resources Inventory)	
for Sunny Cove Ranches, Inc.)	

WHEREAS the Board of Commissioners has adopted a Comprehensive Plan for Umatilla County;

WHEREAS an application was received from Sunny Cove Ranches requesting Umatilla County to amend the Comprehensive Plan to add an approximate 6 acre aggregate site to the Goal 5 Aggregate Resources Inventory, to apply the Aggregate Resource Overlay Zone to the site, and also requesting for a conditional use permit for mining;

WHEREAS the Umatilla County Planning Commission held a public hearing on April 16, 2009 to review the application and the proposed amendment to the plan and recommended that the Board of Commissioners adopt the amendments, and approved the conditional use application;

WHEREAS the Board of Commissions held a public hearing on May 5, 2009, to consider the proposed amendments, and voted for the approval of the application and the amendments.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains that the Umatilla County Comprehensive Plan, adopted May 9, 1983, be further amended to add the following aggregate site to the Goal 5 Aggregate Resources Inventory as a significant resource, located on Umatilla County Tax Lot 5N34-1400, consisting of approximately 6 acres, described as follows:

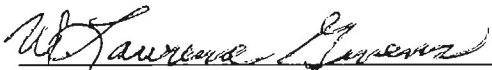
A parcel of land in the Southeast Quarter of Section 8, Township 5 North, Range 34, East of the Willamette Meridian, Umatilla County, Oregon, more particularly described as follows: Beginning at the intersection of Umatilla County Road No. 731, also known as Gerking Flat Road, and the South line of said Section 8; thence westerly along said South line a distance of 350 feet; thence northerly at a right angle to said south line a distance of 400 feet; thence easterly parallel to said

South line a distance of 580 feet; thence southeasterly 435 feet, more or less, to a point on said South line which lies easterly 400 feet from the point of beginning; thence westerly along said south line to the Point of Beginning, containing 6 acres, more or less.

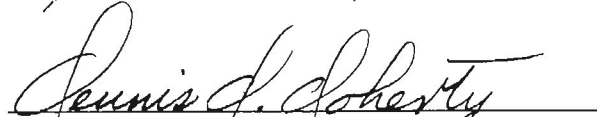
All being East of Willamette Meridian, Umatilla County, Oregon.

DATED this 5th day of May, 2009.

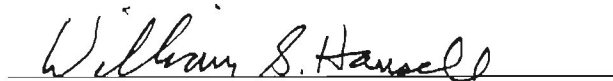
UMATILLA COUNTY BOARD OF COMMISSIONERS



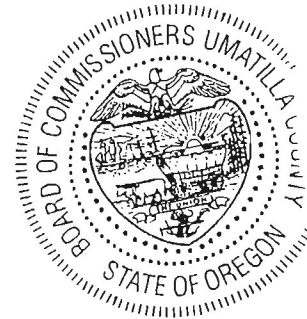
W. Lawrence Givens, Chair



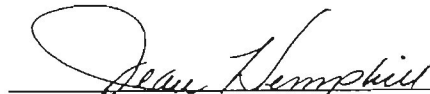
Dennis D. Doherty, Commissioner



William S. Hansell, Commissioner



ATTEST:
OFFICE OF COUNTY RECORDS



Records Officer



**UMATILLA COUNTY BOARD OF COMMISSIONERS
FINAL FINDINGS AND CONCLUSIONS
ROBERT CANNON AGGREGATE APPLICATION
COMPREHENSIVE PLAN TEXT AMENDMENT #T-09-033
COMPREHENSIVE PLAN MAP AMENDMENT #P-097
ZONING MAP AMENDMENT #Z-289
CONDITIONAL USE REQUEST #C-1148-09
MAP 5N 34, TAX LOT 1400**

1. **APPLICANT:** Robert M. Cannon, Sunny Cove Ranches, Inc., 80768 Gerking Flat Road, Athena, Oregon 97813.
2. **OWNERS:** Robert M. Cannon, Sunny Cove Ranches, Inc., 80768 Gerking Flat Road, Athena, Oregon 97813.
3. **LOCATION:** The subject property is located north of Wayland Road, approximately 8.5 miles northwest of the City of Athena.
4. **REQUEST:** Request is to include approximately 6 acres of the subject parcel (Tax Lot #1400 of Map #5N 34) under the Umatilla County Aggregate Resource Overlay Zone, as well as allow aggregate mining and processing at the site and processing on the subject property at a secondary site. The applicant proposes to utilize quality/quantity information to obtain a Comprehensive Plan Text Amendment to classify the site as significant under the Umatilla County Goal 5 inventory. The request involves four separate county applications:
 1. Comprehensive Plan Text Amendment #T-09-033 to include the proposed aggregate site in the Umatilla County Comprehensive Plan as a significant aggregate site.
 2. Comprehensive Plan Map Amendment #P-097 to include a map of the proposed boundaries of the significant aggregate site in the Umatilla County Comprehensive Plan.
 3. Zoning Map Amendment #Z-289 to protect the proposed aggregate site by implementing the Umatilla County Aggregate Resource (AR) Overlay Zone.
 4. Conditional Use Request #C-1148-09 to allow mining on approximately 6 acres of the proposed aggregate site, processing at the site, and processing at a secondary location on the parcel.
6. **ACREAGE:** Tax Lot #1400 = 538.30 acres.
Proposed aggregate site (AR overlay zone) = 6.00 +/- acres
Conditional Use for:
 - mining = +/- 6 acres
 - processing at secondary location = 140.00 +/- acres

- 7. COMP. PLAN/ZONING:** EFU (Exclusive Farm Use), North/South Agricultural Comprehensive Plan designation.
- 8. ACCESS/ROAD TYPE:** The parcel has direct access off of Gerking Flat Road. Gerking Flat Road in the area of the pit is a one-lane County Road (#717).
- 9. EASEMENTS:** The applicant states that there are no utility easements throughout the subject property.
- 10. LAND USE/
LAND FORM:** Columbia Basin Plateau. Portions of the subject property is dry land farmed by the owner. Other portions of the subject property are utilized to graze livestock, or unutilized open space.
- 11. BUILDINGS:** No buildings currently exist, or are proposed with the subject property. Temporary operations office, truck scales, and processing equipment would be located on the proposed aggregate site and secondary processing site during periods of operation following approval.
- 12. ADJACENT:** Large resource zoned parcels surround the subject property. These parcels are mainly utilized for dry land agricultural production, grazing and wind energy generation.
- 13. SOIL TYPE:**
- | Name | Slope/ | Ag Class/
irr/dry | Percent of AOI |
|-------------------------------------|---------|----------------------|----------------|
| 49F: Licksillet-Nansene association | 35-70%/ | -/ VIIs/ | 55% |
| 114C: Walla Walla silt loam | 7-12%/ | IIIe/ IIIe/ | 39% |
| 114B: Walla Walla silt loam | 1-7%/ | Ile/ Ile/ | 6% |
- 14. UTILITIES:** No utilities are necessary to service the proposed development.
- 15. WATER:** No water rights currently exist on the subject property. Dust abatement will be required, and it will be the applicant's responsibility to provide water for dust abatement measures. Water will also be required for processing. Water will be trucked to the subject property.
- No on-site sewage disposal facilities currently exist on the subject property. It is unclear if the applicant will site sanitation facilities on the subject property but should sanitation facilities be proposed, DEQ approval of an on-

site sewage disposal facility will be required.

16. GOAL 5 ISSUES: Scenic, Open Space, Historic, Wildlife, and other resources.

In order to mine aggregate in Umatilla County, a site must either be an active insignificant site, or be listed on the Goal 5 Inventory of the Umatilla County Comprehensive Plan as a significant site. This site is not currently on the Goal 5 Inventory as a significant site. The applicant proposes to utilize quality/quantity information to obtain approval of the plan amendment to add the site to the Umatilla County inventory of significant aggregate sites and obtain Goal 5 protection of the resource. Part of this Goal 5 protection is to include the sight under the AR (Aggregate Resource) overlay zone. The Umatilla County Comprehensive Plan requires that “[a]ny proposed modification to the text or areas of application (maps) of the AR, HAC, CWR or NA overlay zones shall be processed as an amendment to this plan.” Therefore, this application constitutes a Post-Acknowledgement Plan Amendment (PAPA), and is subject to the criteria listed in Oregon Administrative Rules (OAR) 660-023-0030 through 660-023-0050, and OAR 660-023-0180.

See other Goal 5 criteria listed below.

17. OREGON ADMINISTRATIVE RULE CHAPTER 660, DIVISION 23: The standards required to include an aggregate resource in the Umatilla County Goal 5 inventory are provided in underlined italicized text as follows. The responses are listed in normal text.

OAR 660-023-0030: Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when processing under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal resource sites;*
- (b) Determine the adequacy of the information;*
- (c) Determine the significance of resource sites; and*
- (d) Adopt s list of significant resource sites.*

(2) Collect information about Goal 5 resource sites: The inventory process begins with collection of

existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

- (a) Notify state and federal resource management agencies and request current resource information; and
- (b) Consider other information submitted in the local process.

This PAPA pertains to a specific site. Therefore, Umatilla County is not required to collect information regarding other resource sites in the jurisdiction.

(3) Superseded by OAR 660-023-0180 (6)

(4) Superseded by OAR 660-023-0180 (3)

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200 (7) for historic resources, and OAR 660-023-0220 (3) for open space acquisition areas. The approval of this application would include the site on a list of significant aggregate sites in the Umatilla County Comprehensive Plan and Technical Report.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not order to protect such sites under Goal 5. As stated in number 17 (5) above, the application is to include the site as significant in the Umatilla County Comprehensive Plan. Should the Umatilla County Board of Commissioners deem this site to be insignificant, this section shall apply and the subject property could not be approved for mining.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

- (a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and
- (b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first. This does not apply. Development regulations and protection measures are adequate to protect the resource.

(1) Local government shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The ESEE processes are as follows:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

- (a) If no uses conflict with a significant resource site, acknowledgement policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)
- (b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020 (1)).

See Impact Area and protection criteria specific to mineral and aggregate resources under OAR 660-023-0180 (4) below.

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site. See Impact Area criteria and findings under OAR 660-023-0180 (4) below.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address

each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analysis of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation. See ESEE consequences and findings under OAR 660-023-0180 listed below.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

- (a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.
- (b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.
- (c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

According to the setback requirements of the Umatilla County Development Code, dwellings are allowed to exist around an aggregate site as long as they are set back from the aggregate site a minimum of 500 feet. Any new dwellings would be required to be set back a minimum of 500 feet from the nearest boundary of the Aggregate Resource Overlay Zone. Therefore, the Aggregate Resource Overlay Zone allows conflicting uses while protecting the significant aggregate resource site.

OAR 660-023-0050: Programs to Achieve Goal 5

- (1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040 (5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-

0040 (5)(b) and (c). As part of this application, the proposed aggregate site will be included under the Aggregate Resource Overlay Zone. This overlay zone is adopted in the Umatilla County Comprehensive Plan and implemented in the Umatilla County Development Code.

- (2) When a local government has decided to protect a resource site under OAR 660-023-0040 (5) (b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:
- (a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;
 - (b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or
 - (c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

The Umatilla County Development Code meets the criteria in (a) of this provision to protect aggregate resource sites listed in the inventory of the Umatilla County Comprehensive Plan. Setbacks for dwellings shall be no less than 500 feet from an existing aggregate site unless the applicant for the dwelling obtains a written release from the adjacent mining operation or waives the right to remonstrate against normal aggregate mining activities. This setback shall apply around all areas sited under the AR overlay zone.

- (3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:
- (a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and
 - (b) Require a level of protection for the resources that meets or exceeds the intended level determined under OAR 660-023-0040 (5) and 660-023-0050 (1). This section does not apply. The application pertains to an aggregate resource.

OAR 660-023-0180: Mineral and Aggregate Resources

- (3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:
- (a) A representative set of samples of aggregate material in the deposit on the site meets Oregon

Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 500,000 tons outside the Willamette Valley;

(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or

(c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan September 1, 1996.

(d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996 had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or

(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule, unless the average width of the aggregate layer within the mining area exceeds:

(i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;

(ii) 25 feet in Polk, Yamhill, and Clackamas counties; or

(iii) 17 feet in Linn and Benton counties.

The applicant has submitted information that the proposed aggregate site contains material that would meet state specifications (see exhibit #6). Note that the fine aggregate soundness test exceeded the specified percent loss. According to the applicant, the natural fines will be rejected at the front end of the crushing plant and the fines from crushing will be used for production. The natural fines will be utilized in reclamation of the site. According to the applicant, the proposed 6.00 +/- acre aggregate site could produce in excess of 556,000 tons of aggregate material. The aggregate site contains less than 6% high value soil (see soil information in exhibit # 5).

The Board of Commissioners finds that based upon evidence submitted into the record and the testimony received the proposed site is capable of producing enough material (>500,000 tons) to meet the significance standard for quantity.

Regarding the justification on quality, the number of samples was discussed and deliberated by the Planning Commission and Board of Commissioners. The applicants provided one sample report from the site as part of the application packet. The Planning Commission finds that the one set of samples is enough to allow them to make a determination that the entire, 6 acre, site meets the significance standard for quality.

(4) Skipped in findings due to inapplicability.

(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving a significant aggregate site, the process for this decision is set out in subsections (a) through (g) of this section. For a PAPA involving a significant aggregate site, a local government must complete the process within 180 days after receipt of a

complete application that is consistent with section (6) of this rule, or by the earliest date after 180 days allowed by local charter. The process for reaching decisions about aggregate mining is as follows:

(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.

See attached map (exhibit #1) indicating the 1,500-foot impact area around the boundaries of the proposed aggregate site. Besides impacts to County Roads, explained in the paragraph below, factual information was presented at the Planning Commission hearing regarding potential conflicts outside the 1,500' impact area that warrants expanding the study boundaries to the south of the nearest dwelling located on Gerking Flat Road (the Thuul residence). The impact that has been addressed is dust related to hauling and transport operations on Gerking Flat Road.

In addition to the 1,500-foot impact area, lengths of three separate County Roads (Gerking Flat Road, Wayland Road and Waterman Road). To address impacts to the County Road system, Gerking Flat Road, Wayland Road and Waterman Road were assessed, beginning at the access to the subject property and ending at the Athena Holdman Highway (State Highway #334).

(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;

No dwellings currently exist within the impact area of the proposed aggregate site. Any new dwellings would be required to meet a 500' setback from the permit boundaries of the proposed aggregate site.

There is one existing dwelling approximately 2,500' to the south of the subject property and approximately 1.5 miles south of the aggregate boundaries that was considered by the County. The dwelling is approximately 50' from the right-of-way of Gerking Flat Road and could be impacted by dust and noise from both the water trucks and aggregate trucks utilizing Gerking Flat Road. Due to these potential impacts, the Planning Commission recommended amending the proposed road participation agreement (Exhibit #15) to include dust abatement on Gerking Flat Road from the access point to the proposed aggregate site to a location south of the existing dwelling. A specific distance was not discussed and is the responsibility of the applicant to address in the amended road

participation agreement. The Board of Commissioners finds that the recommended amendments to the Road Maintenance and Participation agreement (Exhibit #17) are warranted to limit impacts to the existing dwelling. The Board of Commissioners further finds that the dust abatement be required from the permit boundaries to a distance approximately ¼ mile south of the existing residence (Thuul residence).

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

According to site plans submitted by the applicant, the proposed aggregate site will have two access points off of Wayland Road. The existing access from the south will be maintained through the Wayland Pit. A new access will be provided to the north end of the pit via a service road constructed for wind energy production in the area. From these access points, trucks would travel approximately 1.1 miles to the intersection between Wayland Road and Gerking Flat Road. State Highway 334 is the nearest arterial identified in the Umatilla County Transportation System Plan.

Goal 1 of the Umatilla County Transportation System Plan (TSP) is to “[p]reserve the function, capacity, level of service, and safety of the local streets, county roads, and state highways.” The TSP requires Umatilla County to “include a consideration of a proposal’s impact on existing or planned transportation facilities in all land use decisions.” Section 152.017 of the Umatilla County Development Code, allows the County to require the applicant to provide a traffic impact study to demonstrate the level of impact to surrounding systems if the proposed development meets the definition of significant change in trip generation. This proposed use appears to meet the definition of significant change in trip generation on Wayland Road by generating over 20 trips of vehicles over 10,000 pounds Gross Vehicle Weight (GVW) on gravel roads. Additionally, one notified land owner has commented regarding his concerns with dust and road degradation on Gerking Flat Road.

The applicant has proposed to downsize their original request for extraction from +/- 80 acres to +/- 6 acres to focus on the immediate impacts to the County road system (see exhibit #3 and #4) that could occur as a result of wind turban development. The applicants proposed that the Conditional Use permit sought by the applicant, for extraction, will be limited to those six acres with conditions to assure that Wayland Road, the primary haul road for the initial six acres, is maintained by the applicant. Maintenance requirements would include grading, gravel overlay and dust abatement on the section of Wayland Road between the two proposed access points. The applicant shall enter into

According to Section 152.017(B-C) of the Umatilla County Development Code, the applicant shall be required to provide adequate information regarding a traffic impact study or traffic counts to demonstrate the level of impact to the surrounding system. This study shall be coordinated with the service provider, in this case Umatilla County, and mitigation of the impacts attributable to the

project shall be required. The first phase of quarry development will not require a traffic impact study extending to the nearest arterial. The Planning Commission and Board find that limiting development of a new aggregate site to 6 acres and signing a road participation agreement was not adequate, in and of itself, for them to conclude that impacts to the County road system would be minimized. Additionally, the Planning Commission Board of Commissioners conclude that they can not address the impacts on the road system from just wind turban development, but that the impacts of the pit had to be address as would any pit utilized for commercial extraction, and therefore, impacts to Wayland Road, as well as to Waterman and Gerking Flat Road were discussed. The proposed Road Participation Agreement was amended to address the potential for such impacts. The amended Road Participation Agreement (exhibit #17) addresses the concerns of the Planning Commission and Board of Commissioners and will be required as a condition of approval.

(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments. This paragraph shall not apply after the effective date of commission rules adopted pursuant to Chapter 285, Oregon Laws 1995;

Not applicable. No public airports are in the vicinity of the proposed site.

(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;

There is a permitted aggregate resource site adjacent to this proposed site. Both of these sites have been utilized by Umatilla County as a resource for construction and maintenance of area roadways. The operation of these pits will be consistent with DOGAMI permits that allow zero foot setbacks between the sites to prevent the wasting of the source and facilitate reclamation of the area. New aggregate sites could conflict with existing significant aggregate sites, but conflicts associated with this application cannot currently be quantified.

(E) Conflicts with agricultural practices; and

Agricultural operations by the owner currently exist within the impact area of the proposed aggregate site. The property encompassed by the proposed permit boundary is composed primarily of class VIIs soils with a farmed hill top area of class IIIe, and IIe soils. According to the applicant, production in that area has been approximately 40 bushels/acre every two years. Development of the proposed quarry would not appear to conflict with agricultural practices on the subject property or neighboring parcels.

(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;

Without citizen or agency comment, additional conflicts cannot be quantified. Additional Conditional Use restrictions provided in #21 and 22 below can be used to mitigate additional conflicts that supercede DOGAMI regulations. As a condition of approval of the Conditional Use Permit, the applicant is required to comply with all DOGAMI requirements.

(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

Conflicts between the mining operation and uses/services located within the impact area, as well as other dwellings and land uses in the surrounding area, could be mitigated by the following:

Dust Control: Require the applicant to submit proof of a Air Contaminant Discharge Permit from the Oregon Department of Environmental Quality for the on-site processing operation, and require the applicant to utilize water trucks to abate dust from leaving the subject property and abate dust on the portion of County Roads used for hauling.

Water Discharge: According to DOGAMI, the applicant is required to retain all water generated by storm water run-off, as well as the aggregate operation, on site. If water is leaving the premises, DOGAMI regulates storm water programs for mining operations and will impose a storm water program for the subject property.

Noise: Noise is naturally minimized by the distance from the quarry to any potential conflicting use (e.g. residences, places of business, etc.) The applicant could be required to notify surrounding property owners within the 1,500' impact area 24 hours prior to any blasting that would occur on the subject property. The Planning Commission, or Board of Commissioners could place additional restrictions on blasting to better safeguard surrounding property owners.

