

W. T. B.

AGENDA COVER MEMO

DATE: October 4, 2004 (Date of Memo)
October 19, 2004 (Date of Meeting)

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT.: Public Works Department/Land Management Division

PRESENTED BY: Thom Lanfear/Land Management Division

AGENDA ITEM TITLE: ORDINANCE PA 1188 ---IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN TO REVISE THE "SIGNIFICANT MINERAL AND AGGREGATE RESOURCES INVENTORY", REDESIGNATE FROM "FOREST" TO "NATURAL RESOURCE: MINERAL", REZONE FROM "F-1/NON-IMPACTED FOREST LANDS" TO "QM/QUARRY AND MINE OPERATIONS" AND ALLOW MINING FOR 40 ACRES OF LAND PURSUANT TO LANE CODE 16.400 AND 16.252 AND THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR 660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 98-5144; B. J. EQUIPMENT COMPANY)

I. MOTION

- 1. ALTERNATIVE MOTIONS AFTER DELIBERATIONS:
 - A. I MOVE TO ADOPT ORDINANCE PA 1188.

OR

- B. I MOVE TO DIRECT STAFF TO REVISE THE FINDINGS FOR FINAL ACTION.

II. ISSUE OR PROBLEM

The Board needs to adopt findings for a Board final decision on Ordinance PA 1188 (B.J. Equipment).

III. PROCEDURE

The Board of Commissioners may follow these Meeting procedures on October 19/20:

- 1. Announce the meeting is closed to testimony and the purpose of the meeting is for the Board of Commissioners deliberations;

2. Disclose any ex parte contacts;
3. Call for abstentions due to ex parte contacts or biases;
4. Request the Director or staff to present an introductory report, and provide such information as may be requested by the Board of Commissioners ("Board", hereinafter);
5. Board deliberations;
6. At the conclusion of deliberations, the Board has several options:
 - a) the Board may adopt the Ordinance with the current supporting findings of fact; or
 - b) the Board may assign the drafting of revised findings of fact and conclusions to the staff for adoption at a subsequent meeting.

IV. DISCUSSION

A. Background

The Board held public hearings on this Ordinance on April 30, 2003 and conducted deliberations on February 11, 2004 and February 25, 2004. At the conclusion of deliberations, the Board directed staff to prepare appropriate findings for adoption of the Ordinance.

B. Analysis

The attached findings correspond to the Board deliberations of February 25, 2004 in the following manner:

1. The aggregate resource site is considered "significant" as provided by OAR 660-023-0180(3);
2. The conditions of approval are modified in the following manner:
 - Conditions are removed that were contrary to the provisions of OAR 660-023-0180 in that they addressed perceived impacts beyond the established 2300-foot impact area from the mining area or potential conflicts with local roads;
 - The maximum allowable number of trucks per day is specified;
 - Road improvement requirements for Bear Creek Road and Cedarcroft Road are specified.
3. Subject to the proposed conditions and mitigating measures, the proposal meets all the conflict minimization requirements of OAR 660-023-0180(4) and mining is allowed.

A complete copy of the revised findings showing the changes is available in the record.

D. Alternatives/Options

Upon conclusion of Board deliberations, options are available to the Board:

1. If the Board finds that the Ordinance with attached findings of fact and conclusions corresponds to the will of the Board, Move to adopt the Ordinance as presented; or
2. If the Board finds that revisions to the findings are necessary prior to adoption, Move to direct staff to prepare revisions to the findings of fact and conclusions for subsequent final adoption.

E. Recommendations

Staff recommends Option 1.

F. Timing

The Ordinance will take effect immediately upon final adoption by the Board.

V. IMPLEMENTATION/FOLLOW-UP

When the Board takes final action, notice will be provided as required. At the Board's direction, staff will bring revised findings back to the Board for review and action.