Traffic Impact: Traffic impacts can be minimized by the phased development of the quarry and current operating permit limit of six disturbed acres under DOGAMI and a Umatilla County Conditional Use Permit. Each subsequent development, beyond the proposed six acre mining boundary, would require a new Conditional Use Permit, new Traffic Impact Study and mitigation measures.

A road maintenance and participation agreement resulting in zero degradation to Wayland Road, Gerking Flat Road and Waterman Road and County Road #717 will also minimize traffic impacts.

(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:

(A) The degree of adverse effect on existing land uses within the impact area;

(B) Reasonable and practicable measures that could be taken to reduce the identified adverse

effects; and

(C) The probable duration of the mining operation and the proposed post-mining use of the site.

Based on comments from surrounding landowners, and the County Public Works Director, it would appear that all the conflicts identified under subsection (c) could be minimized by conditions of approval imposed through the conditional use process, as well as this PAPA process. Therefore an ESEE analysis appears unnecessary.

(e) 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, except with regard to mining or processing activities:

(A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;

(B) Not requested in the PAPA application; or

(C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

Conditions of approval associated with the PAPA, as well as the Conditional Use permit shall be clear and objective, and shall be required to mitigate conflicts identified by the PAPA process.

(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.

This is applicable. The existing site consists of a mix of resource uses (grazing, dry land wheat, and open space). Post mining reclamation will be re-grading and seeding the subject property with native vegetation for resource uses and open space, which is compatible with and allowed outright in the EFU zone.

(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.

This section does not apply. The application would approve a new processing operation on a new site included in the Goal 5 inventory of the Umatilla County Comprehensive Plan.

(6) Skipped in findings due to inapplicability.

(7) Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site.)

See responses to OAR 660-023-0040 and 660-023-0050 above. With the establishment of an AR overlay zone over the 6 acre extraction area dwellings would not be allowed within 500-feet of boundaries of the overlay.

(8) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-0030(3). An application for a PAPA concerning a significant aggregate site shall be adequate if it includes:

(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;

See (3) above regarding the quantity/quality requirements of the proposed aggregate site.

(b) A conceptual site reclamation plan;

(NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780)

The applicant shall comply with reclamation requirements of DOGAMI. A final reclamation plan shall be submitted to the Umatilla County Planning Department as a Subsequent Condition of Approval (draft reclamation plan included as exhibit #8).

(c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (4)(b)(B) of this rule;

The applicant has proposed to mine 6 acres. The Board of Commissioners has adopted the Road Participation Agreement submitted by the applicants to assure that all potential impacts to County Roads are minimized (see exhibit #17).

(d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and

(e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

The site plan is included. The Planning Commission discussed limiting hours of operation and found that the remote location of the subject property did not warrant limits to hours. A final site plan and legal description of the 6 acre permit boundary will be required as a precedent condition of approval.

(9) 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 local Umatilla County Development Code has not been amended consistent with this OAR. Umatilla County regulations are limited to Conditional Use Permit application and AR Overlay Zone criteria of approval as described below in Sections 18, 19, 20 and 21. Where this OAR was adopted after the county's Work Program for Periodic Review was acknowledged in 1995 subsection (b) shall apply to the county's next Periodic Review.

18. 152.487 CRITERIA FOR ESTABLISHING AN AR OVERLAY ZONE: Section 152.487 of the Umatilla County Development Code lists required criteria the Planning Commission must consider for establishing an AR (Aggregate Resource) Overlay Zone. Criteria are listed and underlined. Evaluation responses are provided in normal text.

- (1) The proposed overlay would be compatible with the Comprehensive Plan; A Plan change application to include the proposed site under the Goal 5 significant aggregate site inventory is in conjunction with this AR Overlay Zone application. Approval of the Comprehensive Plan Text Amendment to establish significance would meet this requirement.
- (2) There is sufficient information supplied by the applicant to show that there exists quantities of aggregate material that would warrant the overlay; See findings under OAR 660-023-0180(3) above regarding quantity/quality.
- (3) The proposed overlay is located at least 1,000 feet from properties zoned for residential use or designated on the Comprehensive Plan for residential; The proposed site is surrounded by lands zoned for Exclusive Farm Use.
- (4) Adequate screening, either natural or man-made, is available for protecting the site from surrounding land uses.
DOGAMI regulates storm water run-off if it is found that water running off the aggregate site. The applicant proposes to slope the quarry floor toward the high wall preventing runoff from leaving the mined area. The Board finds that no additional screening, either natural or man-made, to protect surrounding properties from impacts, was necessary.
- (5) The site complies with Oregon Administrative Rules (OAR) 660-023-0180. The criteria for this rule is discussed in number 17 above.

19. 152.488 MINING REQUIREMENTS: Section 152.488 of the Umatilla County Development Code lists mining requirements for aggregate sites under the AR overlay zone. Criteria are listed and underlined. Evaluation responses are provided in standard text.

(A) All work done in an AR Overlay Zone shall conform to the requirements of the Department of Geology and Mineral Industries or its successor, or the applicable state statutes. The applicant understands that the proposed aggregate site will be subject to the requirements of the Department of Geology and Mineral Industries. As a subsequent condition of approval, the applicant shall provide the Umatilla County Planning Office with an approved reclamation plan from DOGAMI.

(B) In addition to those requirements, an aggregate operation shall comply with the following standards:

(1) For each operation conducted in an AR Overlay Zone the applicant shall provide the Planning Department with a copy of the reclamation plan that is to be submitted under the county's reclamation ordinance;

This criteria does not apply. The county surface mining land reclamation ordinance has been repealed. The Oregon Department of Geology & Mineral Industries (DOGAMI) regulates mining and reclamation. DOGAMI will not authorize activity until the county provides land use approval. The applicant will be required to provide a copy of the DOGAMI Operating Permit as a subsequent condition of approval.

(2) Extraction and sedimentation ponds shall not be allowed within 25 feet of a public road or within 100 feet from a dwelling, unless the extraction is into an area that is above the grade of the road, then extraction may occur to the property line;

This shall be a condition of approval. The extraction shall remain above the grade of County Road #717.

(3) Processing equipment shall not be operated within 500 feet of an existing dwelling at the time of the application of the overlay zone. Dwellings built after an AR Overlay Zone is applied shall not be used when computing this setback.

No dwellings currently exist within 500' of the proposed permit boundary.

(4) All access roads shall be arranged in such a manner as to minimize traffic danger and nuisance to surrounding properties and eliminate dust.

Access to the site is via a single lane County Road. The applicant shall obtain access permits from the County Public Works Director and improve all haul roads to a "D" Industrial/Agricultural County Road Standard

20. LIMITATIONS ON CONDITIONAL USES in Umatilla County's Exclusive Farm Use Zone. Applicable criteria from Section 152.061 of the Umatilla County Development Code. Criteria are listed and underlined. Evaluation responses are provided in normal text.

A. Is compatible with farm uses described in ORS 215.203(2) and the intent and purpose set forth in ORS 215.243, and will not significantly affect other existing resource uses that may be on the remainder of the parcel or on adjacent lands.

Aerial photos of the subject property reveal that the proposed permit boundary is clear of trees. Boundaries between farm operations and the quarry will be buffered with an access road and a berm. It would not appear that the proposed aggregate site would conflict with adjacent farm use, due to these buffers.

B. Does not interfere seriously with accepted farming practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm uses, nor interfere with other resource operations and practices on adjacent lands, and will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Due to the location and buffer proposed by the applicant, the proposed aggregate site would not appear to interfere with accepted farm practices.

C. Does not materially alter the stability of the overall land use pattern of the area.

The approval and operation of this quarry would not appear to alter the stability of the overall land use pattern of the area. The primary use of the land, farming, grazing and wind power production will continue.

D. A Covenant Not to Sue with regard to normal farming practices shall be recorded as a requirement for approval.

This will be required as a condition of approval.

21. STANDARDS FOR REVIEW OF CONDITIONAL USES FOR MINING IN SECTION 152.616 (Q). Applicable criteria from Section 152.616 (Q) of the Umatilla County Development Code are listed and underlined. Evaluation responses are provided in capped text.

1. Extraction holes and sedimentation ponds shall comply with the following restrictions and regulations under the following circumstances:

(a) In an existing pit. 1. They shall not be allowed within 25 feet of a public road, county road or utility right-of-way and shall not exceed over 75% of the total land mass and shall be centered on the property. 2. They shall not be allowed within 100 feet from the part of a property line which is adjacent to a residential dwelling.

The subject parcel is large enough that the 6.00 acre aggregate site would not exceed 75% of the overall land mass. No dwellings currently exist within 1000 feet of all property lines.

2. Processing equipment shall comply with the following restrictions and regulations under the following circumstances:

a) In an existing pit. 1. Equipment shall not be located within 50 feet of a public road, county road or utility right-of-way or further if the Hearings Officer deems it necessary. 2. Equipment shall not be located within 100 feet from any part of a property line which is adjacent to a residential dwelling or further if the Hearings Officer deems it necessary.

As a condition of Approval, equipment shall not be located within 50' of a County Road other than County Road #717. This condition applies to both proposed processing locations.

3. All accesses and their locations shall be arranged in such a manner as to minimize traffic danger and nuisance to surrounding properties;

See #19(B)(4) above.

4. The operation areas shall be screened from adjoining residential districts, county roads, highways and public roads by placement of fences, walls, hedges or a landscaped berm. Native plants and trees shall be emphasized or plants and trees with a demonstrated ability to survive under the conditions required shall be provided. If fencing and/or walls are required by the Planning Designee, they shall be of a type and color that will blend with the surrounding landscape and existing uses. In all instances above, the placement and design shall effectively screen the site from the public;

The aggregate site is located more than one mile from public access roads with limited visibility due to surrounding terrain. No additional screening is anticipated as being necessary.

5. Legible copies of a detailed site plan shall be submitted. Such site plans shall have a horizontal scale that is no smaller than one inch equals 400 feet and shall show, but not be limited to, the corners and boundaries of the mining areas; the area to be mined; the location and names of all streams, natural areas, roads, railroads, and utility facilities within or adjacent to such land; the location of all proposed access roads to be constructed in conducting such operations; if applicable, location of each phase of the mining activity; date; contour interval; and identification of an area by legal subdivisions (section, township and range). If aerial photographs are used as a base, the scale shall be shown;

A preliminary site plan has been provided. The Board may request the applicant provide more detail of the quarry site. Additionally, a final site plan and legal description of the 6 acre aggregate site is required as a condition of approval.

6. Haul roads shall be constructed to a standard approved by the Public Works Director to reduce noise, dust and vibration and be located so that they are not directed through recreational residential or rural residential areas and zones. The Planning Designee may require dust-free site access roads near concentrated residential areas;

Any new roads must be improved to a "D" Industrial/Agricultural County Road Standard (See Exhibit #9). The subject property and all of the surrounding property is zoned EFU.

7. A reclamation plan has been submitted to the County Public Works Director pursuant to the County Surface Mining Land Reclamation Ordinance;

The above (#7) does not apply. The county surface mining land reclamation ordinance has been repealed. The Oregon Department of Geology & Mineral Industries (DOGAMI) regulates mining and reclamation. DOGAMI will not authorize activity until the county provides land use approval. The applicants will be subject to DOGAMI reclamation requirements.

8. The operation complies with all applicable air, noise and water quality regulations of all county, state or federal jurisdictions and all applicable state or federal permits are obtained; The applicant will be required to obtain an Air Contaminant Discharge Permit from the Oregon Department of Environmental Quality prior to placement of a batch plant and rock crusher. It is the applicant's responsibility to obtain any other state or federal permits that may be required for operation of the quarry, PCC batch plant and rock crusher.

9. Rehabilitation of landscape after the extraction operations are completed. The Planning Designee may required a time limit and bond sufficient to cover costs plus 10% of necessary road improvements, vermin, reclamation, landscaping and other pertinent conditions, if in their opinion, such bond or time limit will insure timely rehabilitation and protect the health, safety and public welfare of adjacent property owners and lands. These standards do not apply to any parcel or area as a plan site, work area for an ongoing extractive mining or aggregate operation.

The applicant must comply with the reclamation requirements of DOGAMI. See #7 above. Aggregate sites that are less than one acre in size and/or where less than 5,000 cubic yards of material are removed per year are exempt from DOGAMI reclamation requirements. Based on the applicant's projections, this site will not be exempt from DOGAMI requirements. It is the applicant's responsibility to apply for and obtain necessary DOGAMI permits.

10. All equipment, refuse, and temporary structures shall be removed from the project site and the site left free of debris after completion of the project; This is included as a condition of approval. No structures are proposed. All equipment is portable.

11. The activity complies with other conditions deemed necessary by the Planning Designee which may include, but not be limited to;

(a) Limitations on lighting;

As a condition of approval, all lighting must be directed so as not to interfere with surrounding land use, and must be approved by the County Road Department.

(b) Restrictions on the hours of operations; The applicant has not proposed any limits to operation. Should conditions warrant, the Planning Commission or Board of Commissioners may restrict the hours of operation for the proposed aggregate site, or defer to such time that conditions warrant.

(c) Fencing of open pit areas;

Fencing is not proposed at this time, and provided the quarry is developed with appropriate slopes to prevent caving, fencing would not appear to be necessary at this remote location where there is limited pedestrian or equestrian traffic.

(d) An increase or decrease in required setbacks;

Based on the plot plan setbacks appear to be met (see exhibit #8). Based on concerns, the Board of Commissioners may increase or decrease the required setbacks.

(e) Proof of adequate water supplies for dust control, reclamation, and if required, landscaping.

Water supplies will be trucked in for dust abatement and processing. As noted above, reclamation is regulated by DOGAMI.

(f) Off-site stockpiling and/or processing if located adjacent to concentration of residential dwellings.

DOGAMI does not allow any off-site stockpiling or processing of materials. Stockpiling and processing activities are considered part of the mining process and must be maintained in the area permitted for mining.

(g) An annual review and conditional use renewal fee.

Staff recommends that the applicant be subject to an annual review and fee for the duration of the aggregate operation, to assure compliance with the conditions of approval.

12. Within an Exclusive Farm Use Zone, the requested site must be included on an inventory included in the acknowledged Comprehensive Plan in order for a permit for mining of aggregate to occur.

OAR 660-023-0180 has established a process and criteria for adding a mineral or aggregate resource to a local comprehensive plan. In summary, there are two processes, to declare a site significant and thus protect the aggregate from conflicting uses or, to declare a site not significant and prevent mining of the site. The applicant has applied for a significant designation and for commensurate protection and has submitted information to show the site is significant. Based on the findings included in Section 17 above, relative to Goal 5, this site appears to meet the minimum requirements to qualify as a significant goal 5 resource.

22. IN ADDITION TO THE REQUIREMENTS AND CRITERIA THE PLANNING DIRECTOR MAY IMPOSE ONE OR MORE OF THE CONDITIONS IN THIS SECTION UPON A FINDING WHEN CIRCUMSTANCES WARRANT ADDITIONAL RESTRICTIONS. THE CRITERIA FROM SECTION 152.615 ARE LISTED BELOW:

1. Limiting the manner in which the use is conducted, including restricting hours of operation and restraints to minimize such environmental effects as noise, vibration, air pollution, glare or odor; See staff comments under 660-023-0180 (4) (c) above.
2. Establishing a special yard, other open space or lot area or dimension.
3. Designating the size, number, location and nature of vehicle access points;

4. Increasing the required street dedication roadway width or improvements within the street right-of way;
5. Increasing the required street dedication, roadway width or improvements within the street right-of way;
6. Designating the size, location, screening, drainage, surfacing or other improvement of a parking or loading area;
7. Limiting or otherwise designating the number, size, location, height and lighting of signs;
8. Limiting the location and intensity of outdoor lighting and requiring its shielding;
9. Requiring diking, screening, landscaping or other methods to protect adjacent or nearby property and designating standards of installation and maintenance;
10. Designating the size, height, location and materials for a fence;
11. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources;

The Board finds that no additional conditions are necessary to minimize conflicts addressed in OAR 660-023-0180 provided above.

23. PROPERTY OWNERS NOTIFIED:

*45-day notice to DLCD: March 9, 2009
for Board of Commissioners hearing: April 20, 2009
for Planning Commission hearing: March 27, 2009*

24. HEARING DATE: *Board of Commissioners Hearing: May 5, 2009
Planning Commission Hearing: April 16, 2009*

25. AGENCIES NOTIFIED: Soil and Water Conservation District, Oregon Fish & Wildlife, Confederated Tribes of the Umatilla Indian Reservation, County Public Works Director, Oregon Department of Land Conservation and Development, Oregon Division of State Lands, Oregon Department of Agriculture, Environmental Protection Agency, Oregon Department of Geology & Mineral Industries, Oregon Water Resources Department, Oregon Department of Environmental Quality and County Assessor.

26. COMMENTS RECEIVED: Comments received included in exhibits #13, #14 and in the minutes of the April 16, 2009 Planning Commission hearing and May 5, 2009 BoC hearing.

27. ACTION OF THE PLANNING COMMISSION: Based on the above findings and conclusions, and additional measures to minimize County Road impacts the Umatilla County Planning Commission unanimously voted to recommend approval of the aggregate extraction/processing request to the Umatilla County Board of Commissioners.

28. ACTION OF THE BOARD OF COMMISSIONERS:

The Umatilla County Board of County Commissioners has found that based on the above Final Findings, the following amendments are approved:

Comprehensive Plan Text Amendment (File #T-09-033), Comprehensive Plan Map #P-097 and Zoning Map Amendment (File #Z-289) for property located on Assessor's Map #4N 37, TAX LOT #2101 & #1301.

**29. THE CONDITIONAL USE REQUEST (#C-1148-09) IS APPROVED
SUBJECT TO APPROVAL OF THE GOAL 5 INVENTORY AMENDMENT, THE AR
OVERLAY ZONING MAP AMENDMENT AND THE FOLLOWING CONDITIONS**

The following "**precedent conditions**" must be completed prior to the issuance of final approval or a Zoning Permit, which is required before the applicant may begin construction or operation of the quarry:

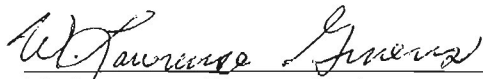
1. The applicant and landowner shall sign and record a Covenant Not To Sue agreement with regard to normal farming practices.
2. Obtain or verify from the Public Works Department Access Permits for the driveways/roadways.
3. Enter into a Road Participation Agreement with the County Road Department, on terms agreeable by both parties for the future mitigation of impacts to Wayland Road, Gerking Flat Road and Waterman Road and County Road #717.
4. Submit a final plot plan showing potential haul roads in the permitted area.
5. Submit a final legal description of the 6 acre site to be included in the Umatilla County Goal 5 inventory.
6. Provide documentation that a legal water source has been secured to meet the daily needs of the mining operation.

The following "**subsequent conditions**" apply following final approval:

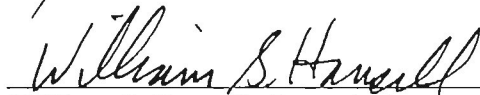
7. Comply with any on-site or off-site improvements that may be recommended by the Public Works Director. Example of off-site improvement may be to make certain improvements to the road approach so as to minimize impact to the county roadway, or, to abate excess dust from leaving the subject property.
8. The applicant shall remove all debris at the conclusion of mining operations and leave the extraction area in a safe and useable condition.

9. Utilize overburden contained within the permit boundary to berm the perimeter of the aggregate site.
10. If lighting is added, approval by the County Public Works Department is required.
11. All stockpiled materials and crushing operations shall remain on the aggregate site or alternative site permitted for processing only.
12. Notify property owners within 2,500-feet of the aggregate site 24 hours prior to any blasting.
13. The Planning Department will require a yearly review and fee for the first three years of operation. If requirements are being met, subsequent reviews could be deferred unless warranted by complaints or threat of danger.
14. Equipment shall not be located within 50' of any utility right of ways, or County Roads, and extraction holes shall not be located within 25' of any utility right of ways.
15. Provide adequate on-site and off-site dust abatement during times of operation.
16. Maintain an on-going spill response plan for all contaminants stored or utilized within the permit boundaries.
17. A zero-foot setback is recognized along the south property line of the permitted aggregate site.