VI. ATTACHMENTS

1. Proposed Ordinance w/attachments
2. Revised Conditions showing recent changes
3. BCC Minutes February 11, 2004 meeting
4. BCC Minutes February 25, 2004 meeting

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE PA 1188 (IN THE MATTER OF AMENDING THE LANE COUNTY RURAL
(COMPREHENSIVE PLAN TO REVISE THE "SIGNIFICANT MINERAL
(AND AGGREGATE RESOURCES INVENTORY", REDESIGNATE
(FROM "FOREST" TO "NATURAL RESOURCE: MINERAL",
(REZONE FROM "F1/NON-IMPACTED FOREST LANDS" TO
("QM/QUARRY AND MINE OPERATIONS AND ALLOW MINING FOR
(40 ACRES OF LAND PURSUANT TO LANE CODE 16.400 AND 16.252
(AND THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR
(660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES
((FILE PA 98-5144; B. J. EQUIPMENT COMPANY)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, Lane Code 16.400 sets forth procedures for amendment of the Rural Comprehensive Plan and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

WHEREAS, Oregon Administrative Rules (OAR) Chapter 660 Division 23 sets forth procedures for amendment of the Goal 5 Inventory of Significant Mineral & Aggregate Sites within Lane County as well as addressing requests for a post-acknowledgment plan amendment (PAPA); and

WHEREAS, in September 1998, application no. PA 98-5144 was made for a major amendment to add to the Lane County Goal 5 Inventory of Significant Mineral & Aggregate Sites, redesignate from "Forest" to "Natural Resource: Mineral" and concurrently rezone from "F-1/Non-Impacted Forest Lands" to "QM/Quarry and Mine Operations" a 40-acre portion of tax lot 3500 of map 19-02-00 (30); and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearings on March 2, and March 16, 1999, deliberated on April 6, 1999 and forwarded the matter to the Board with formal Planning Commission recommendations; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapter 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted public hearings and is now ready to take action;

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The subject site, consisting of a 40-acre portion of tax lot 3500 of map 19-02-00 (30) as depicted on Exhibit "A" attached and incorporated here, shall be added to the Lane County Inventory of Significant Mineral and Aggregate Sites identified as Appendix "D" of the "Mineral and Aggregate Resources Working Paper" based on findings and conclusions as described in Exhibit "C" attached and incorporated herein.

Section 2. The Lane County Rural Comprehensive Plan is amended by the redesignation of a 40-acre portion of tax lot 3500 of map 19-02-00 (30), from "Forest" to "Natural Resource: Mineral", such territory depicted on Plan Plot 440B further identified as Exhibit "A" attached and incorporated herein.

ORDINANCE PA 1188 ---IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN TO REVISE THE "SIGNIFICANT MINERAL AND AGGREGATE RESOURCES INVENTORY", REDESIGNATE FROM "FOREST" TO "NATURAL RESOURCE: MINERAL", REZONE FROM "F-1/NON-IMPACTED FOREST LANDS" TO "QM/QUARRY AND MINE OPERATIONS" AND ALLOW MINING FOR 40 ACRES OF LAND PURSUANT TO LANE CODE 16.400 AND 16.252 AND THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR 660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 99-5144; B. J. EQUIPMENT COMPANY)

Section 3. A 40-acre portion of tax lot 3500 of map 19-02-00 (30), is rezoned from "F-1/Non-Impacted Forest Lands" (Lane Code 16.210) to "QM/Quarry and Mine Operations" (Lane Code 16.216), such territory depicted on Rural Zoning Plot 440B, and further identified as Exhibit "B" attached and incorporated herein, and the mining and processing of aggregate resources shall be authorized pursuant to Lane Code 16.216 and subject to the Conditions of Approval contained within Exhibit "C" attached and incorporated herein.

FURTHER, although not a part of this Ordinance except as described above, the Board of County Commissioners adopts Findings and Conclusions as set forth in Exhibit "C" attached, in support of this action.

The prior designation and zone repealed by this Ordinance shall remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

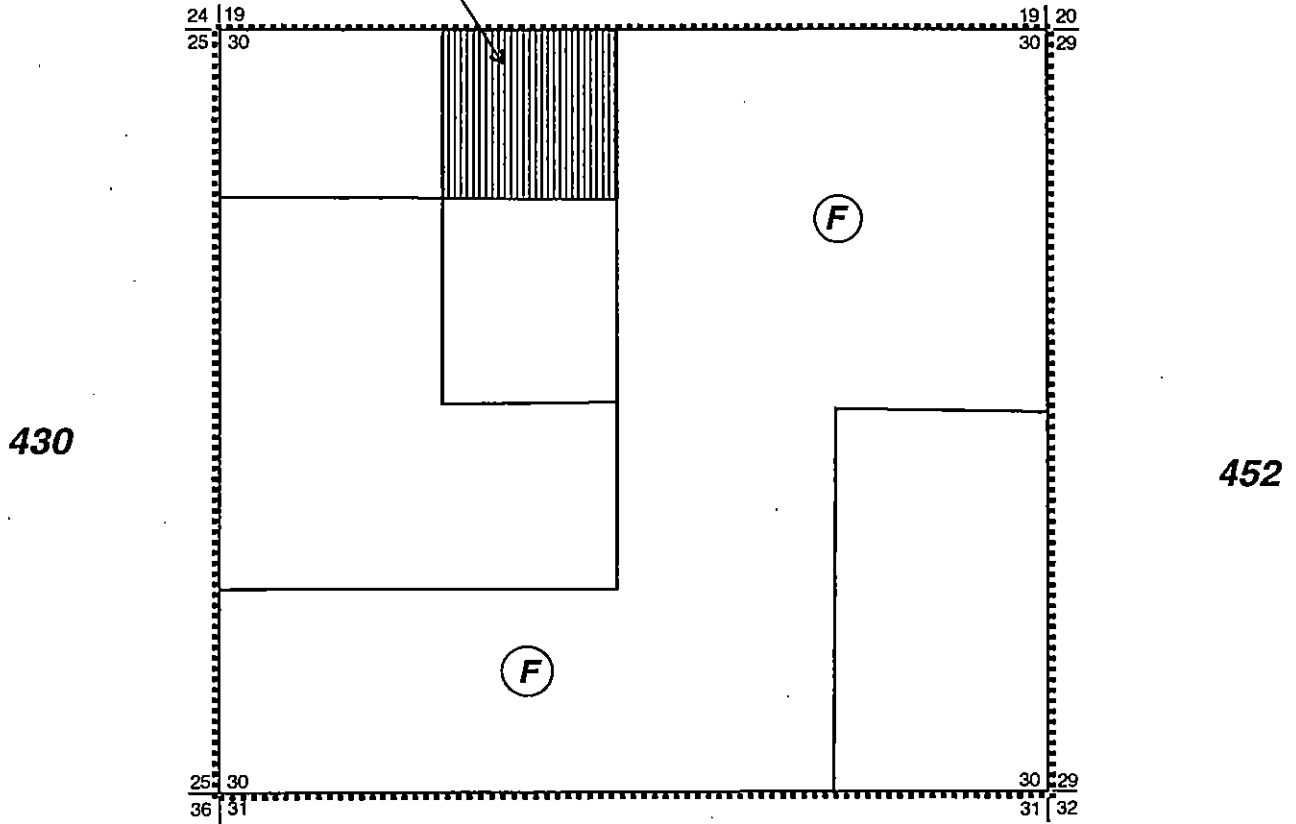
If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