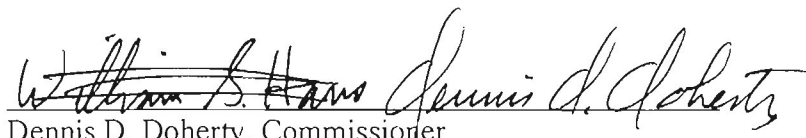
UMATILLA COUNTY BOARD OF COMMISSIONERS



W. Lawrence Givens, Chair

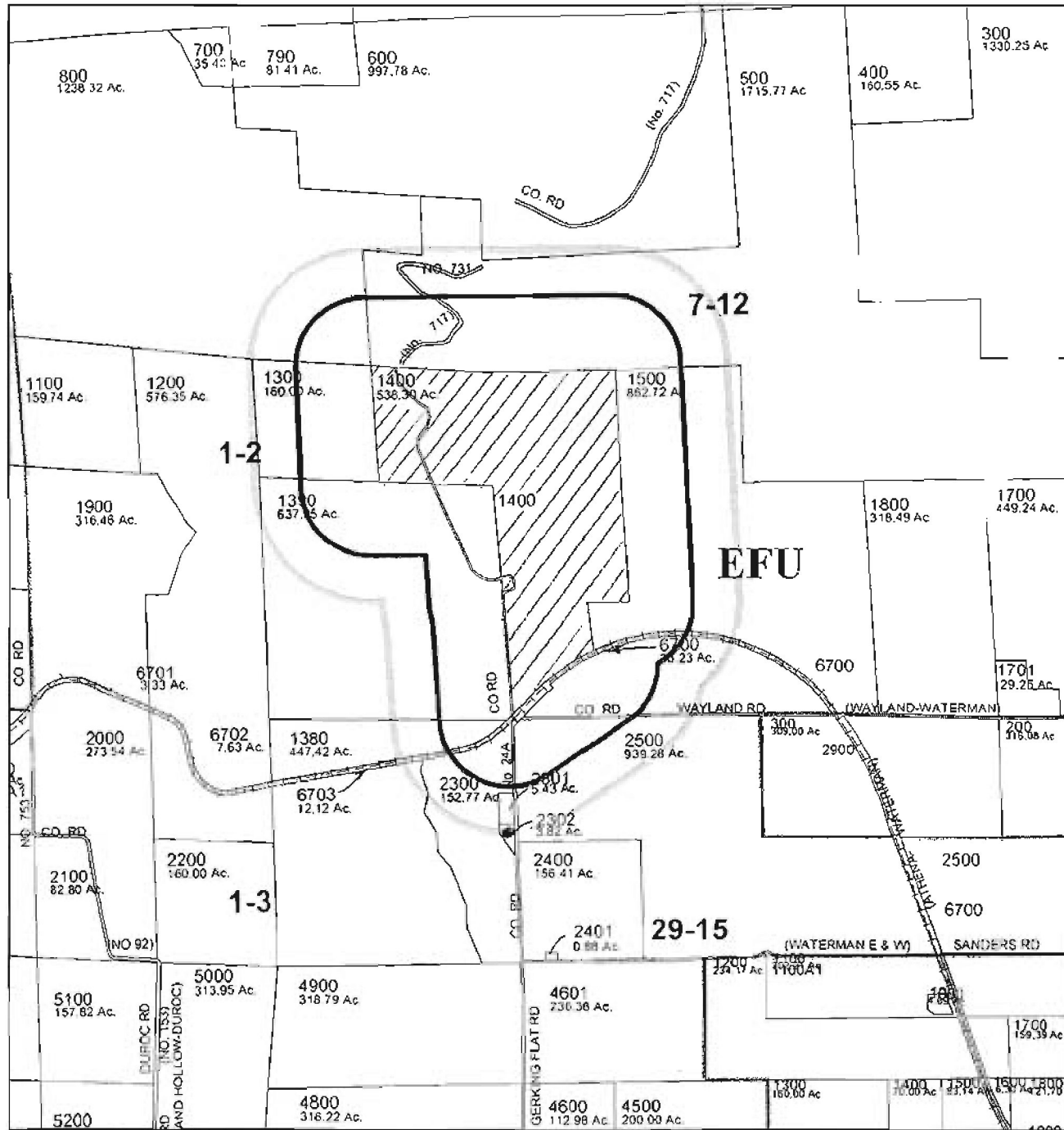


William S. Hansell, Commissioner



Dennis D. Doherty, Commissioner

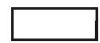

Date: 5/12/09
Attachments




**PROPERTY OWNERS WITHIN 750'
OF SUBJECT PARCEL 1400**

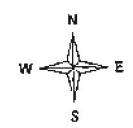
- MAP 5N34**
- 500 SCHUBERT CHARLES R 1/2 ETAL 1/2
% EURUS ENERGY AMERICA CORP
 - 500 KESSLER ARLENE 1/2 ETAL 1/2
 - 800 J&P WHITNEY PROPERTIES LLC 1/6 ETAL 5/6
 - 1300 J&P WHITNEY PROPERTIES LLC 1/6 ETAL 5/6
 - 1380 J&P WHITNEY PROPERTIES LLC 1/6 ETAL 5/6
 - 1390 J&P WHITNEY PROPERTIES LLC 1/6 ETAL 5/6
 - 1400 SUNNY COVE RANCHES INC
 - 1500 PUGH AMANDA 1/3 ETAL 2/3
 - 1500 MCCORMMACH MAUREEN 1/3 ETAL 2/3
 - 1500 MARSHA JEAN LLC 1/3 ETAL 2/3
 - 2300 J&P WHITNEY PROPERTIES LLC 1/3 ETAL 2/3
 - 2301 NORTHSTAR FARMS INC
 - 2302 THUL GREGORY D & ADRIENNE K
 - 2500 J&P WHITNEY PROPERTIES LLC 1/6 ETAL 5/6
 - 4900 FROESE ALAN L & CHRIS
 - 6700 BURLINGTON NORTHERN R/R CO
 - 6703 J&P WHITNEY PROPERTIES LLC

Legend

-  1500' around Tax Lot 1400
-  2500' around Tax Lot 1400

 Existing Dwelling

 Subject Parcel



y:\workspace\planning\vicinity_maps\rcannon\p1.gws

MAP DISCLAIMER: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. The GIS data displayed on this map is not survey grade and should not be used for legal purposes.

PLAN TEXT AMENDMENT #T-09-033/ZONING MAP AMENDMENT #Z-289/PLAN MAP AMENDMENT #P-097
ROBERT CANNON, APPLICANT **EXHIBIT**
MAP 5N34, TAX LOT 1400
DATE: MARCH 12, 2009 **Page** _____

SECTION 8

ALTERNATIVE ACCESS

EXISTING TOPSOIL BERM

TL 1400
(Owner and Applicant - TL 1400
Robert M. Cannon)

TOPSOIL STORAGE, TYP

25-50 FT. SETBACK FOR HIGH WALL FINAL SCENE

PHASE 2

PHASE 1

Unimproved

PROCESSING AND STOCKPILE AREA

0 FT SETBACK TO DAYLIGHT TO ADJACENT QUARRY

EXISTING QUARRY

EXISTING HIGH WALL

TL 1390

PROPOSED SERVICE ROAD

SECTION 17

Drainage

EXISTING ACCESS ROAD

T.5 N., R.34 E., W.M.
SECTION 8

SCALE IN FEET

200 0 200 400 600

PREPARED BY ED HIBBARD,
ANDERSON-PERRY & ASSOCIATES, INC.
MARCH 2009

ap anderson
perry & associates, inc.

SUNNY COVE RANCHES
UMATILLA COUNTY, OREGON
DOGAMI PERMIT APPLICATION - CANNON PIT

SITE LAYOUT

MAP

2

EXHIBIT

4

Page _____

T5N R34E WM
UMATILLA COUNTY

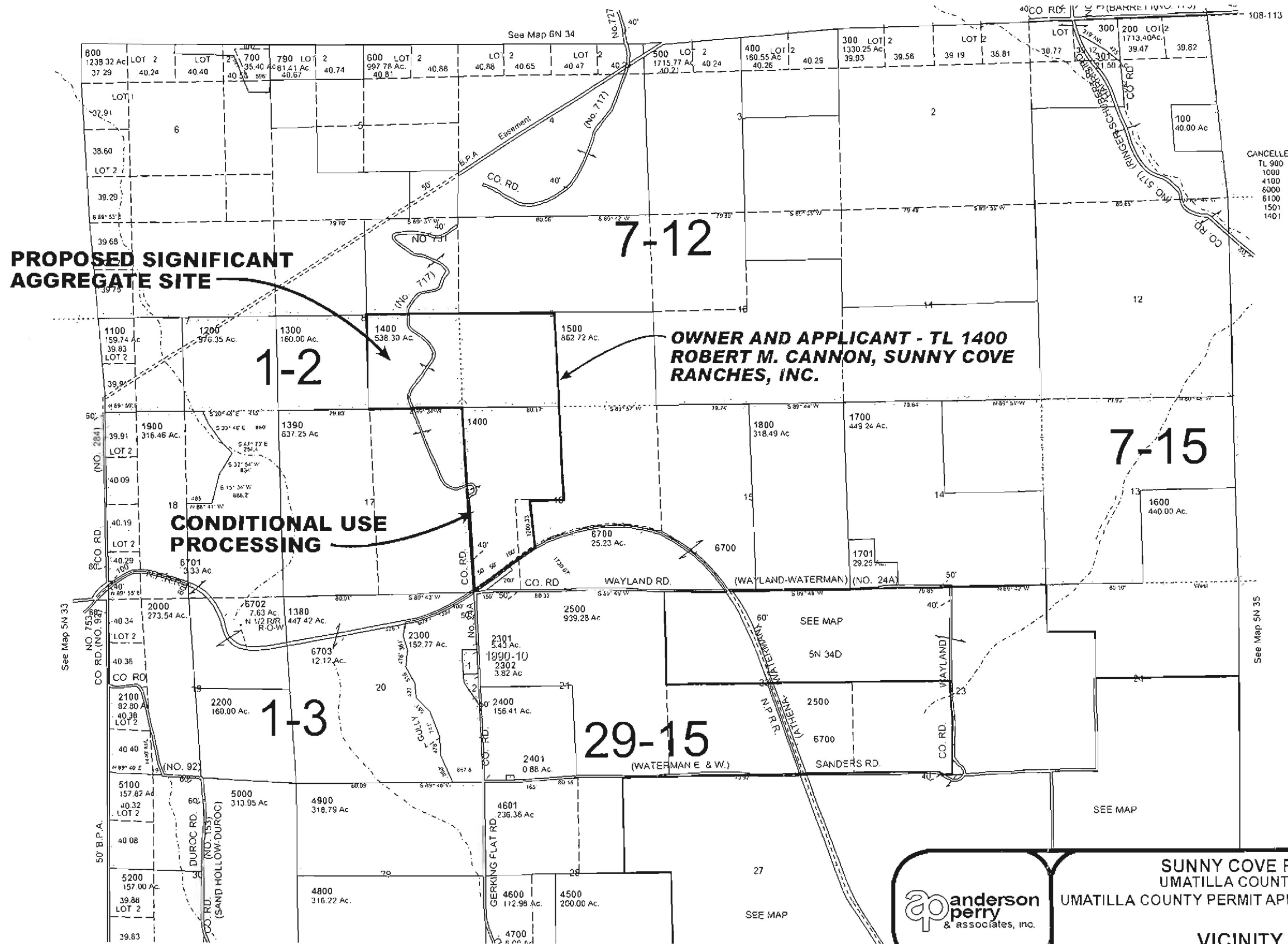
6/26/06

5N34

AERIAL PHOTO NO. NZ 6P 23-28,80-84,108-113



T.5 N., R.34 E., W.M.
1" = 3000'



CANCELLED
TL 900
1000
4100
6000
6100
1501
1401

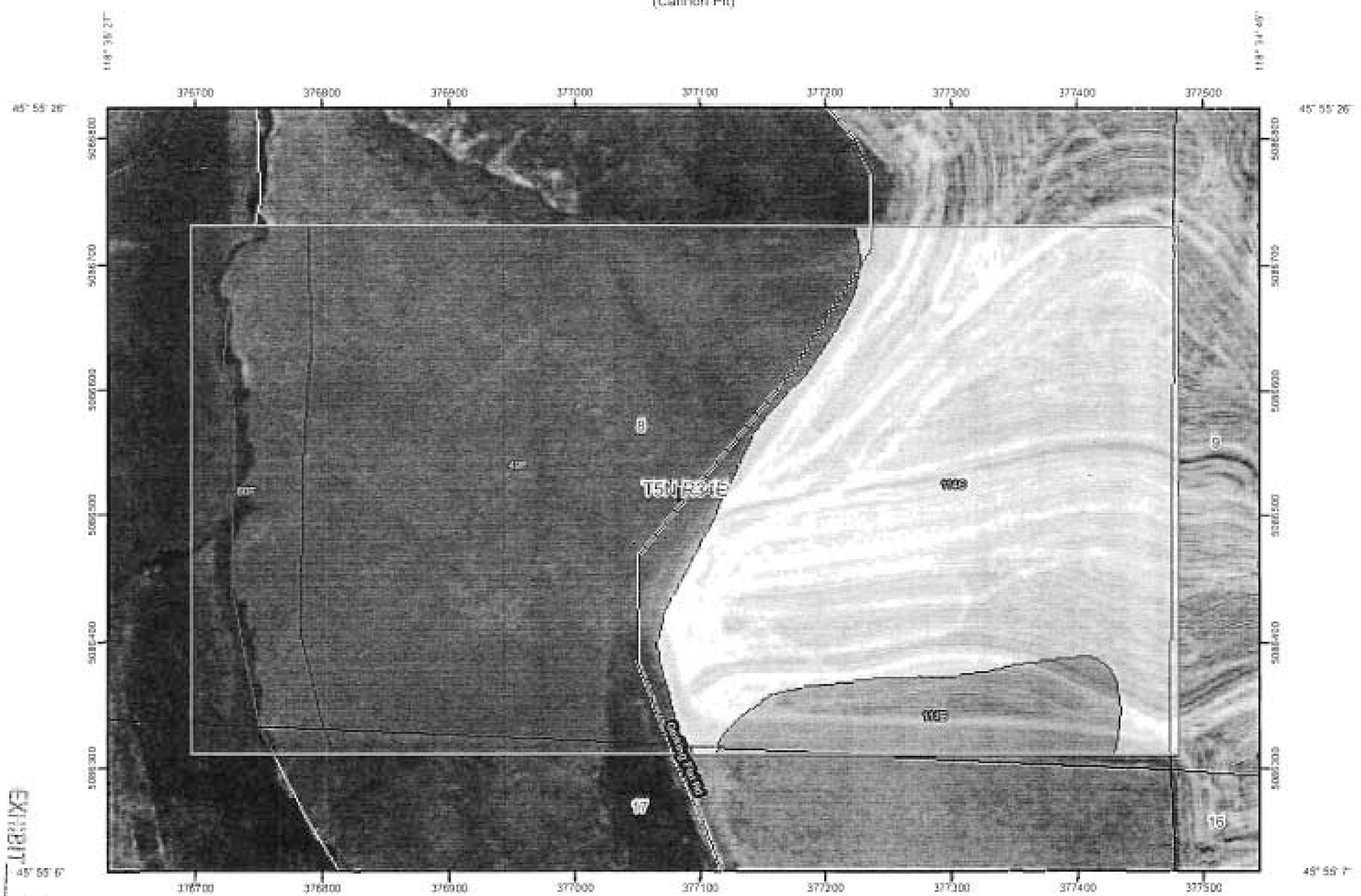
EXHIBIT 2
Page _____

anderson
perry
& associates, inc.

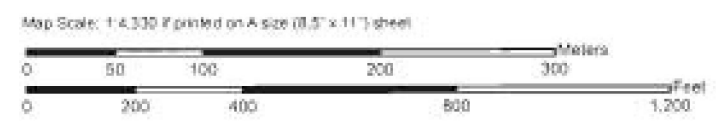
SUNNY COVE RANCHES
UMATILLA COUNTY, OREGON
UMATILLA COUNTY PERMIT APPLICATION - CANNON PIT

VICINITY MAP

Nonirrigated Capability Class—Umatilla County Area, Oregon
(Cannon Pit)





















Page _____
EXHIBIT 5



Nonirrigated Capability Class-Umatilla County Area, Oregon
(Cannon Pit)

MAP LEGEND

- Area of Interest (AOI)  Local Roads
-  Area of Interest (AOI)
- Soils
-  Soil Map Units
- Soil Ratings
-  Capability Class - I
-  Capability Class - II
-  Capability Class - III
-  Capability Class - IV
-  Capability Class - V
-  Capability Class - VI
-  Capability Class - VII
-  Capability Class - VIII
- Not rated or not available
- Political Features
-  Cities
-  PLSS Township and Range
-  PLSS Section
- Water Features
-  Oceans
- Streams and Canals
- Transportation
-  Rails
-  Interstate Highways
-  US Routes
- Major Roads

MAP INFORMATION

Map Scale: 1:4,340 if printed on A size (8.5" x 11") sheet.

The soil surveys that comprise your AOI were mapped at 1:20,000.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
Coordinate System: UTM Zone 11N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Umatilla County Area, Oregon
Survey Area Data: Version 5, Feb 9, 2007

Date(s) aerial images were photographed: 7/23/2005

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Nonirrigated Capability Class

Nonirrigated Capability Class— Summary by Map Unit — Umatilla County Area, Oregon				
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
49F	Lickskillet-Nansene association, 35 to 70 percent slopes	7	35.9	44.3%
60F	Nansene silt loam, 35 to 70 percent slopes	7	9.4	11.6%
114B	Walla Walla silt loam, 1 to 7 percent slopes	2	4.7	5.8%
114C	Walla Walla silt loam, 7 to 12 percent slopes	3	31.1	38.4%
Totals for Area of Interest			81.2	100.0%

Description

Land capability classification shows, in a general way, the suitability of soils for most kinds of field crops. Crops that require special management are excluded. The soils are grouped according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to management. The criteria used in grouping the soils do not include major and generally expensive landforming that would change slope, depth, or other characteristics of the soils, nor do they include possible but unlikely major reclamation projects. Capability classification is not a substitute for interpretations that show suitability and limitations of groups of soils for rangeland, for woodland, or for engineering purposes.

In the capability system, soils are generally grouped at three levels—capability class, subclass, and unit. Only class and subclass are included in this data set.

Capability classes, the broadest groups, are designated by the numbers 1 through 8. The numbers indicate progressively greater limitations and narrower choices for practical use. The classes are defined as follows:

Class 1 soils have few limitations that restrict their use.

Class 2 soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices.

Class 3 soils have severe limitations that reduce the choice of plants or that require special conservation practices, or both.

Class 4 soils have very severe limitations that reduce the choice of plants or that require very careful management, or both.

Class 5 soils are subject to little or no erosion but have other limitations, impractical to remove, that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 6 soils have severe limitations that make them generally unsuitable for cultivation and that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat.

Class 7 soils have very severe limitations that make them unsuitable for cultivation and that restrict their use mainly to grazing, forestland, or wildlife habitat.

Class 8 soils and miscellaneous areas have limitations that preclude commercial plant production and that restrict their use to recreational purposes, wildlife habitat, watershed, or esthetic purposes.

Rating Options

Aggregation Method: Dominant Condition

Component Percent Cutoff: None Specified

Tie-break Rule: Higher

Carlson Testing, Inc.

Main Office
P.O. Box 23814
Tigard, Oregon 97281
Phone (503) 684-3460
FAX (503) 684-0954

Salem Office
4060 Hudson Ave., NE
Salem, OR 97301
Phone (503) 589-1252
FAX (503) 589-1309

Bend Office
P.O. Box 7918
Bend, OR 97708
Phone (541) 330-9155
FAX (541) 330-0183

January 8, 2009
B0803703.CTI

Hooker Creek Asphalt & Paving
SW Scalehouse Loop #100
Bend, Oregon 97702

Re: Hooker Creek Asphalt & Paving (Misc.-2008)
Aggregate Durability Test - 3/4"-0 and Cobbles (X-1 Pit)
Gerking Rd.