ENACTED this _____ day of _____, 2004

Bobby Green, Chair
Lane County Board of Commissioners

Recording Secretary for this meeting of the Board

FOREST to
NATURAL RESOURCES 440



lane county



OFFICIAL PLAN MAP

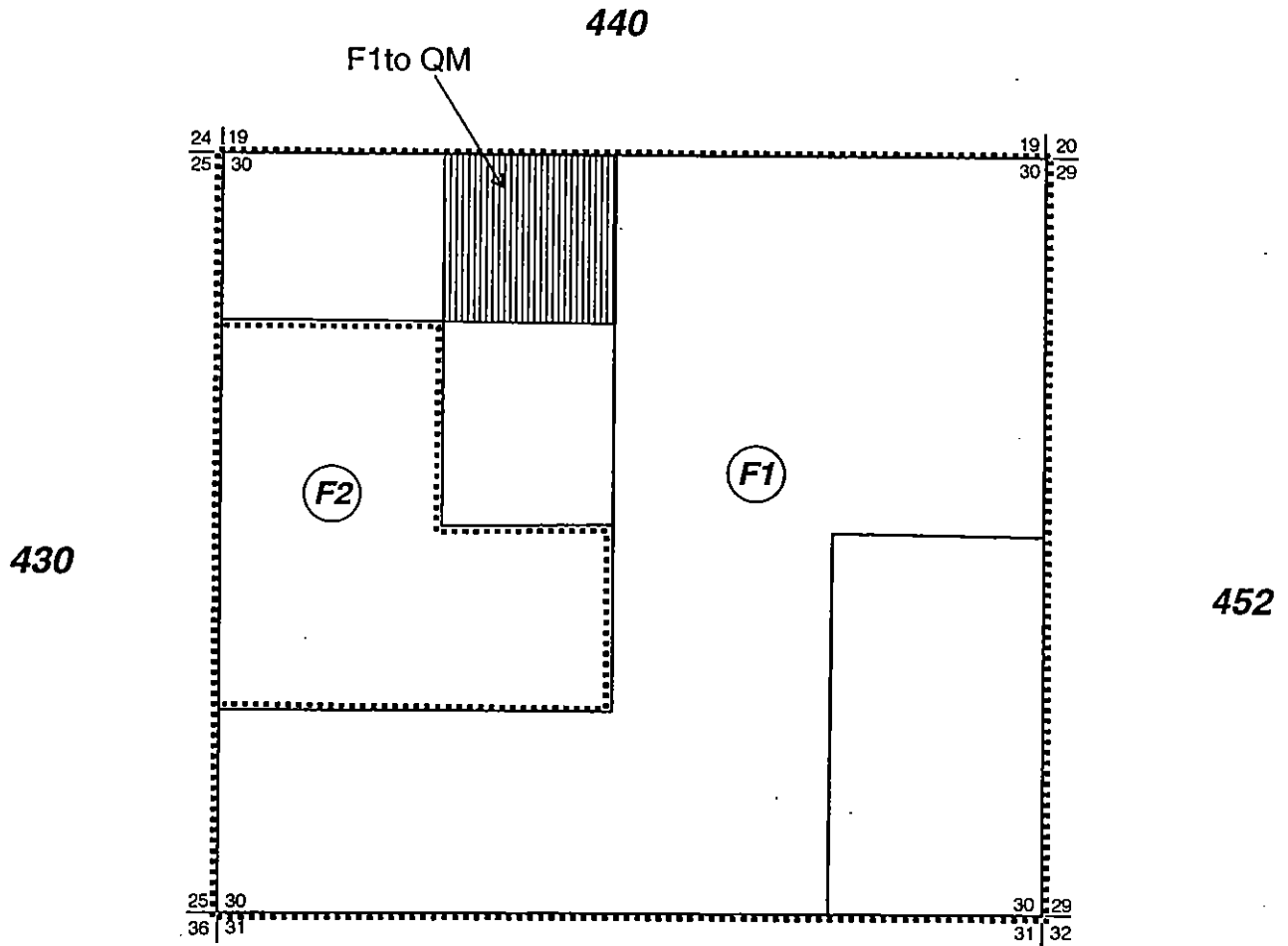
PLOT #440B

Twtnshp Range Section

19 02 30

ORIGINAL ORD. # _____ PA 884 _____ DATE 2/29/1984 _____ FILE # _____

REVISION # _____ ORD# _____ DATE _____ FILE # _____



lane county



OFFICIAL ZONING MAP

PLOT #440B

Twnshp Range Section
 19 02 30

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE # _____

REVISION # _____ ORD# _____ DATE _____ FILE # _____

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
LANE COUNTY, OREGON**

IN THE MATTER OF THE POST ACKNOWLEDGMENT)
PLAN AMENDMENT (PAPA) TO REDESIGNATE LAND)
FROM F-1, NON-IMPACTED FOREST LAND TO)
QM-RCP, QUARRY AND MINE OPERATION ZONE)
(PA 98-5144; ROSS BRADFORD))

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND CONDITIONS IN THE MATTER OF PA 98-5144**

A. The Application.

The applicant and property owner, Ross Bradford, by and through his agent, BJ Equipment Company, LLC, has submitted an original Application and Amended Application seeking approval of the following:

1. Pursuant to OAR 660-023-0180, amendment to Lane County’s acknowledged inventory of significant mineral and aggregate resources to include the subject parcel designated in the application by means of a Post Acknowledgment Plan Amendment (PAPA);
2. Amendment to the Rural Comprehensive Plan Diagram to designate the subject parcel Natural Resources: Mineral; and
3. Rezoning of the subject parcel from F-1 (Non-Impacted Forest Land) to Q-M (Quarry and Mine Operations zone).