Gentlemen:

As requested, we have completed durability testing on a sample of 3/4"-0 and cobble mixture that was submitted to our laboratory by your representative on December 5, 2008 from X-1 Pit. Following is the test data:

SOUNDNESS - AASHTO T104:
Coarse Aggregate

Sieve Fractions	Weight Before Test	Weight After Test	Percent Loss @ 5 Cycles
3/4" x 3/8"	1000.6 g.	981.0 g.	2.0%
3/8" x #4	301.9 g.	287.4 g.	4.8%
Totals:	1302.5 g.	1268.4 g.	6.8%

Average Percent of Loss @ 5 Cycles = 3.4%
ODOT PCC Aggregate Specifications = 12% Maximum

Weighted percentage of loss not determined, as product gradation does not exist.

SOUNDNESS - AASHTO T104:
Fine Aggregate

Sieve Fractions	Weight Before Test	Weight After Test	Percent Loss @ 5 Cycles
#4 x #8	100.2 g.	83.7 g.	16.5%
#8 x #16	100.2 g.	84.4 g.	15.8%
#16 x #30	100.3 g.	81.9 g.	18.3%
#30 x #50	100.6 g.	82.9 g.	17.6%
Totals:	401.3 g.	332.9 g.	68.2%

Average Percent of Loss @ 5 Cycles = 17.1%
ODOT PCC Aggregate Specifications = 10% Maximum

Weighted percentage of loss not determined, as product gradation does not exist.

ABRASION - AASHTO T96:

Percent Loss to Abrasion @ 500 revs. = 14.4% *
ODOT PCC Aggregate Specification: 30% maximum
* Grading "B" utilized in the loss determination.

EXHIBIT 6

Page _____

B0803703.CTI
January 8, 2009
Page 2 of 2

OREGON AIR DEGRADATION - OSHD TM 208:

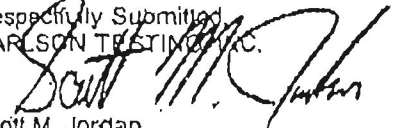
Percent Passing the 850 mm (#20) sieve = 4.2%
ODOT PCC Aggregate Specifications: 30.0% maximum

Sediment Height: 0.5"
ODOT PCC Aggregate Specifications: 3" maximum

Our reports pertain to the material tested/inspected only. Information contained herein is not to be reproduced, except in full, without prior authorization from this office.

If there are any further questions regarding this matter, please do not hesitate to contact this office.

Respectfully Submitted,
CARLSON TESTING, INC.



Scott M. Jordan
Vice President

CC: No report distribution per clients request.

**Wayland Rock Quarry
Bob Cannon - Property Owner
T5N R33E SW Quarter Section 9**

Bob Cannon and TPC have agreed upon an easement through Cannon's property, from the northbound public road on the section line (16 & 17) from Wayland to Bud Schubert's property line in sections 8 and 9. Bob Cannon wants to close the county Wayland Quarry and open a new quarry, approximately .6 mile northeast to the southwest quarter of section 9 location (the old name, Wayland, shall be used for this new relocated quarry). The new quarry will be used by TPC to build access roads and some turbine strings in sections 8 and 9. Other persons which have leased the Cannon property are anticipated to use the same quarry for their purposes. The Umatilla County Road Department also will have use of the quarry after TPC's project has been completed.

The county shall assist Bob Cannon with permit drawings and documents as their contribution in developing the new Wayland Quarry.

TPC shall rebuild existing county road (Gerking Flat Road # 731), from the junction of Wayland Road (County Road #722) north .5 miles. A new access road from the county road where it turns east from the section line (north of Wayland) roughly east and north (along a fence line) to the new quarry, and once TPC's project is complete, maintenance of this road from Wayland Road to the rock quarry will be assumed by the county. The reason for this proposal is to establish an equitable agreement between the three parties involved (TPC, Cannon, & the Umatilla County Road Department). TPC is willing to pay for creating the new road and, if TPC is the first quarry user, opening the quarry. TPC will be responsible for the new road's maintenance from Wayland to the quarry at the time it creates the road until it is done with its wind project on the adjoining Schubert property. Thereafter, the county's contribution is in-kind work, by helping to prepare DOGAMI documents and maintaining the road to the quarry.

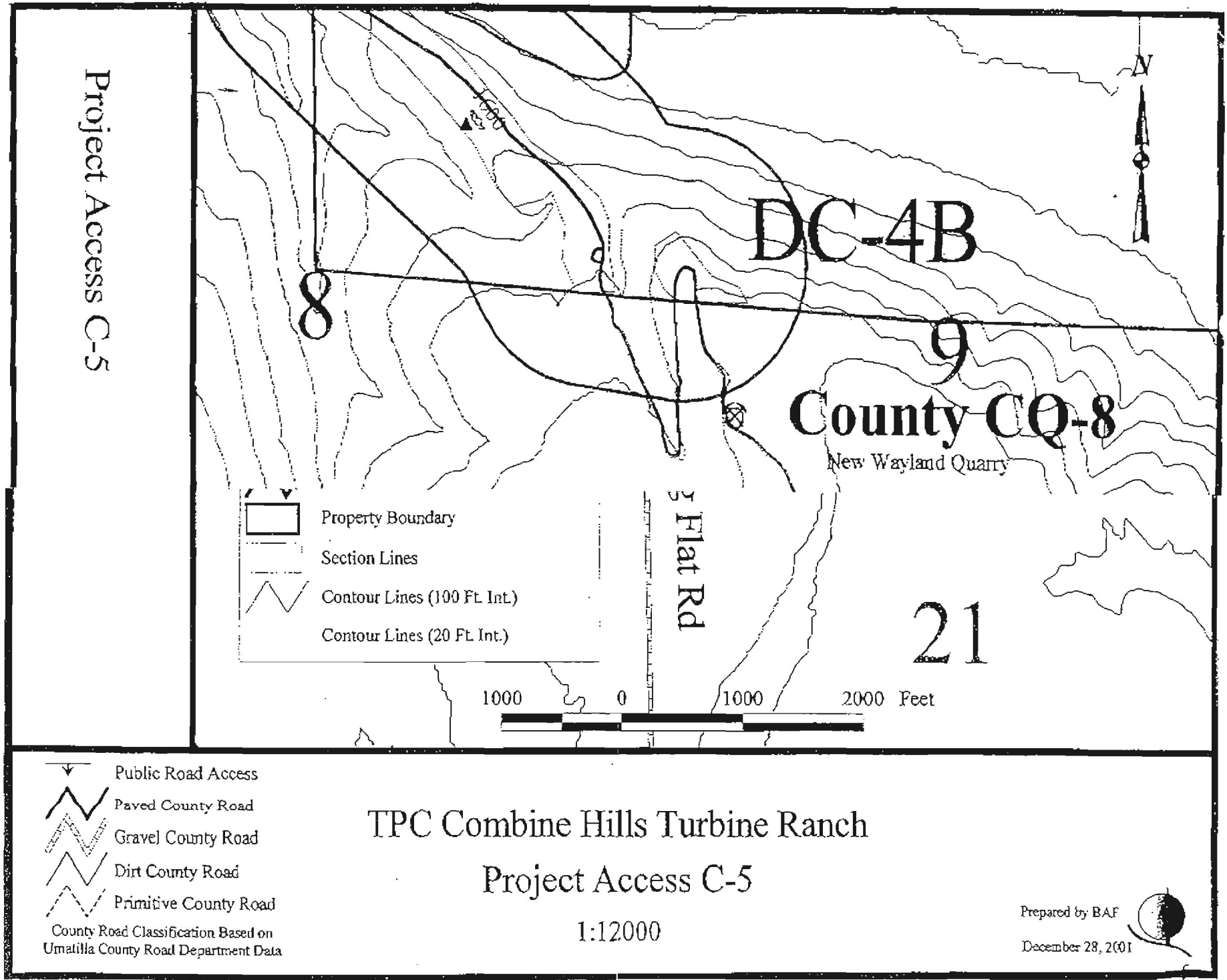
After construction and revegetation are completed Umatilla County Road Department shall be responsible for weed control along the first .5 mile of road, land owner shall be responsible for weed control on the remaining $\frac{3}{4}$ of a mile of road that leads to quarry.

After TPC's construction is completed, the majority of traffic to the quarry will be county personnel, subject to other users as allowed by Cannon.

It shall be the responsibility of Bob Cannon to negotiate the closure of the old Wayland Quarry with its other owners, James and Gregory Rice, and potentially North Star Farms. This is because the old Wayland Quarry straddles the Cannon-Rice property line and North Star has a farming lease on the Rice property (See attached Cannon Easement Map).

EXHIBIT 7

Page _____



- Public Road Access
 - Paved County Road
 - Gravel County Road
 - Dirt County Road
 - Primitive County Road
- County Road Classification Based on
Umatilla County Road Department Data

TPC Combine Hills Turbine Ranch
Project Access C-5

1:12000

Prepared by BAF
December 28, 2001



DOGAMI

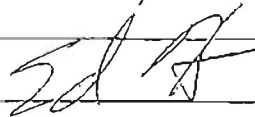
Attention Ben Mundie

Dear Ben,

Attached is the Application paperwork for the Cannon Pit located in Umatilla County north west of Athena. This pit is adjacent to the Wayland Pit No. 30-0053 and has previously been utilized by Umatilla County. The two pits are currently daylighted across the east west dividing property line. It is the intent of the property owner to continue mining with a zero foot setback along this common property line. An agreement with Mr. Jim Whitney, the property owner of the Wayland Pit, is being sought at this time.

Please Contact me at 541 963-8309 with any questions you may have.

Thank you,



CC Bob Cannon
Bret Moore
B. File

Umatilla County Planning is processing land use approval concurrent with this application. JR Cook of Umatilla County may be contacted regarding status.

EXHIBIT 8

Page

Copy of DOGAMI Application

DOGAMI – MINED LAND RECLAMATION
229 BROADALBIN STREET SW
ALBANY, OR 97321-2246

OPERATING PERMIT APPLICATION – PAGE 1
Under ORS 517.750-990

APPLICANT

List the name, address, etc. for the person or company the permit is to be issued to. Reclamation security must also be provided in this same name. *If the applicant is a business the name must be registered with the Secretary of State's office to do business in Oregon.*

Name Robert Cannon
Mailing Address Sunny Cove Ranches
Mailing Address 80768 Gerking Flat Road
City / State / Zip Athens, Oregon 97813
Phone (541) 566-2085
Fax (877) 626-2298
E-mail nyekrs@msn.com

LANDOWNER(S)

Is the applicant the landowner of this property? Yes No
If no, list below. *(Attach a separate piece of paper if necessary.)*

Name Same
Mailing Address _____
Mailing Address _____
City / State / Zip _____
Phone ()
Fax ()
E-mail _____

CONTACT PERSON

List the contact person if different from the applicant.

Name Same
Phone ()
Other Phone ()
E-mail _____

ACREAGE INFORMATION

What is the total number of acres to be covered under this permit?

80 Acres 6 acres

How many acres are currently affected by mining?

1.2 Acres

How many acres are to be affected by mining during the next 12 months?

6.0 Acres

SITE LOCATION

County Umatilla
Section(s) 8
Township(s) 5N
Range(s) 34E
Tax Lot(s) 1400

Is this site located within ¼ of a mile of a state or federal wild or scenic river corridor? Yes No

Is this site located within the limits of a city? Yes No

If no, complete the following:

Site is 8.5 miles (N / S / E / W) from
Athens (nearest community).

Is the site address different from the applicant's address? Yes No
If yes, list site address:

Site Name Cannon Pit

OPERATION INFORMATION

Date mining to begin May 2009

Check all mining methods and other on-site activities that apply:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Drill & Blast | <input type="checkbox"/> Rip & Load |
| <input type="checkbox"/> Shovel, loader or scraper | <input checked="" type="checkbox"/> Stockpiling removal |
| <input checked="" type="checkbox"/> Crushing | <input checked="" type="checkbox"/> Screening |
| <input type="checkbox"/> Washing | <input type="checkbox"/> Administration |
| <input type="checkbox"/> Other _____ | |

Has this site been permitted by DOGAMI in the past? Yes No
If yes, provide DOGAMI ID number, if available, or permittee's name.

However, associated with Wayland Pit No. 30-0053

LAND-USE

If land-use approval has not been obtained, it may take up to 165 days after a complete land-use application is filed with the appropriate land-use agency before we can issue our permit.

Has land-use authorization been obtained? Yes No

If yes, provide documentation (copy of CUP, etc.).

If no, explain.

A CUP application is in process with Umatilla County concurrent with this application.

CONTINUED ON REVERSE

DOGAMI – MINED LAND RECLAMATION
 229 BROADALBIN STREET SW
 ALBANY, OR 97321-2246

OPERATING PERMIT APPLICATION – PAGE 2
 Under ORS 517.750-990

RESERVES & PRODUCTION *Reserves and production figures shall not be circulated outside of DOGAMI. Confidential per ORS 517.900.*

What is the estimated total quantity (tons) of mineral available (reserves)? 1,000,000± tons

In the previous 12 months, how many tons were excavated? None

During the ensuing 12 months, what is the estimated number of tons to be excavated? ± 100,000 tons

COMMODITY

Please indicate the PRIMARY commodity for this site:

Aggregate		Metals	Industrial Minerals		Gemstones/Lapidary/ Mineral Specimens
cinder	andesite	chromium	perlite	zeolite	agate
pumice	basalt	gold-placer	limestone/marble	bentonite	jasper/picture jasper
borrow/fill/topsoil	blueschist	gold-lode	soapstone	clay-brick	thunder eggs
bar run	decomposed granite	copper	emery	clay-other uses	sunstone
dredge tailings	granite	silver	silica sand	quartz/silica/cristobalite	zeolite
sand & gravel	sandstone	nickel		diatomaceous earth	obsidian
	serpentine	mercury		building/decorative stone	opal
	shale				
PRIMARY use:	construction fill				
concrete aggregate	asphalt aggregate				
base rock aggregate	rip rap				

 APPLICANT'S SIGNATURE

Robert M. Cannon
 PRINT OR TYPE NAME OF PERSON SIGNING

President, Sunny Cove Ranches, Inc.
 TITLE

 DATE

Operating and Reclamation Plan

For sites in sensitive locations, additional information may be required.
If more space is needed, attach additional sheets or use the blank sheet provided at the end of this form.

Oregon Department of Geology and Mineral Industries
Mined Land Reclamation Program
229 Broadalbin Street SW
Albany, OR 97321-2246
(541) 967-2039
Fax (541) 967-2075

MUCH OF THE INFORMATION REQUESTED CAN BE EXPLAINED ON THE MINE PLAN MAP. See enclosure Map or Aerial Photo Requirements.

1. PRE-MINE CONDITIONS

- a) Current land use and zoning Farming, Range/EFU
- b) Average depth of topsoil 2 to 2-1/2 feet
- c) Type and density of vegetation Sparse native grasses and winter wheat
- d) Are there any springs, seeps, intermittent or perennial streams on or near the site? yes no
If yes, list here and locate on mine plan map.
Unnamed drainage greater than 700 feet west of site
- e) Has a wetland delineation been completed? yes no
If yes, attach report.
- f) Has a landslide investigation been completed on this property? yes no
If yes, attach report.

2. POST-MINING LAND USE

- a) What is the planned post-mining beneficial use of the permit area?
 - Agriculture
 - Range/Open Space Open range
 - Forestry
 - Housing/Construction
 - Wildlife/Wetland
 - Recreation
 - Other

The post-mining use must be compatible with the local comprehensive plan or have specific land-use approval. For significant aggregate sites zoned for mining, local government must determine the post-mining land use.

3. RECLAMATION TIMING

- a) How many days after mining is completed will reclamation begin? 30 to 60 days
- OR
- b) If reclamation will be concurrent with mining, explain the procedure for concurrent reclamation.

4. OPERATING PLAN

- a) Mining method(s) to be employed (mark all that apply):
 - single bench
 - multiple bench
 - pond excavation
 - placer mine
 - side hill cut
 - hill top removal
 - other

- b) Equipment to be used for mining:
Rock crusher, dump truck, loader, crawler/tractor dozer, belly dump, track hoe
- c) Will there be on-site processing? yes no
If yes, check type of processing:
 - wash water contained in a closed system
source of water: _____
 - wash water discharged off site
 - dry processing
 - other: _____
- d) Will blasting be employed? yes no
- e) Distance to closest structure not owned by permittee.
1.5 miles
- f) Disposition of removed vegetation.
Stockpile with topsoil
- g) Soil types which will be disturbed by mining, processing, or reclamation.
Lickskillet-Nansene
Walla Walla silt loam
- h) Average soil salvage depth 2 feet
- i) Overburden removal depth Soil only
- j) Will soil, overburden, rock waste or crusher reject dumps or stockpiles be created during mining? yes no
If yes, list the estimated volume of each at the end of this form and locate on a mine plan map.

Additional information may be required for large dumps or those located on steep terrain.

- k) Will this plan require excavating across any property lines?
In agreement with Whitney property yes no
- l) How and where will soil or subsoils be stored for reclamation? Locate storage areas on mine plan map.
Soil will be piled as shown on the plan map
- m) What measures will be taken to reduce compaction and prevent water and wind erosion of the topsoil stockpiles and when will they be implemented?
Topsoil to be watered to form a crust and remaining vegetation will be allowed to grow
- n) What will be the minimum property line setback:
 - for the excavation 0 feet
 - for processing or storage 20 feet

ID No. _____

5. WATER RESOURCE PROTECTION

- a) Will mining occur below groundwater level? .. yes no
- b) Will mine site dewatering be necessary?..... yes no
If yes, explain procedure and estimated depth to which water will be drawn down inside of the mine and where water will be discharged.

WRD A permit may be required from the Water Resources Department for dewatering activity.

- c) Will process water be contained on site? N/A yes no
- d) Will storm water be contained on site? yes no
- e) Will a pond(s) be used to contain water? yes no

Explain containment procedures.
The site receives an average of 19 inches of annual precipitation. Evaporation, infiltration, and short-term containment will be used at the site using BMPs for erosion and runoff control.

If the answer to c) or d) is no, please explain discharge procedures.
N/A

DEQ A permit from the Department of Environmental Quality may be required for off-site discharges and is required for any discharge into public waters, wetlands, streams or lakes. Contact DOGAMI for these permits.

- f) Will any drainages/streams be relocated? yes no
If yes, complete Section 11.
- g) What will be the minimum undisturbed setback(s) of the operation from all stream(s) or drainage(s)? 600 feet (201)

List the name of stream(s) or drainage(s) and setback from each at the end of this form and locate on a mine plan map.

- h) How will the buffer(s) be identified and protected during mining and reclamation?
Flagged states will mark limits of disturbed areas during soil salvage, stockpiling, and reclamation.

- i) Describe methods employed to control erosion in the permit area. Be specific, i.e., seeding and mulching, sediment basins or ponds, contour ditching, waterbars, etc.

The quarry floor will be sloped to retain water drainage toward the high wall away from the material.

- j) Will settling ponds/dams be constructed?..... yes no
State the number and size of the impoundment(s) and how they will be built. Will the pond be excavated or will berms be constructed? Locate on a mine plan map.

- k) If dams will be constructed, how high will they be and what is the maximum amount of water (in acre feet) to be impounded behind each dam?
N/A

If a dam is higher than 10 feet, and stores more than 9.2 acre feet of water, approval from the Water Resources Dept is required prior to construction.

- WRD** l) If berms or a dam will be constructed, describe construction details and attach a sketch showing construction methods.
N/A

- m) How deep will impoundment(s) be? N/A
- n) If the impoundment(s) are to be removed upon completion of mining, how will they be drained and/or filled?
N/A

- o) Will settling ponds, wetlands, or a water impoundment be left upon final reclamation? yes no

6. GROUNDWATER INFORMATION

- a) Proposed mine depth 600 feet
- b) Groundwater depth >100 feet
(Under static (pre-mine) conditions)
- c) What is groundwater depth estimate based on?
Well record UMAT 3879
- d) Flow direction of groundwater, if known. Northwest
- e) Distance to closest well outside the permit boundary. 1.5 miles

Wells within permit area must be shown on mine plan map. Attach a copy of the well log(s).