The Bradford pit site plan is set forth at Exhibit 44. The site plan includes the specifications that the hours of operation for the quarry will be Monday through Saturday, 7:00 a.m. to 4:30 p.m. with occasional Saturday operation. Blasting will be performed intermittently Monday through Friday between the hours of 10:00 a.m. and 4:30 p.m. All blasting procedures will conform with the Office of Surface Mining recommendations. All quarry access will be secured during blasting operations. Blasting will be performed only by federal and state licensed blasters. A maximum of 40 loaded trucks per day is contemplated by the application. No more than the equivalent of that number of loaded trucks (40 per day) shall be allowed by approval of the application. Dimensions of the proposed quarry will encompass approximately 20 acres out of the total 40-acre parcel, including loading areas and stockpiles.

B. Lane County Planning Commission action.

On March 2, 1999 and March 16, 1999, the Lane County Planning Commission held public hearings and the record remained open for written material until March 30, 1999. The Lane County Planning Commission toured the site of the request. On April 6, 1999, the Lane County Planning Commission deliberated in public meeting and recommended by a vote of 5-2 to approve the PAPA and rezoning and adopt certain conditions.

C. Legal criteria applicable to the decision.

The substantive criteria for approval of a PAPA are set forth below in the text of the findings. These include the criteria of OAR 660-023-0180 and the Statewide Planning Goals.

The procedural rules applicable to the Board's decision are as follows:

- Lane Code 14.200, 14.300 – General Hearing Rules, De Novo Hearing Procedure.
- Lane Code 16.400 - Rural Comprehensive Plan Amendments.
- Lane Code 16.252 – Procedures for Zoning, Rezoning and Amendments to Requirements.
- Lane Manual 3.915 – Procedural Rules for Conduct of Hearings.

Opponents have presented an argument that the application should be terminated due to excessive processing time. This assertion is based, in part, on a Lane Manual provision adopted in 1976 which references an interim procedure until code procedures are adopted for initiation of plan amendments by individual applicants. Such a code prescribed procedure was adopted as Lane Code 16.400 prior to the submittal of this application. This section specifies procedures for review of such a privately initiated application and those procedures have been followed for this application. There are no provisions within that section or other sections of Lane Code that would require or allow termination of an application due to excessive processing time.

D. Findings of fact and conclusions of law: PAPA review pursuant to OAR 660-023-0180, the Goal 5 analysis.

Statewide Planning Goal 5 was amended June 14, 1996, becoming effective September 1, 1996. Oregon Administrative Rules, Chapter 660, Division 23 was amended and became effective the same day. The Board makes the following findings required by the Administrative Rule.

Step 1. Adequacy of the PAPA information.

The Board finds that the information contained in the original Application, the Amended Application submitted February 17, 1999 and subsequent written submittals by the applicant provides the information required by OAR 660-023-0180(6). The following is a brief discussion of the information provided and its adequacy. Based on information in the record and the following discussion, the Board concludes the applicant provided adequate information to allow consideration of the application.

1. Minimum information. OAR 660-023-0180(6).

a. Details about the quantity, quality and location that are sufficient to determine whether the standards and conditions of section (3) of the Administrative Rule are satisfied.

This requirement is met if samples of the aggregate material on the site meet Oregon Department of Transportation (ODOT) specifications for base rock or air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley. Record Exhibits 44 and 49 include reports of Century West Engineering Corporation establishing that standards and conditions of Section (3) of the Administrative Rule are satisfied.

b. A conceptual site reclamation plan.

The Application contained a conceptual site reclamation plan. Record Exhibit 44.

c. A traffic assessment within one mile of the entrance to the mining area pursuant to OAR 660-023-0180(4)(b)(B).

At Record Exhibit 44 is the Traffic Impact Analysis for the proposed Bradford Pit Quarry prepared by Branch Engineering on June 1998, and, at Exhibit 15, the October 15, 1998 addendum to that report, followed by supplemental reports from Mr. Branch, including a 20-year projection at Exhibit 179 C and D.

d. Proposals to minimize any conflicts with existing uses preliminarily identified by applicant within a 1500 foot impact area.

The mining site is located in the southwest quadrant of a 40-acre F-1 zoned parcel and is approximately 2300 feet from the nearest residence to the south and is well over one-half mile from the nearest residence to the north. There are only forestry uses within the 1500-foot radius of the site. The impact area and potential impacts are discussed further below.

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

The Bradford Pit site plan is set forth at Exhibit 44 and further described throughout these findings.

**Step 2. Determination whether the resource site is significant.
OAR 660-023-0180(2)(b) and (3).**

OAR 660-023-0180(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 100,000 tons outside the Willamette Valley;”

The reports of Century West Engineering Corporation, above referenced, establish the requisite quality and quantity of the rock at the site to satisfy the Administrative Rule.

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

Lane County has not established a lower threshold for significance than subsection (a) above.

“(d) Notwithstanding subsections (a) through (c) 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;”

The information included in Exhibit 44, a soils map produced by Lane Council of Governments from the NRCS map, establishes that the only high value soils on this parcel are located at the northeast corner of the parcel. This area is far removed from the location of the pit itself, as shown on the site plan, and the geotechnical investigation by Century West establishes that the area where the mining will occur contains virtually no high value soils. The Board finds that this site qualifies as a significant site in that far less than 35 percent of the proposed mining area consists of Class I, Class II or Unique soils.

An opponent asserted that the Oregon Department of Forestry (ODOF) ratings for soils on the parcel would indicate some soils to be Class I and Class II for timber production. The NRCS study, the standard specified in the administrative rule, however, classifies the same soils as Class VI (Witzel), Class IV and VI (Bellpine) depending on the slope.

The Board concludes that subsections (A) and (B) set forth above do not apply and that adequate information on the quantity, quality and location of the resource demonstrates the resource site is “significant.”

Step 3. Determine if conflicts from mining can be minimized.

The impact area. OAR 660-023-0180(4)(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 1500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance.”

The Board notes that the term “**mining area**” as used above is defined at OAR 660-023-0180(1)(g) as:

“ . . . the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.”

The rule defines “**mining**” as:

“ . . . the extraction and processing of mineral or aggregate resources, in the manner provided under ORS 215.298(3).”
[OAR 660-023-0180(1)(e).]

The rule defines “**processing**” as:

“ . . . the activities described in ORS 517.750(11)” (sic) [OAR 660-023-0180(1)(h).]

The statutory referenced definition of processing is actually found at ORS 517.750(10) and includes refinement of the mineral in some manner such as crushing, washing, milling and screening.

The Board finds that this portion of the rule, which addresses conflicts with mining and processing activities, clearly limits consideration of conflicts to those uses that conflict with the extraction of the rock from the ground and its processing. The Board finds that transport of the product from the mining area is not a mining or processing activity as defined in OAR 660-023-0180, and therefore, it is not relevant to the establishment of an impact area. (Impact to roads is addressed separately under the Goal 5 rule pursuant to subsection (4)(b)(B).)

The Board finds that the definition of “mining area” restricts the review of impacts to 1500 feet from the area where the mining and processing occurs unless factual information indicates significant potential conflicts with mining and processing beyond this distance. The Noise Impact Study prepared by Art Noxon, contained in Exhibit 44, supplemented by Exhibits 177 and 189B, establishes that noise from mining and processing activities comes into conformity with Department of Environmental Quality (DEQ) daytime standards for exposure to residences at a distance of 2100 feet from the mining area. The Board finds that this 2100-foot perimeter from the proposed quarry site is the impact area for noise.