7. VISUAL AND NOISE SCREENING

Screening can be very effectively employed to isolate sites from public notice and to minimize noise from operations.

a) Does a natural landform or vegetative screen currently exist along the permit boundary? [x] yes [] no
If yes, what screen width will be maintained during mining?
Site is located 1 mile from public access.

b) Will a berm and/or vegetation be established to develop a visual screen for the operation? [] yes [x] no
If yes, describe the height and width of the berms and/or the type and density of vegetation; show location on mine map.

(Crushed rock stockpiles, although not permanent, can also be used to reduce noise from the operation.)

N/A

8. EQUIPMENT AND STRUCTURES REMOVED

a) Upon final reclamation, will all structures, visual berms, equipment, and refuse be removed? [x] yes [] no
If no, explain what will be left.

9. RECLAMATION TECHNIQUES

a) What will be done with oversized rock not used during mining?
Oversized rock will be buried or set aside for future use.

b) What will be the average depth of soil replaced on the area to be reclaimed?
1-1/2 feet

If less than 12" of topsoil is available, a substitute material may be required.

c) Will additional material be utilized as a soil substitute to complete the revegetation? [] yes [x] no
If yes, specify type(s), amount(s), and source(s).

N/A

d) Will any waste products, such as tailings, crusher rejects, etc., be generated during mining? [x] yes [] no
If yes, what will be done with them?

Rejects and fines will be incorporated into the floor of the quarry.

e) How will processing and stockpile sites be reclaimed? If they are to be revegetated, explain procedures which will be employed to decompact areas prior to topsoiling/seeding.

Processing and stockpile sites will have overburden removed prior to use. Restoration will be the same as other impacted areas with soil replaced to suitable depths and seeding.

10. REVEGETATION TECHNIQUES

a) Species to be seeded/planted by type and amount.
A mixture of fescue and wheatgrass will be applied at a rate of 35 to 40 lbs/acre.

b) Describe method and time of year for planned planting.
Seed will be broadcast in late fall or early spring.

c) List fertilizers and lime to be used (include amount).
None.

d) List type and amount of mulch or other erosion control techniques such as erosion netting.
None.

Vegetative survival comparable to the density of original ground cover will normally be considered acceptable.

11. RECLAMATION PROCEDURES - POST-MINE DRAINAGE CONTROL AND RECONSTRUCTION

a) During reclamation, will stream channel and/or bank stabilization and rehabilitation be necessary? [] yes [x] no
If yes, attach plans. [x] n/a

A Division of State Lands' permit is required for relocation of all perennial and some intermittent water courses.

DSL

b) How will surface water runoff and erosion be controlled upon completion of mining? Describe and list structures that will be used.

Areas will be neatly graded with overburden and topsoil then seeded.

12. RECLAMATION PROCEDURES - IMPOUNDMENTS & POND DECOMMISSIONING

a) Will dewatering be required? [] yes [x] no

b) Will it be necessary to backfill a water filled excavation pit or pond? [] yes [x] no

c) How will settling ponds be stabilized and revegetated?
N/A

d) How will quality of imported backfill be monitored to protect groundwater quality?

Native materials will be used for reclamation.

Monitoring may be required to ensure groundwater protection.

13. RECLAMATION PROCEDURES - LAND SHAPING

Long continuous slopes should be avoided or broken up with surface contours, ditches, or complex slope shape.

- a) What will be the:
 - i) -steepest above-water *excavated* slopes left after mining? (1½:1 is generally maximum) 1-1/2:1
 - ii) -steepest above-water *fill* slopes left after mining? (2:1 is generally maximum) 2:1
- b) What will be done to ensure the stability of excavated slopes?
Slopes will be rock excavations with benching if necessary.
- c) What will be done to ensure the stability of fill slopes?
Fill slopes are not anticipated.
- d) Will this site be shaped or backfilled to blend in with surrounding topography? yes no

14. POST-MINING WATER IMPOUNDMENT(S)

- a) Number of impoundment(s) 0
- b) Use of impoundment(s)
N/A
- c) Total surface area in acres N/A
- d) Average depth N/A

- e) How much is the water level expected to fluctuate annually?
N/A
- f) What will be the steepest and flattest in-water slopes left after mining? N/A

Generally 3:1 in-water slopes are the steepest allowable, except off islands. To increase potential for wetland habitat establishment, 5:1 to 20:1 slopes are needed.

- g) Will shallow ponds, shorelines, or other areas conducive to wetland plant development be left? yes no
- h) What will be the impoundment water source?
N/A

WRD A water right for the water source may be needed from the Water Resources Department.

- i) What will be done for wildlife & fish enhancement, e.g. fish structures, islands, peninsulas, and irregular shorelines?
N/A
- j) If wetlands are to be constructed, explain the methods and final configuration.
N/A

15. OTHER PERMITS

In order to assist other agencies in the review of this plan and their ability to ascertain compliance with their laws, list all permits by type and number that are held (or applications filed) for this mine site or processing equipment (such as fill/removal permits, water rights, air quality and stormwater or waste water permits)

Agency/Permit Type	Permit Number
DEQ/Air and Water Quality for processing plant, Hooker Creek Construction	

16. LANDOWNER CONSENT

As surface or mineral rights owner, I concur with the proposed subsequent use for any mining operation and with the operating and reclamation plan as submitted. I also agree to allow access to the State Department of Geology and Mineral Industries or their contractor for reclamation of the mine site if it is declared abandoned by the Department of Geology and Mineral Industries. By my signature below, I certify that I have a legal right to sign this document.

Appropriate signatures are needed for EACH land parcel.

I CONCUR (Surface Rights)

Name (Please Print or Type) Robert M. Cannon

Signature _____

Title President, Sunny Cove Ranches, Inc.

Date _____

I CONCUR (Mineral Rights):

Name (Please Print or Type) Robert M. Cannon

Signature _____

Title President, Sunny Cove Ranches, Inc.

Date _____

17. APPLICANT'S ACCEPTANCE

Name (Please Print or Type) Robert M. Cannon

Signature _____

Title President, Sunny Cove Ranches, Inc.

Date _____

18. PREPARED BY (IF OTHER THAN APPLICANT)

Name (Please Print or Type) Ed E. Hibbard

Signature *Ed E. Hibbard*

Title Permit Specialist

Company Anderson-Perry & Associates, Inc.

Date 3/6/09

ID No. _____

Use this page for additional space if necessary.
Number responses to correspond with question.

4.j. Estimated volume of soil, overburden, rock waste, and reject stockpiles

Soil – 20,000 cy

Overburden – N/A

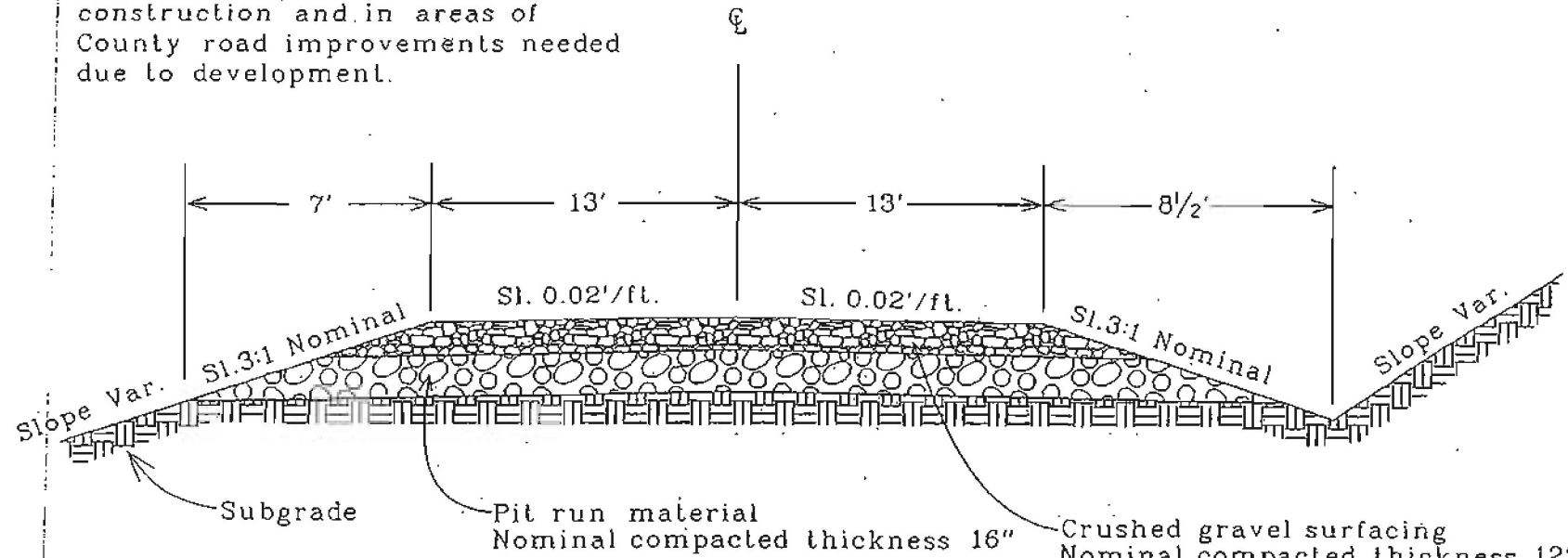
Rock waste – 15 percent of crusher run

Crusher reject – 15 percent of crusher run

5.g. There is an unnamed drainage more than 600 feet west of the quarry site.

"D" Industrial / Agricultural

* Note: To be used in new county road construction and in areas of County road improvements needed due to development.



* Culvert pipes to be installed in locations determined by the Director of Public Works. Materials & workmanship shall conform to current ODOT Standard Specifications. All other construction details and specifications to conform to current ODOT Standard Specifications and to be approved by the Director of Public Works.

Crushed gravel surfacing
Nominal compacted thickness 12"
(size, grading, and compaction requirements to conform to current Oregon Department of Transportation Specifications).

Any changes to surfacing width or depths or variance from current Oregon Department of Transportation Standard Specifications must be approved by the Director of Public Works.

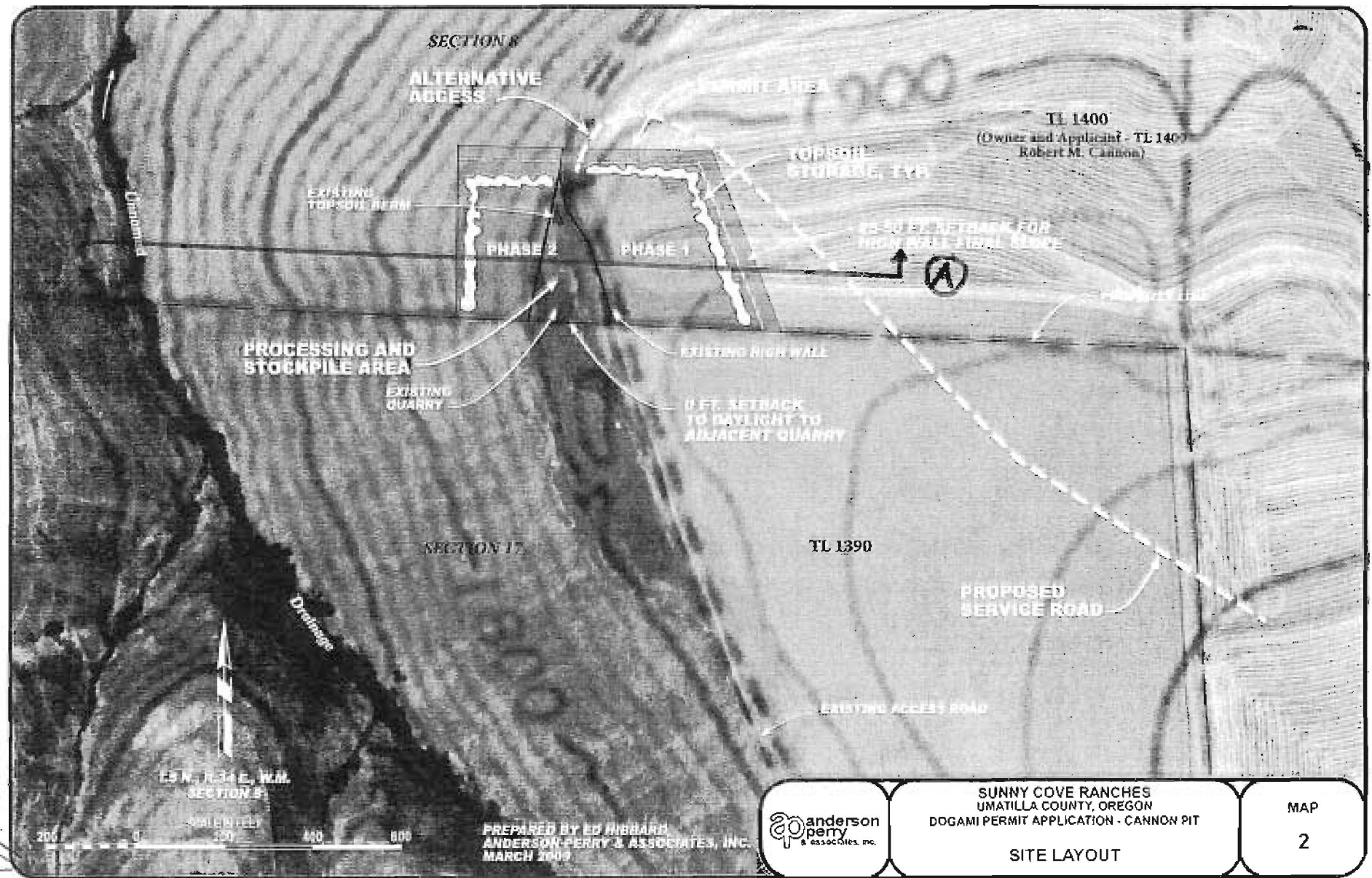
Umatilla Co. Rd. Dept.	
"D"	
Industrial / Agricultural	
Drawn By: JG	Checked By: GR
Date: July 1997	Road Standard

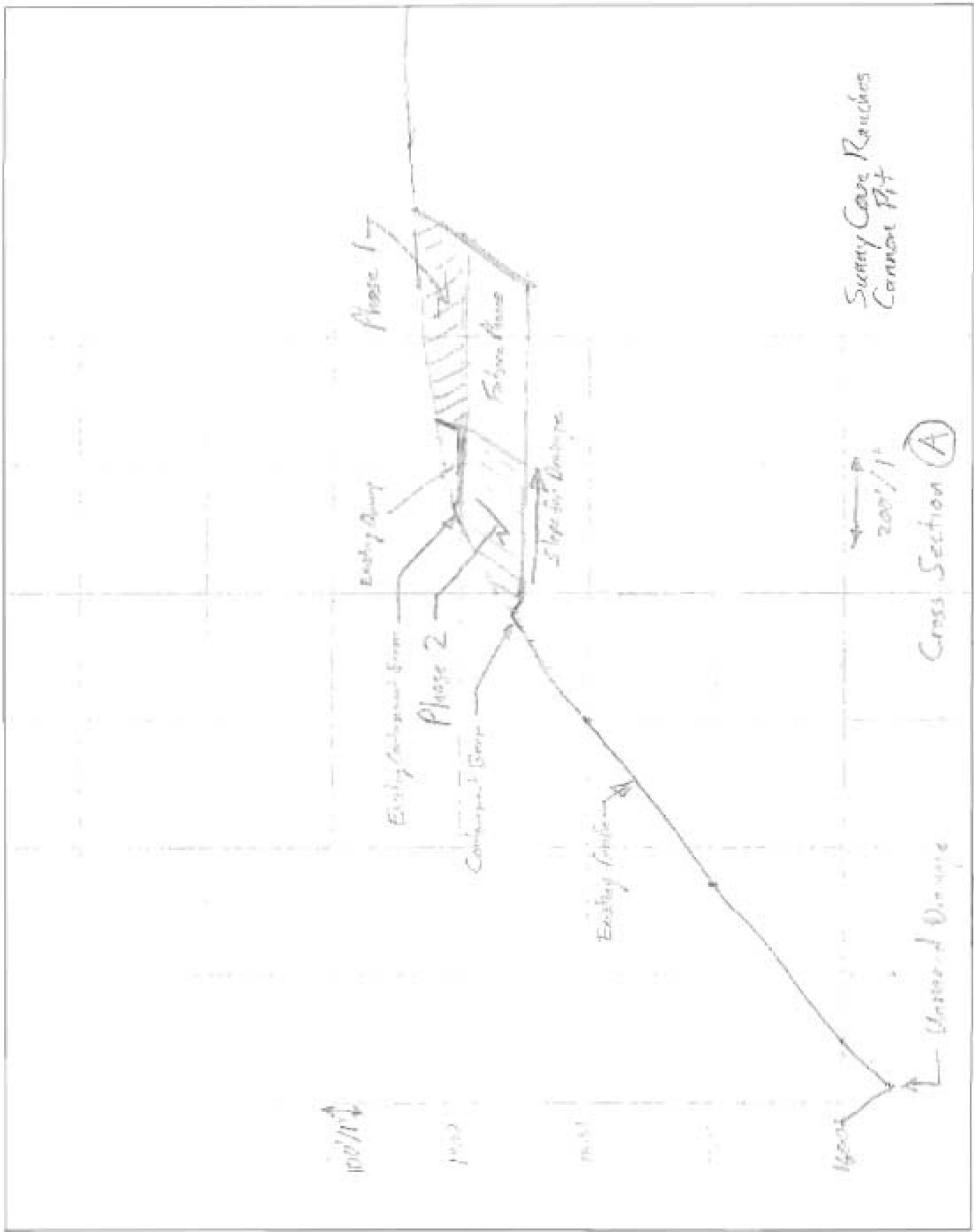
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EXHIBIT

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EXHIBIT 2





Sunny Cove Ranches
Canal Pit

200' / 1"
Cross Section (A)

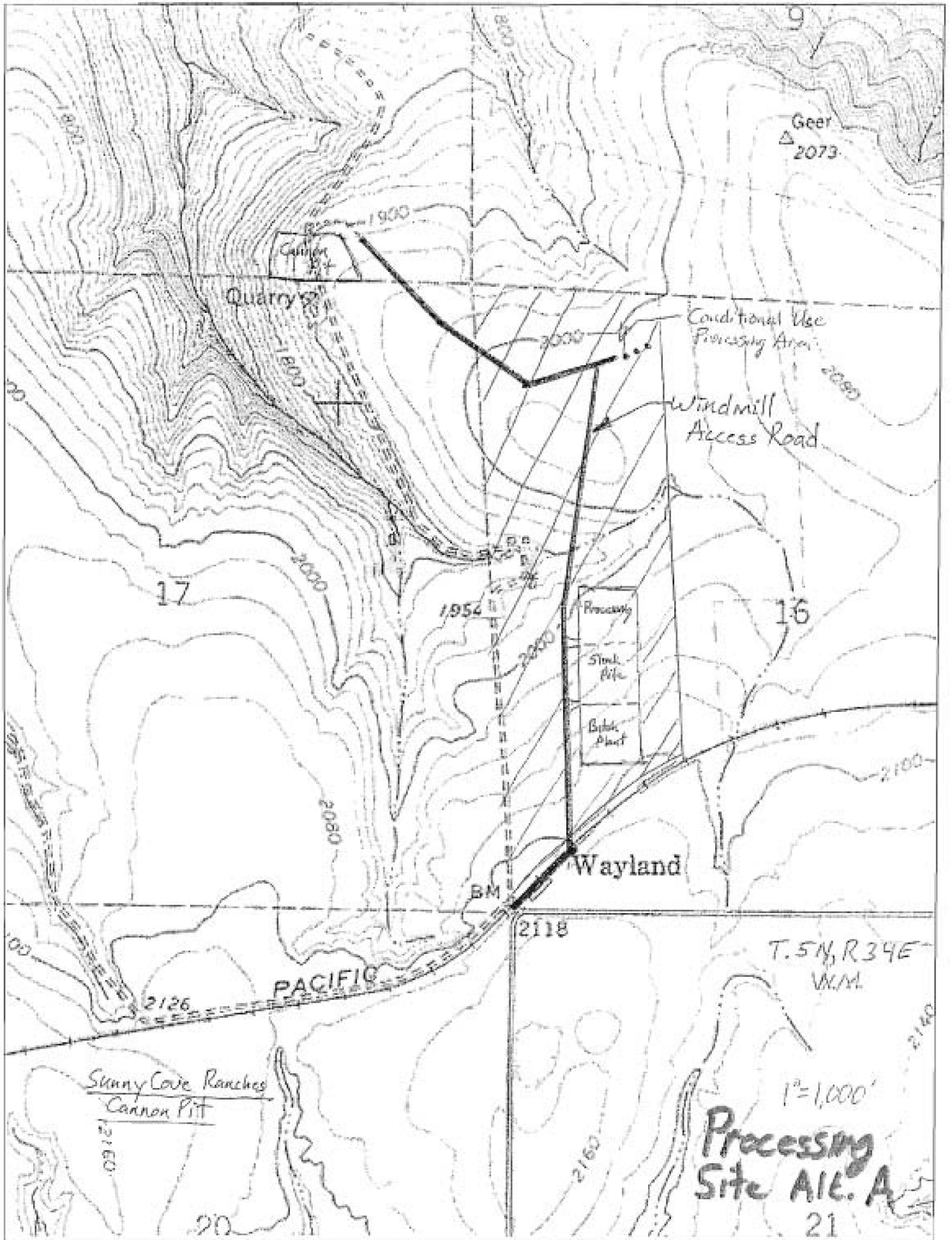
Unimproved Driveway

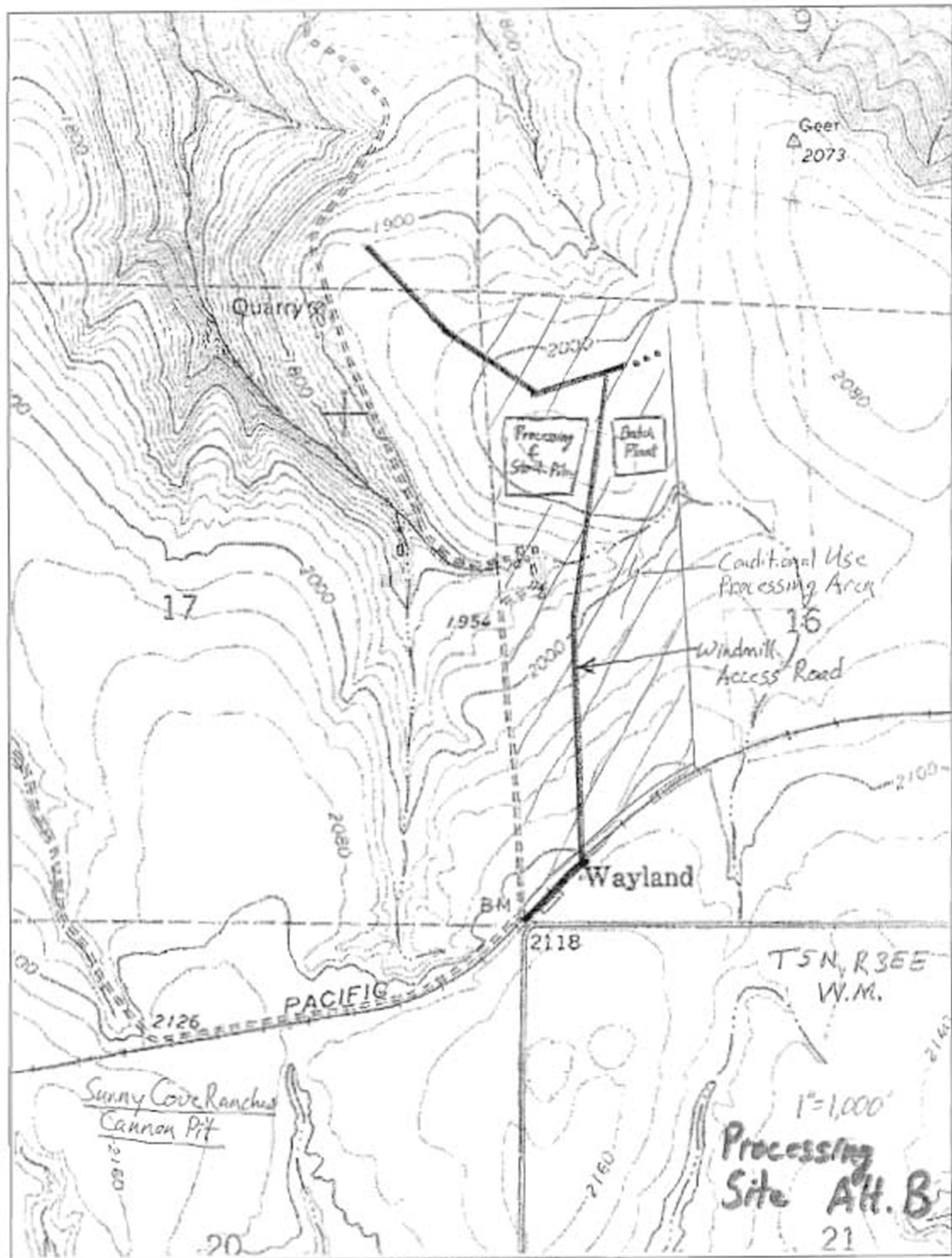
100' / 1"

100'

100'

100'





ADDITIONAL NARRATIVE FOR AMENDMENT
Sunny Cove Ranches
Cannon Pit
April 8, 2009

Operational Plan for the Quarry

The Comprehensive Plan Amendment request is submitted to recognize the 80+/- acre site as a significant source under Umatilla County Goal 5 inventory. The application for Conditional Use is for a 6+/- acre site within the 80 acres for mining at this time. By obtaining condition use on this smaller site, impacts can be assessed in accordance with the scope of effort proposed at this time. The smaller quarry site and mining operation will serve to lesson impacts to adjacent properties and access routes. The DOGAMI permit also addresses the smaller 6 acre site so that mining operations can be completed and reclamation actions finished in a timely manner. As future projects are planned or needs for aggregate arise, additional conditional use and DOGAMI permits will be applied for.

Operational Plan for the Conditional Use Processing Area

The application for conditional use of 140+/- acres as a processing area site is to facilitate materials processing, stock piling and operation of a Portland cement batch plant to support construction of a wind energy facility in the area. The specific location of the processing area is dependent on the final layout of windmill access roads through the site. Approximately 5 acres will be needed for each phase of the cement production (material processing, stock pile, and batch plant) for a total of 15 +/- acres. Possible alternatives for site layout are shown in the attached Processing Site Alternative maps.

Traffic Impacts

Access to the proposed aggregate site is currently provided via County Road No. 731 (formerly Gerking Flat Road) which connects at the intersection of Gerking Flat Road and Wayland Road approximately one mile south of the quarry. A second access is proposed that will connect the north side of the quarry with roads to be constructed for windmill access east of the site. This windmill access road will traverse the adjoining property (TL 1390) and then remain on the applicant's property to the intersection of Wayland and Gerking Flat Roads. The primary haul route for material mined at the site will be the windmill access road using off highway trucks carrying 50 ton loads. This road will be appropriately constructed and maintained by Florida Power and Light (FPL) and its contractors.

Increased traffic loads associated with this quarry site will be primarily within the immediate area of the windmill construction. Some short distance hauls may occur on Gerking Flat Road and Wayland Road to reach alternate windmill access roads.

The following estimates are provided for trip generation associated with this application:

Quarry to processing site – 60 per day, 50 ton loads, on private windmill access routes

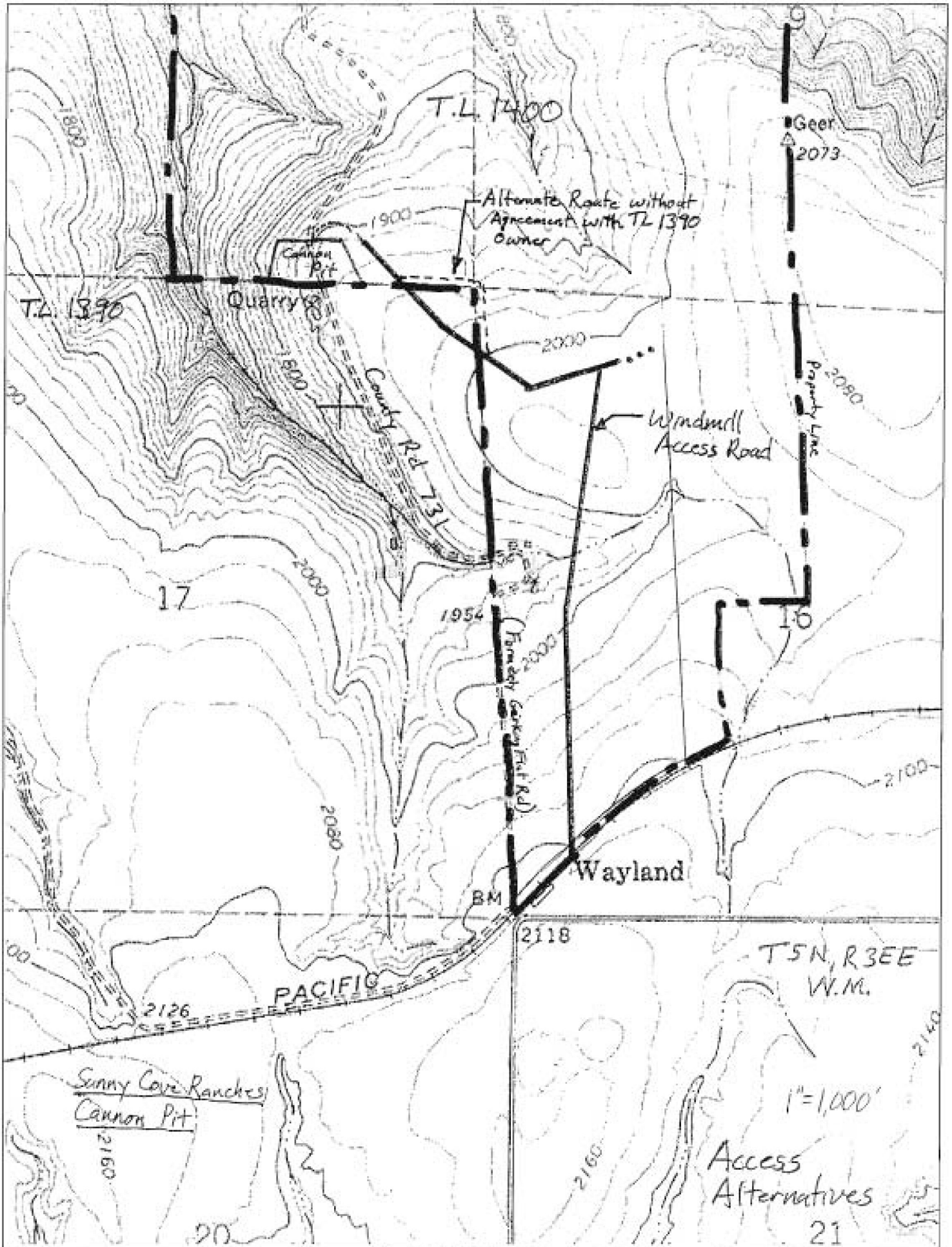
Concrete loads to windmill sites – up to 88 loads per day, primarily on windmill access routes (not associated with the quarry permit application)

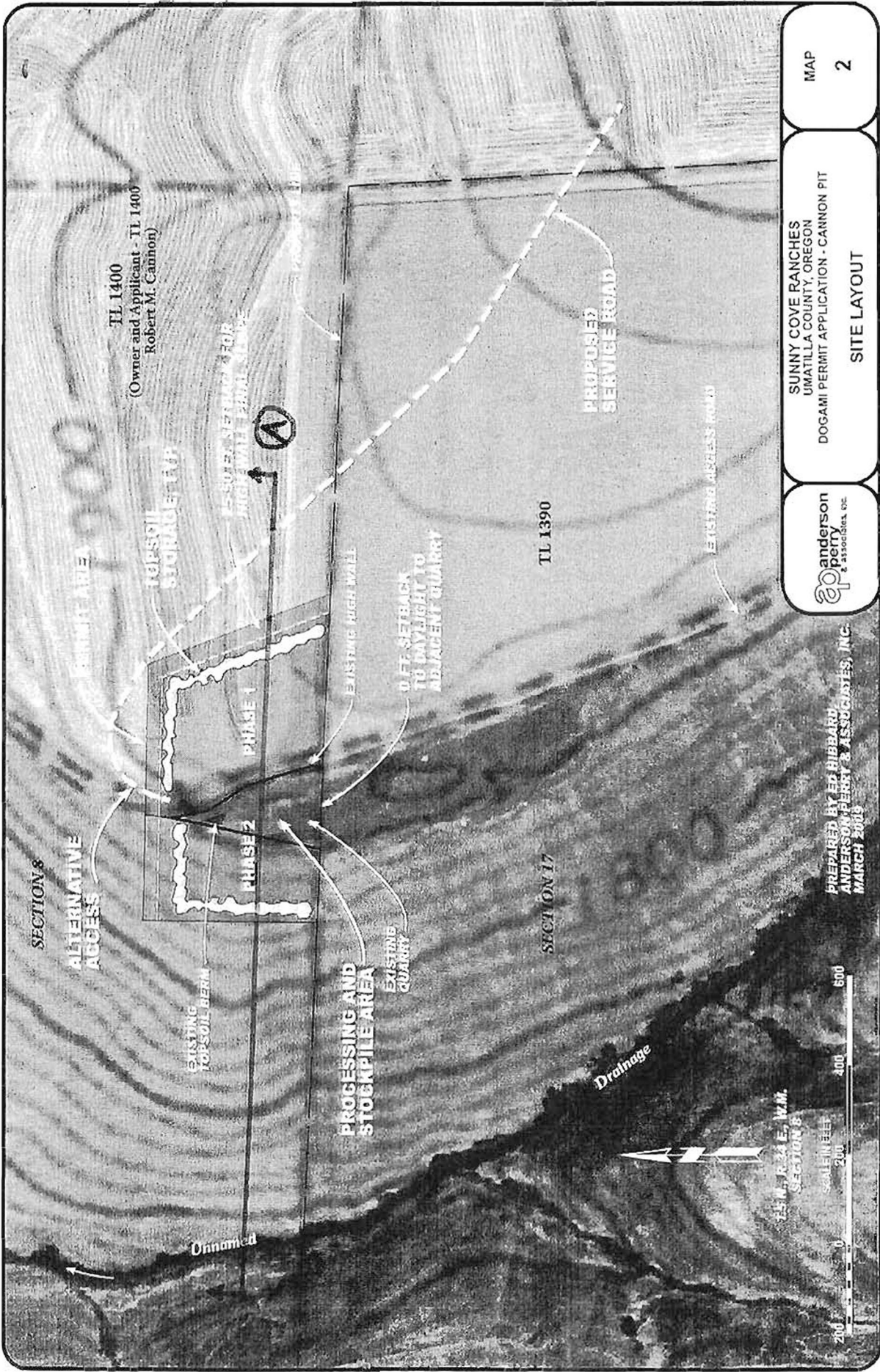
Athena-Helix Highway trips – up to 6 loads per day of cement coming into batch plant (not associated with the quarry permit application)

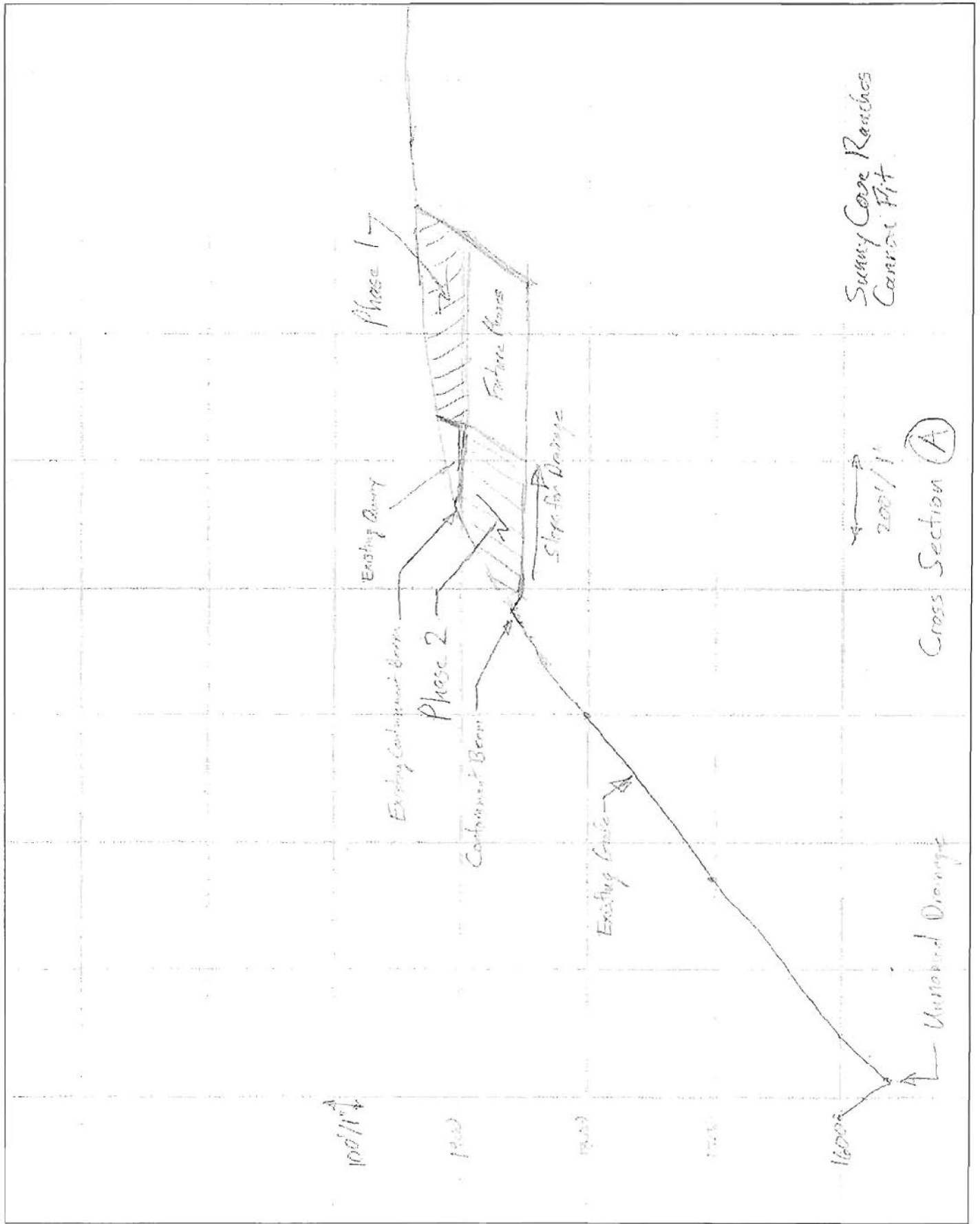
8 miles of Gerking Flat Road – up to 10 loads of water per day from the dump (not associated with the quarry permit application)

Following completion of the windmill project, access to the pit will continue to be available via the County road; however, secondary access will be maintained via the windmill access route. If an access agreement with the owner of TL 1390 is not obtained for the portion of road traversing the northeast corner of Section 17, an alternative route may be constructed that remains on the applicant's property (see Access Alternatives Map).

Future access requirements with associated traffic impacts can't be assessed until the size of a specific job is known. With the Conditional Use approved for the 6 acre site, future quarry expansions will require a new Conditional Use Permit application. At that time, a new commercial project would be assessed for potential traffic impact and the need for a traffic study.







ADDITIONAL NARRATIVE FOR AMENDMENT No. 2
Sunny Cove Ranches
Cannon Pit
April 10, 2009

Geo-Technical

Rock samples taken from the existing quarry indicate state spec rock is available at the site. As a part of the Columbia Plateau, this area is characterized as having region wide basalt flows underlying alluvial deposits mantled by blown loess (soil survey of Umatilla County, USDA). Areas of water and wind erosion have expose basalt outcroppings in the vicinity with deep drainages in the area north and at the west boundary of the proposed significant site providing supporting evidence of the presence of basalt. The color and appearance of the rock source along the exposed quarry high wall from greater than 600 feet south of the property line to the north limit of the existing quarry on the proposed site provide strong evidence of the consistency of the rock source.

Impacts to Water

The proposed quarry site is planned to daylight on the west side with the deep ravine that has an unnamed drainage flowing south to north at its bottom. The current quarry has a containment berm on this west boundary and the quarry floor is sloped away from the ravine so any precipitation runoff is retained in the quarry for infiltration and evaporation. The proposed expansion of the quarry site will continue this practice with a containment berm and east sloping quarry floor as shown in the attached cross-section drawing.



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

800 NE Oregon Street M/S 18, Suite 1145

Portland, Oregon 97232-2162

Phone: (503) 731-4065

Fax: (503) 731-4068

Web Address: <http://www.lcd.state.or.us>



JR Cook
Umatilla County Planning
216 SE 4th St
Pendleton, OR 97801

April 15, 2009

Subject: Post Acknowledgement Plan Amendment (PAPA) to add an 80 acre site to the Umatilla County's inventory of significant aggregate sites. Local file number P-097, T-09-033, Z-289 (DLCD file # 001-09)

Dear Mr. Cook,

The Department of Land Conservation and Development (DLCD) appreciates the opportunity to review and comment on the proposed Comprehensive Plan amendment, to add an 80 acre site to the county's inventory of significant aggregate sites. I have reviewed the information submitted with the March 9, 2009 Plan Amendment Notice and have spoken with you about the current status of the application on the phone. I have the following comments and concerns regarding the application:

There is insufficient information in the application that was attached to the Plan Amendment Notice for a determination to be made concerning the status of the site in relation to the criteria set forth in Oregon Administrative Rule (OAR) 660-023-0180.

In our telephone conversation you informed me that the county had made a similar assessment, and that additional information had been provided by the applicant. You explained that the county recognized that questions regarding the quality of the aggregate at the site and the specific measures to be employed in order to mitigate potential impacts to surrounding uses were yet to be resolved. When reviewing the additional information the county should:

Confirm that the test results on the aggregate quality provide data on several samples, extracted strategically across the proposed site, to adequately reflect the quality of rock across the full site.

Confirm that sufficient information is provided on potential impacts from the proposed mining and processing and that sufficient information is provided on measures to mitigate these impacts so that the county can determine if the impacts can be minimized. [See OAR 660-23- 0180(5)(a-c)]

EXHIBIT 13

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April 15, 2009
JR Cook, Umatilla County Planning
Page 2 of 2

If impacts are not able to be minimized, additional analysis under OAR 660-23-0180(5)(d) is needed.

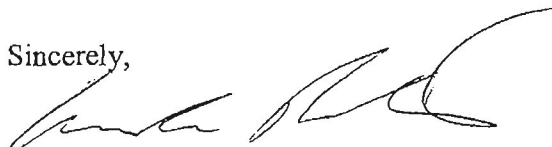
In our telephone conversation you explained that the applicant had requested that the entire site be considered for significance, but that only six acres be permitted for mining. I am concerned that this arrangement is not provided for under the OAR 660-23-0180. Section (5) of this rule states that,

(5) For significant mineral and aggregate sites, local governments **shall** decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. **A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.** [Emphasis added]

If the applicant is not prepared to provide sufficient information on all potential impacts and their mitigation, the county will need to find the application incomplete or deny the proposal for mining. Another possible option for resolving the situation would be for the applicant to request that a small portion of the site be included on the county's inventory under the criteria in OAR 660-23-0180(4). This option can only be used when the quantity of material to be mined is 500,000 tons or less. Under OAR 660-23-0180(6) the county can then use its conditional use permit review process to allow mining. The applicant could then re-apply for consideration of the entire site under Division 23 0180(3) and (5) when the full impact analysis can be completed.

Please provide DLCD with additional information relevant to this application. Also feel free to contact me if you have any questions. I can be reached by phone at 971-673-0961 or e-mail at amanda.punton@state.or.us.

Sincerely,



Amanda Punton
Natural Resource Specialist

Cc: DLCD staff- Rob Hallyburton, Jon Jinings, File

JOHN M. JUNKIN
Direct Dial: (503) 499-4613
E-mail: john.junkin@bullivant.com

April 16, 2009

Via E-mail (jrcook@umatillacounty.net)

Umatilla County Planning Commission
Umatilla County Courthouse
216 SE 4th St.
Pendleton, OR 97801

Re: Robert Cannon Aggregate Application
Nos. T-09-033; P-097, Z-289, and C-1148-09

Dear Commissioners:

We represent Jim Whitney in regard to the above applications. Mr. Whitney is the owner of property directly adjacent to the proposed aggregate site. Your planning staff has provided you with a good summary of the process required under state law (OAR 660-023-0180) for the approval of a post acknowledgement plan amendment (PAPA) allowing for inclusion of a significant mineral and aggregate site in a county's comprehensive plan. The applicant has chosen to pursue a PAPA, and is required to meet the criteria and standards required by the state rule. However, here, as further explained below, the applicant's efforts fall far short of what is required.

It appears that the applicant merely submitted a modified version of an earlier – and different – request for a mineral and aggregate PAPA. The applicant's efforts to bootstrap in his PAPA, using an application for a completely different PAPA as the foundation, are insufficient. Although all mineral and aggregate site PAPAs are required to apply the same state rules, it is not appropriate for an applicant to merely take an application for a different site and through deletions and some additions call it his own. The State has imposed the mineral and aggregate rules for a purpose, and in recognition that sites that obtain status as significant mineral and aggregate sites under the rules should be protected. These rules therefore require applicants to use considerable effort to establish that they have addressed and met the criteria and standards required by the State. It is not uncommon – and is even expected -- for mineral and aggregate PAPA applicants to submit a significant amount of information and evidence in support of the PAPA. This is not merely a bureaucratic exercise

EXHIBIT 14

property owners are required to do, but, rather, is a necessary step to achieve the status of a protected significant mineral and aggregate site.

The obligation of the applicant to provide the necessary information and evidence in support of an application is even more important in the instant case, where there is presently an approved aggregate site adjacent to the applicant's property that provides sufficient aggregate for the needs of the area and the applicant's request would result in the removal of what we believe is farm land capable of producing, based on historical production, 65 bushels of wheat per acre. We understand the applicant has represented the production to be significantly less -- 40 bushels per acre, thus making it marginal -- but the evidence would suggest that the land is capable of producing significantly more, with the average yield on the adjoining parcel to the south achieving 75 bushels per acre.

Notwithstanding the applicant's failure to present an application that properly addresses the PAPA criteria and standards required by State rule, the County did deem the application complete. However, in so concluding, the County was obviously giving the applicant the benefit of the doubt where the information was lacking. Upon scrutiny of the application, it is clear that it does not provide the information and evidence to support the PAPA. Among other things, as staff has informed you, in order to be deemed a significant, an aggregate site must pass certain quantity and quality standards. The applicant provides some evidence in his application that the quality standards would be met in the aggregate mined from the site. However, the applicant fails to provide sufficient evidence to support whether the quantity standard is met. The quantity standard in this case is 500,000 tons. The applicant asserts the site would produce in excess of 2.5 million cubic yards of aggregate material -- and the proposed site may be capable of such a quantity -- but the application fails to provide the appropriate evidence in support of this claim. This appears to be an example of the applicant attempting to obtain the PAPA with minimal effort -- when state law is very specific as to what is required in order to obtain a significant aggregate site PAPA.

The applicant likewise provides minimal effort in indentifying and addressing conflicting uses. The PAPA rule provides that the local government is to determine the impact area for purposes of identifying conflicts with the proposed mining and processing activities (generally 1500 feet from the boundaries of the mining area). Then the local government is to determine what existing or approved land uses within that area would be adversely impacted by the proposed mining operation. The application again provides minimal information upon which any potentially adverse impacts may be judged. In regard to local roads used for access and egress to the mining site the potential impact is to be considered up to one mile from the entrance to the mining site -- unless a greater distance is necessary in order to include the intersection with the nearest arterial. In this case the



application is not clear as to how the proposed aggregate site would be accessed, however, in any event, staff concluded that the mining activity would result in a significant change in trip generation on Wayland Road.

The applicant responds to this conflict and others, however, not by providing a traffic analysis, but merely by proposing that the mining would be done in phases – assumedly believing “phasing” would act to “minimize” the conflicts. However, phasing or delaying impacts is not a proper manner to minimize conflicts. For example, phasing the mining and claiming it will delay the impact to the roads to a later date does not minimize conflicts – at best it may delay them. The applicant is seeking approval of a very large area to be designated a significant mining and aggregate resource. The conflicts must be based upon what the applicant is asking for, and not the applicant’s claim it will actually mine only a portion of the site. The applicant’s approach to phasing mining does not properly address the conflict the PAPA would present to traffic or other conflicting uses, but merely delays those conflicts to some later date.

In regard to potential conflicts arising from noise, dust and other discharges, as well as conflicts with agricultural practices, the applicant simply does not provide enough information and evidence regarding those conflicts and how they may be minimized in accordance with the State’s PAPA rule for significant mineral and aggregate sites..

The applicant also seeks conditional use approval for the processing it intends to employ. Again, there is insufficient information provided upon which these uses can be reviewed. In any event, such conditional uses would only proceed upon the applicant obtaining the PAPA – and he has failed to provide sufficient information and evidence in support of the PAPA.

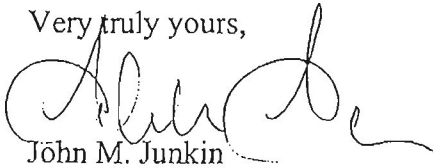
On behalf of our client, we ask that the PAPA application be denied, on the basis that the applicant has failed to provide sufficient information and evidence in support of, among other things, sufficient quantity of aggregate being present and failure to properly identify and explain conflicting use impacts or the manner in which those impacts may be minimized under the state’s rule. In the alternative, your Commission may choose to allow the applicant to submit further information and evidence in support of the PAPA application and continue this matter to another hearing to allow review and consideration of such supplemental information and evidence.

We have today been informed that based upon the DLCD response to the PAPA application, the applicant may likely need to modify his application. In the event the PAPA is modified our client must be afforded the opportunity to review the modified PAPA and

Umatilla County Planning Commission
April 16, 2009
Page 4

provide comments. This will necessitate a further hearing before your Commission on the modified PAPA.

Thank you for your cooperation in this matter.

Very truly yours,

John M. Junkin

JMJ:tk

cc: James L. Whitney
JR Cook

11492503.1



ROAD USE AGREEMENT LANGUAGE
Sunny Cove Ranches
Cannon Pit
April 16, 2009

1.0 DATE

The date of this agreement is April ____, 2009.

2.0 PARTIES

The parties to this agreement are UMATILLA COUNTY ("County"), and SUNNY COVE RANCHES, INC. ("Sonny Cove Ranches").

3.0 ROADS

3.1 Sunny Cove Ranches, as part of its operation of the Cannon Pit, may at times be using County Road No. 717 (Gerking Flat Road) for hauling operations in conjunction with its aggregate mining and processing sited on a tract of land located in the Southeast Quarter of Section 8, Township 5 North, Range 34 East of the Willamette Meridian, Umatilla County, Oregon. The length of the road subject to this agreement is from _____ to the described aggregate site, approximately _____ miles.

3.2 Additional roads may be used as part of the hauling operation and be subject to the terms of this agreement. The parties will list additional roads by a written addendum to this agreement.

3.3 This agreement will set out the terms of use for the hauling operations and any maintenance to Gerking Flat Road necessitated by the hauling operations.

4.0 TERM

The requirements of Sunny Cove Ranches shall continue as long as any aggregate mining or processing occurs at the site described in paragraph 3.1.

5.0 CONDITIONS

5.1 Sunny Cove Ranches will provide to the County a video record showing the condition of Gerking Flat Road, at least 7 days prior to commencing the hauling operations on that road.

5.2 Sunny Cove Ranches abide and comply with all load limits established by the County on all used roads for hauling materials and equipment to and from the site.

5.3 County reserves the right and authority to change or vary the load limits on any County Road as the County deems necessary.

5.4 Sunny Cove Ranches shall be responsible for providing traffic control and protective devices meeting the requirements of the MUTCD as required to allow the safe flow of traffic on Gerking Flat Road. Sunny Cove Ranches acknowledges that the road is of minimum width and sight distance.

6.0 MAINTENANCE

6.1 Sunny Cove Ranches will maintain the portion of Gerking Flat Road subject to this agreement in a condition acceptable to the Public Works Director.

6.2 Sunny Cove Ranches agrees that if notified in writing by the County of any necessary maintenance, Sunny Cove Ranches shall perform all such required maintenance at its expense within 24 hours of receipt of notice.

7.0 ADDITIONAL CONDITIONS

7.1 Sunny Cove Ranches will instruct its employees, invitees and licensees, to drive within the road right of way of Gerking Flat Road.

7.2 In addition to the conditions itemized in this contract, the County may impose additional conditions through its Public Works Director to address other maintenance necessitated by the hauling operation of Sunny Cove Ranches.

8.0 COMPLETION

8.1 Sunny Cove Ranches shall notify the County within five working days after hauling operations are completed, to schedule a visual inspection of the Gerking Flat Road to assure that the road is in compliance with the terms of this agreement.

8.2 After the completion of hauling operations, so long as Sunny Cove Ranches or its successors or assigns mines or processes any aggregate at the site described in paragraph 3.1, the portion of Gerking Flat Road will be maintained as set forth in this agreement.

9.0 GENERAL TERMS

9.1 All work will be done to the satisfaction of Umatilla County Director of the Public Works.

9.2 All materials and work product applied to any County Road right-of-way as a result of this contract become the exclusive property of the County.

April 20, 2009

RE: DAYLIGHT AGREEMENT
WAYLAND GRAVEL PIT/CANNON GRAVEL PIT

To Whom It May Concern:

This document affirms the agreement between the owners of the Wayland Pit and the Cannon Pit, both located in Umatilla County northwest of Athena Oregon, that mining may proceed with a zero foot setback along the adjoining property line between the two pits.

This agreement allows for mining of aggregate source material to the property line for joint reclamation without a finger of undisturbed land between the material sources.

Signed by Jim Whitney and Robert Cannon

Jim Whitney, Owner, Wayland Pit

Robert M. Cannon, Owner, Cannon Pit

EXHIBIT 16

Page _____

ROAD USE AGREEMENT LANGUAGE

Sunny Cove Ranches

Cannon Pit

April 16, 2009

Planning Commission Amendments, April 28, 2009 (Note: Planning Commission Recommendations Italicized)

1.0 DATE

The date of this agreement is *May*____, 2009.

2.0 PARTIES

The parties to this agreement are UMATILLA COUNTY ("County"), and SUNNY COVE RANCHES, INC. ("Sunny Cove Ranches").

3.0 ROADS

3.1 Sunny Cove Ranches, as part of its operation of the Cannon Pit, may at times be using County Road No. 731 (Gerking Flat Road), County Road #717, County Road #722 (*Wayland Road*) or County Road #725 (*Waterman Road*) for hauling operations in conjunction with its aggregate mining and processing sited on a tract of land located in the Southeast Quarter of Section 8, Township 5 North, Range 34 East of the Willamette Meridian, Umatilla County, Oregon. The length of the road subject to this agreement is from *Highway 334* to the described aggregate site, approximately _____ miles.

3.2 Additional roads may be used as part of the hauling operation and be subject to the terms of this agreement. The parties will list additional roads by a written addendum to this agreement.

3.3 This agreement will set out the terms of use for the hauling operations and any maintenance to Gerking Flat Road, *County Road #717, Wayland Road and Waterman Road* necessitated by the hauling operations.

4.0 TERM

The requirements of Sunny Cove Ranches shall continue as long as any aggregate mining or processing occurs at the site described in paragraph 3.1.

5.0 CONDITIONS

5.1 Sunny Cove Ranches will provide to the County a video record showing the condition of Gerking Flat Road, *County Road #717, Wayland Road and Waterman Road* at least 7 days prior to commencing the hauling operations on that road.

5.2 *Sunny Cove Ranches will conduct the necessary improvements to bring*

Gerking Flat Road, *County Road #717, Wayland Road and Waterman Road to a Umatilla County "D" Industrial/Agricultural Road Standard prior to commencement of commercial mining operations.*

5.3 Sunny Cove Ranches abide and comply with all load limits established by the County on all used roads for hauling materials and equipment to and from the site.

5.4 County reserves the right and authority to change or vary the load limits on any County Road as the County deems necessary.

5.5 Sunny Cove Ranches shall be responsible for providing traffic control and protective devices meeting the requirements of the MUTCD as required to allow the safe flow of traffic on Gerking Flat Road, *County Road #717, Wayland Road and Waterman Road during the duration of mining operations.* Sunny Cove Ranches acknowledges that the road is of minimum width and sight distance.

6.0 MAINTENANCE

6.1 Sunny Cove Ranches will maintain the portions of Gerking Flat Road, *County Road #717, Wayland Road and Waterman Road at a minimum of a "D" Industrial/Agricultural Road Standard.*

6.2 *Sunny Cove Ranches agrees to perform and maintain dust abatement on Gerking Flat Road and County Road #717 from the aggregate site to a distance _____' south of the nearest dwelling (The Thuul Dwelling).*

6.3 Sunny Cove Ranches agrees that if notified in writing by the County of any necessary maintenance, Sunny Cove Ranches shall perform all such required maintenance at its expense within 24 hours of receipt of notice.

7.0 ADDITIONAL CONDITIONS

7.1 Sunny Cove Ranches will instruct its employees, invitees and licensees, to drive within the road right of way of Gerking Flat Road.

7.2 In addition to the conditions itemized in this contract, the County may impose additional conditions through its Public Works Director to address other maintenance necessitated by the hauling operation of Sunny Cove Ranches.

8.0 COMPLETION

8.1 Sunny Cove Ranches shall notify the County within five working days after hauling operations are completed, to schedule a visual inspection of the Gerking Flat Road, to assure that the road is in compliance with the terms of this agreement.

8.2 After the completion of hauling operations, so long as Sunny Cove Ranches or its successors or assigns mines or processes any aggregate at the site described in paragraph 3.1, the portions of Gerking Flat Road, *County Road #717,*

Wayland Road and Waterman Road will be maintained as set forth in this agreement.

9.0 GENERAL TERMS

9.1 All work will be done to the satisfaction of Umatilla County Director of the Public Works.

9.2 All materials and work product applied to any County Road right-of-way as a result of this contract become the exclusive property of the County.

NEW HEARING:

Plan Text Amendment #T-09-033, Plan Map Amendment #P-097, Zoning Map Amendment #Z-289, Conditional Use Request #C-1148-09: Sunny Cove Ranches, Inc, owner; Robert Cannon, applicant. The subject property is located approximately one mile north of the corner of Gerking Flat Road and Wayland Road, 8.5 miles northwest of the City of Athena. The request is to include approximately 6 acres of the subject property under the Umatilla County Aggregate Resource Overlay Zone, as well as allow aggregate mining and processing of the site. The applicant proposes to utilize quality/quantity information to obtain a Comprehensive Plan Text Amendment to classify the site as significant under the Umatilla County Goal 5 inventory. Criteria for approval are specified in Oregon Revised Statutes 215.298, 215.283(2) (b), 215.296, 215.425; Oregon Administrative Rules 660-033-0130(5), 660-023-0030 through 660-023-0050 and 660-023-0180; Chapter VIII of the Umatilla County Comprehensive Plan and sections 152.061, 152.487, 152.615 and 152.617 (K) of the Umatilla County Development Code.

Commissioner Rhinhart called for abstentions or objections to the jurisdiction of the Planning Commission. Commissioner Lynde declared that he has known the applicant for many years and hunted on his property, but still felt he could make an unbiased decision. There were no abstentions or objections.

Staff Report:

Assistant Planning Director, J.R. Cook presented the staff report. Mr. Cook referred to his April 9th memo to the PC. He explained that there is a complex list of steps for permitting this type of use in the EFU zone. It is not just a conditional use any more.

The first step is to decide if it meets the state significance standard of 500,000 tons as well as the state quality standard for base rock. The original application proposed an 80 acre site, estimating quantity at 2 ½ million cubic yards, which is well over the threshold.

Exhibit #6 is the test showing that it does meet the state standard for base rock. The new packet provided includes a letter from the Department of Land Conservation and Development (DLCD) and a letter from an opponent's attorney, John Junkin, which both speak to quality. They both talk about a representative set of samples to show that all the materials meet specifications for base rock.

The next step is identifying a conflict area around the proposed build out area, which in this case is a 1,500 foot perimeter around the originally proposed 80 acre area. Oregon Administrative Rule limits what conflicts can be looked at. Some of those include noise, dust, or other discharges that can be associated with dwellings. In this case there is only one dwelling in this area and that property owner is present to testify.

Mr. Cook talked about impacts to the road system, referring to an overhead map. OAR allows the county to address impacts from the site to the nearest arterial, which is the Athena/Helix Highway. This application is designed more for wind turbine roads and related development, and the County Roadmaster has stated that this aggregate site is too

removed for other applications, so it is not likely to be used otherwise. Unfortunately the rule doesn't allow the county to determine that it is only for wind development and only address impacts for the road system for that use. The county must also consider that, in the future, the entire 80 acre site could be utilized for another application.

After the initial application with 45-day notice to DLCD, staff had several questions for the applicant. Mr. Cook noted that the applicant determined they could minimize impacts by phasing development of the aggregate site, addressing impacts of each phase.

There are no conflicts with airports or other Goal 5 resources within the 1,500 acre foot impact area.

Addressing conflicts with agricultural practices goes back to state statute, which has been addressed in the county conditional use process, found in condition #20 on page 16. Other conflicts are addressed by requiring a conditional use permit that addresses potential other conflicts that could occur in and around the area.

Mr. Cook explained that the biggest issue is with the size of the site and roads. The applicant proposed to minimize impacts to roads by phasing the site. DLCD disagrees that this is even possible because the rule reads all or none. The applicant has agreed to amend their PAPA permit boundaries to protect a 6 acres site, meeting the 500,000 ton threshold, but limiting the impact assessment to about 520,000 tons.

Exhibit #15 is a proposed maintenance and participation agreement for the road. The applicant has worked with the County Public Works Director and agreed to develop all haul roads to the county's "D" industrial/agricultural standard.

There are significant setback standards to limit impacts on agricultural lands. The applicant has also proposed that impacts are minimized because the site is marginal farmland.

Commissioner Colgan commented that the process of designating Goal 5 resources and scaling to 6 acres makes it a selective process. If it's truly a Goal 5 resource and all 80 acres are an aggregate site, then the location is irrelevant. Shouldn't it be recognized from a land use point of view as an aggregate site? Mr. Cook replied that the county can, through Periodic Review or a Plan Amendment, map aggregate resource sites throughout the county, but that has never been done. The initial inventory was done with the original Comprehensive Plan. Commissioner Colgan asked what the purpose was of going through Goal 5 and a PAPA to protect this site. He would be more concerned with reclamation. Mr. Cook replied that this requirement stems from a LUBA decision that states that to mine on EFU land for commercial purposes it shall be on a list of significant sites on the county's Comprehensive Plan and it shall be protected for extraction.

Mr. Cook continued, explaining that, once conflicting uses are identified, the conditional use process is used to minimize impacts. Recommended conditions were included in packets.

The local process is to implement the AR overlay zone and look at conditional use permit criteria of approval. If the Planning Commission finds that additional conditions are warranted then they can implement them. After approval the application is reviewed annually for subsequent conditions, but otherwise approval is permanent.

DLCD states that the applicant might have gone through the minor significant determination, which is a new rulemaking that allows for sites less than 500,000 tons to go through a different set of plan amendment standards. The problem is that they still have to go through this process, but they are bound to limited production. Mr. Cook spoke with DLCD today and they agreed they cannot go through that process at this point.

Mr. Cook noted that there has been a request for continuance by the opponent's attorney due to the amendment to the original PAPA request. Because this is a recommendation to the Board, additional information can be addressed at that time, but the Planning Commission does have the opportunity to keep the record open, if desired, or simply deny it based on lack of sufficient evidence to address the 6 acre site.

Mr. Cook asked that the Planning Commission adopt the preliminary staff report with any amendments they recommend, as well as the first 15 exhibits presented.

Commissioner Standley asked about Exhibit #7, which talks about closing another quarry. He asked that Mr. Cook point out where the other quarry is located, and the significance of Exhibit #7. Mr. Cook could not find where the "new" Weyland quarry was one of the county's approved quarry sites. The old Weyland quarry has an existing CUP, but a portion of it is located on the applicant's property, which is not included on the original CUP. The county actually used the site for road maintenance purposes, but has not used it for quite some time.

Commissioner Rhinhart wondered how the existing pit is protected as a Goal 5 resource if this pit is opened up next to it. Mr. Cook explained that the neighboring site is not a designated Goal 5 resource because, even though there is a CUP, it did not go through the plan amendment process, so it is not on the county's inventory.

Commissioner Standley suggested removing Exhibit #7 from the record. Mr. Cook replied that it can't be removed, but the Planning Commission can make note that the county is not held to any reference in that exhibit. There was discussion.

Commissioner Reeder asked about data on projected wind power construction in the area. Tamra Mabbott replied that there are two proposed turbine sites. There was discussion about locations and changes to the roads.

Applicant/Proponent Testimony:

Ed Hibbard with Anderson Perry and Associates testified on behalf of the applicant. Mr. Hibbard reviewed the history, explaining that the Weyland pit was originally opened

south of the property line, on the Rice property. In 1993 the county submitted a permit to DOGAMI to extend the pit onto the Cannon property. That was approved and became an extension of the Weyland pit, and that became the new Weyland pit. It looks like one pit at this point.

In 2001, the agreement that was included in Exhibit #7 was put together, with an understanding that both pits were useable, but it came to light that this was not so. They are now initiating the process to legitimize the pit. They are on a tight schedule because they are getting ready to begin work at the turbine site.

Mr. Hibbard talked about addressing the issue of significance, noting that quantity is not an issue, and they have produced one sample from the existing pit. The property consists of basalt and they believe they satisfy both quality and quantity.

Mr. Hibbard referred to Exhibit #10, which was put together to address the impacts to water because there was concern about runoff. The exhibit also shows how the hillside has been mined, and it is anticipated that they will continue to mine at the same elevation back to the east for an additional 200-300 feet. If there is additional quantity needed, the next step would be to go down at 40 foot intervals. Mining out the 6 acres in this fashion will exceed the 500,000 tons of aggregate, satisfying the quantity criteria, but minimizing future mining and impacts to roads in the area.

There was discussion about the elevation of both pits and potential for the pits to work together. The county road is intended to continue to provide access. They would use it to bring rock from the Cannon pit out on the north. There are a couple of alternatives.

There was a traffic impact study coordinated with the service provider, which is the county. The initial traffic counts essentially generated no traffic on county roads.

Commissioner Kaminski asked how water was supplied for the mining operation. Mr. Hibbard replied that water count was 6 loads per day for the batch plant, with the water source being from the nearby Humbert well.

They anticipate that future traffic impacts will in close proximity. The County Roadmaster agreed that a road maintenance agreement would be appropriate, so that when other projects come up, routes are identified and documented, and the applicant is responsible for putting the road back into good condition. The applicant is willing to accept any conditions to minimize impacts.

Mr. Hibbert noted that time is of the essence, so if the Planning Commission determined a continuance was necessary, the applicant would appreciate any efforts to expedite.

Opponent Testimony:

Greg Thul, nearby property owner testified that he was neutral, but having the only house on Gerking Flat Road in this vicinity, he was of course concerned with traffic from the pit.

Commissioner Reeder noted that upgrades would be made to county roads for wind turbine construction, so the condition of the roads will likely be maintained or improved by the wind companies.

Commissioner Colgan noted that the road use agreement doesn't address the length of road or distances of roads.

Jim Whitney testified as the owner of the adjacent property that contains the original pit. He too reviewed the history of the pit and stated that he didn't see the need for another pit because the permit for his property includes more aggregate than could ever be used.

Mr. Whitney also did not feel the applicant had fully addressed the issues. He noted the request for continuance from his attorney related to the change in size to 6 acres, and stated that he would prefer to waive that request and hear a decision this evening. He felt the standard had not been met and the Planning Commission would not be able to make a decision of approval based on the information provided.

Commissioner Standley noted that they are planning to begin mining at the Whitney pit soon and wondered if the county should be considering impacts to the road from that site as well. Commissioner Colgan asked if the conditions of the original permit on Mr. Whitney's property addressed this. Mr. Cook replied there was really nothing required other than meeting DOGAMI standards.

Mr. Cook also noted that the county is exempt from DOGAMI regulations, but for commercial use the Cannon pit is not. They are only exempt if it is mined for private use only.

Agency Testimony:

None.

Rebuttal Testimony:

Mr. Hibbard explained that Exhibit #7 was submitted as an acknowledgement that the county realizes there is a right-of-way. It was not meant to commit the county.

The county right-of-way is intended as the access for the subject pit. The other accesses from the north may or may not pass through the Whitney property, so they have not gotten to the point where they need to negotiate an easement with Mr. Whitney.

Mr. Hibbard argued that the applicant has met the standard, although Mr. Whitney disagrees. Operations start quickly and there is a large pit adjacent, which creates a problem for the applicant because there are two organizations using the same road; one with an agreement and one without. The applicant is willing to enter an agreement with the county for road maintenance.

Umatilla County Planning Commission
April 16, 2009

Mr. Hibbard talked briefly about criteria related to impacting a percentage of prime farmland, which is considered class I or II soils. There is an area of class II soil located south of the property going into Mr. Whitney's property. It is about 6% of the 80 acre site. The soils that are actually coded for the applicant's property is class III or lower.

Commissioner Standley commented that, if the Cannon site is developed then he would assume there would be processing, stockpiling and a batch plant. Should these things be addressed as well? Mr. Cook replied that there are requirements in the code for a conditional use. In this instance, they had an alternative processing location offsite. It was included with the CUP, so processing is approved at both the aggregate site as well as the location along the road system itself.

There was further discussion about roads, and the relation between the aggregate sites and turbine development.

Commissioner Williams asked if there would be any conflict of interest related to any agreement between the county and the applicant for gravel supplied to the county. Mr. Cook replied that the Planning Commission would want to stipulate in the findings that the agreement in Exhibit #7 does not apply, or encumber the county in any way.

Mr. Cook explained his recommendations, and there was discussion about the request for continuance. It was noted that Mr. Whitney had waived that request, and Mr. Cook added that tonight's decision was just a recommendation to the Board. The application will still go before the Board of Commissioners for final decision.

Hearing Closed; Deliberation and Decision:

Commissioner Reeder asked if there was adequate information in regards to quality standards. Mr. Cook replied that it was up for interpretation. The DLCDC letter states that a representative sample of the entire site, showing that all 500,000 tons meets state specs. This application includes one sample from the existing site, which is in the center of the proposed 6 acre area. It's up to the Planning Commission to decide if they feel the remaining basalt is of the same quality or not. After discussion, Commissioner Reeder stated that he was satisfied that the sample is qualifying of the character of the rock in the subject area.

Mr. Cook explained that if the Planning Commission is satisfied that there is enough aggregate to meet the quantity threshold and quality, conflicts associated with the mining must be addressed. Commissioner Reeder suggested a condition for dust abatement along the road in the vicinity of any dwellings, in addition to the requirement to improve the road to the agricultural/industrial standard for the length of road to the highway. Mr. Cook added that the County Roadmaster could verify that road condition is at or above that standard. If not, it would be the applicant's burden to bring it up to that standard to the quarry. Commissioner Reeder also suggested having the Roadmaster determine a preferred route that would meet that standard.

Umatilla County Planning Commission
April 16, 2009

Commissioner Reeder moved to recommend approval, with the discussed changes, and clarifying that Exhibit #7 does not encumber the county. Commissioner Wysocki seconded. Question called. Commissioner Reeder commented with his vote that he would recommend that both property owners work together and share the road as gentlemanly as possible under the circumstances. Commissioner Rhinhart commented with his vote that he would have probably opposed this application if it was for a totally separate pit, but they are essentially one. Motion carried 8:0.

Umatilla County

Department of Land Use Planning



May 5, 2009

MEMO

Director
Tamra Mabbott

To: Umatilla County Board of Commissioners

From: J.R. Cook, Asst. Planning Director

CC: Umatilla County Planning Department

Land Use

Planning

Division:

541-278-6252

Interested Persons

RE: Umatilla County Aggregate Approval Process (Robert Cannon Aggregate Application #T-09-033, #P-097, #Z-289 and #C-1148-09)

CODE
ENFORCEMENT
541-278-6300

...
Emergency
Management
Division:

EMERGENCY
MANAGEMENT
541-966-3700

CHEMICAL
STOCKPILE
EMERGENCY
PREPAREDNESS
PROGRAM
(CSEPP)
541-567-2084
541-966-3700
1-877-367-2737

There are basically five steps to the aggregate decision making process. The steps are codified in Oregon Administrative Rule (OAR) 660-023-0180 and provide the basis for the Board's decision on whether to allow, limit or not allow mining at the proposed Cannon aggregate site. The purpose of this memo is to help move the hearing process forward by focusing on the legal requirements (steps) of the OAR and the evidence, submitted to date, that resulted in a Umatilla County Planning Commission (PC) recommendation for approval on April 16, 2009.

Step 1: Determine the Significance of the Site (Site must be significant prior to moving on to Step 2)

1. Is the Site Significant (Quantity and Quality)?

Per Rule, the proposed Cannon site must contain a minimum of 500,000 tons of ODOT specification base rock. During the PC hearing the following was presented and/or discussed:

A. Amount of Aggregate Material: The applicant's consultant provided verbal documentation that the proposed site contained approximately 554,000 tons of aggregate material. No evidence was submitted by opponents to indicate that there was not enough material to meet the quantity threshold and the PC found that based upon the evidence in the record enough material is present to satisfy the quantity criterion.

B. Quality of Aggregate Material (New Sites): The applicants relied upon Exhibit #6 (Carlson Testing report) to defend a finding that the 500,000 tons of material meets the minimum ODOT specification for base rock. Letters submitted to the PC by DLCD (Exhibit #13) and an opponents attorney (Exhibit #14) indicate that multiple samples are necessary to enable a decision making body to conclude that at least 500,000 tons of material meets the spec requirement.

tr 19

Staff has found that the sampling rule is somewhat subjective in that it requires a "representative set of samples." It is up to local decision making body to determine if the sampling submitted into the record is representative enough to conclude that there is enough aggregate material within the proposed quarry boundaries, and that the required amount of material meets ODOT standards for base rock. It is the applicant's burden to provide and defend the samples and if opponents are present, it is their responsibility to discredit such samples or prove that the samples are not "representative."

Following testimony and deliberation, the PC found that, based upon the size of the quarry (six acres) and the type of aggregate material (basalt), the testimony into the record and Exhibit #6 was representative enough to warrant a finding of significance under the OAR.

C. High-value soil requirements: Sites containing high-value soils may have additional criteria. The Cannon site does not exceed the maximum threshold for high-value soil (Exhibit #5).

Step 2: Allow, Limit, or Not Allow Mining (This step is the most important in the decision making process and looks at identified conflicts between mining and existing uses/zoning)

I. Identify Conflicting Uses

- A. Noise, dust, other discharges associated w/ dwellings, schools, etc.
 - 1. The PC found that one dwelling within 2,500' of proposed quarry could be impacted by dust from hauling rock and material along Gerking Flat Road.
- B. Impacts to the road system
 - 1. The PC found that pending projects and subsequent rock delivery will lead to impacts/conflicts to the existing improvements of Wayland Road, Gerking Flat Road and/or Waterman Road.
- C. Conflicts with airports
 - 1. No airports exists within the surrounding area.
- D. Conflicts with Goal 5 resource sites.
 - 1. No existing Goal 5 resources in 1,500' study area
- E. Agricultural Practices.
 - 1. The PC found that the site would not significantly impact agricultural practices on surrounding lands.
- F. Other Conflicts.
 - No other conflicts were identified by the PC.

II. Can Conflicts Be Minimized? (If all conflicts can be minimized, proceed with AR Overlay Zone and Conditional Use Permit to allow mining. If all conflicts cannot be adequately minimized refer to Step 3 below referencing OAR 660-023-0180 (d))

In Umatilla County we use a Conditional Use Permit to impose conditions of approval to minimize impacts found in step 2(I) above:

- A. Conflicts w/ dwellings, schools, etc. (dust, noise, etc.)
 - 1. The PC recommended that a road maintenance and participation agreement be developed and include a requirement for dust abatement along Gerking Flat Road (Exhibit #17). The PC did not decide on a distance from the dwelling. It is recommended that the Board require dust abatement begin 1/4 mile south of the dwelling (Thuul Residence) and continue to the aggregate boundaries during mining and hauling activities.
- B. Conflicts w/ road systems
 - 1. To minimize conflicts to the County road system throughout the operational life of the quarry, the PC recommended a more robust road maintenance and participation agreement than that submitted by the applicants. The proposed language of the agreement is included as Exhibit #17.
- C. Conflicts w/ airports (N/A)
- D. Conflicts w/Goal 5 resources (N/A)
- E. Agricultural Practices
 - 1. ORS 215.296 is implemented through #20 in Findings document.
 - 2. Applicants should understand that ORS 215.296 (3) allows a land owner conducting resource activities (i.e. farm/forest activities) to file a complaint that a condition or use has forced a significant change in farm/forest activities and increased the cost of those activities. Upon confirmation of the complaint, a fine and/or stop work order can be issued to the aggregate operator.
- F. Other conflicts (N/A)

Step 3: If Significant Conflicts Cannot be Minimized

I. If conflicts cannot be minimized, the Planning Commission must complete an Environmental, Social, Economic and Energy (ESEE) analysis of allowing, limiting or not allowing mining of the site based on the following:

- A. Degree of adverse affect
- B. Reasonable and practicable measures to reduce adverse impacts
- C. Probable duration of mining and proposed post mining use

II. If mining is not allowed, the analysis must provide clear and objective reasons to support not allowing mining (Steps 4 and 5 would not apply)

The PC concluded that conflicts from mining activities could be minimized.

Step 4: If Mining Allowed, the Site Must be Protected under the AR Overlay Zone.

I. The PC accepted the findings contained within the preliminary findings and conclusions document to protect the site under the AR Overlay Zone. This language is included in the Preliminary Findings document.

Items for Board Consideration

Based upon conversations with both the applicant's and one opponent, the only issue that continues to be debated is the evidence in the record satisfying the quantity and quality requirements of the OAR. Following the hearing process and testimony into the record, the Board must conclude that the evidence is sufficient to conclude that the quantity and quality of material present in the proposed quarry boundaries meet state law. If the Board finds that there is not enough evidence present they may continue the hearing to allow the applicant time to complete additional sampling or deny the application.

If the Board determines the site as significant, it appears that the PC has developed the necessary conditions of approval to assure that all conflicts can be minimized and that mining could be allowed.

April 20, 2009

RE: DAYLIGHT AGREEMENT
WAYLAND GRAVEL PIT/CANNON GRAVEL PIT

To Whom It May Concern:

This document affirms the agreement between the owners of the Wayland Pit and the Cannon Pit, both located in Umatilla County northwest of Athena Oregon, that mining may proceed with a zero foot setback along the adjoining property line between the two pits.

This agreement allows for mining of aggregate source material to the property line for joint reclamation without a finger of undisturbed land between the material sources.

Each party shall be responsible for their own reclamation

Signed by Jim Whitney and Robert Cannon

Jim M. Whitney, owner of P. Whitney Properties LLC

Jim Whitney, Owner, Wayland Pit

Robert M. Cannon

Robert M. Cannon, Owner, Cannon Pit



Umatilla County
Department of Resource
Services and Development
216 SE 4th Street • Pendleton, OR 97801

ATTN: PLAN AMENDMENT SPECIALIST
DLCD
635 CAPITOL ST NE, STE 150
SALEM, OR 97301-2540