The Board finds that the Bradford quarry site is not a “new industrial or commercial noise source” on “previously unused industrial or commercial site” within the meaning of the DEQ administrative rules. Credible unrebutted evidence established that the site has been used for the mining for over 30 years.

The Board specifically accepts the observations, measurements and computations of Art Noxon submitted in the above referenced exhibits and

rejects those of Stanley Associates. The Noxon reports are based upon actual measurements and observations at the site and at a similar quarry site. The Stanley report is not based upon any actual site observations or measurements of sound or distance. The Noxon measurements establish compliance with DEQ standards.

No impacts, in addition to that of noise and roads as previously mentioned, have been identified or established by the evidence beyond the minimum 1500-foot impact area.

Included in Exhibit 44 is a zoning map of the general area and a map showing existing residences and the subject site. Exhibit 44 also includes a topography map. There are a total of 9 properties that are, at the least, in part within the 2100-foot noise impact area:

1. Map 19-02-00 Taxlot 3501; owned by Sears Ranch LLC
2. Map 19-02-00 Taxlot 3600; owned by Bettie Troxclair
3. Map 19-02-00 Taxlot 3602; owned by Burnell and Helen Falk
4. Map 19-02-00 Taxlot 3400; owned by Columbia Pacific Inc.
5. Map 19-02-19 Taxlot 600; owned by Sears Ranch LLC
6. Map 19-02-19 Taxlot 700; owned by Ross Bradford
7. Map 19-02-19 Taxlot 800; owned by Ross Bradford
8. Map 19-03-24 Taxlot 3201; owned by Sears Ranch LLC
9. Map 19-03-25 Taxlot 100; owned by US Government

Within the potential impact area, only forest uses exist. The quarry site is approximately 2300 feet from the nearest residence, which is on the south side of the quarry. The mining area is approximately 3300 feet from the nearest residence on the north side of the hill.

OAR 660-023-0180(4)(b):

“(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.”

There are no residentially zoned properties located within the impact area. The closest residence is 2300 feet from the mining activity. No other

conditional or final approvals for land uses have been granted by Lane County within the impact area.

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;”

As stated above, the impact area is the area measured from the mining activity itself and the impacts must be from the mining or processing activities and not from roads used for transportation of the product from the mining area. For a use to be conflicting, it must interfere with or be adversely affected by mining or processing activity [OAR 660-023-0180(1)(b)]. The Board finds that the rule requires that if a conflict is identified, the mining be allowed if the conflict is minimized. To “minimize a conflict” within the rule means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts that are addressed by local, state or federal standards (such as DEQ standards for noise and dust levels), a conflict is deemed minimized when there is compliance with those standards. [See OAR 660-023-0180(1)(f).]

The testimony in opposition included concerns with noise from mining activity, including blasting and crushing. The Board finds that the report of the acoustical engineer, Exhibit 44, establishes that, assuming the worst case acoustically, sound levels from the crusher and loading of trucks would be at DEQ specified levels for exposure to a residence at a distance of 2100 feet and diminish from there. There are no residences within this impact area. The acoustical engineer also establishes that the sound from blasting will be well below DEQ limits for blasting, and with modern sequential blasting, will be practically inaudible, even at quarter mile distance from the mining area.

The testimony included concern with effects of blasting in the quarry operation on water quality. The report of Ralph Christensen, hydrologist, contained in Exhibit 44, points out that the level of the quarry is well above that of properties owned by those expressing a concern, therefore, mining would not affect groundwater for wells that will be far below the quarry floor level. As to water quality concerns, the hydrologist points out that the only possibility is a fuel spill from the mining operation if it were to infiltrate the ground through the quarry floor. As noted by the hydrologist, a spill prevention and cleanup plan must be prepared for the site as required by law which includes the requirement that cleanup materials be kept at the site and be readily available at all times. As discussed in the hydrologist’s report, DEQ

allows onsite remediation of hydrocarbon spills much larger than would occur in this situation and any risk of temporary groundwater pollution is minimal.

Concern was expressed with the possibility of discharge of water from the mining site. The DOGAMI permit does not allow discharge of stormwater or process water from the site. Obviously, the mining operation cannot function without a DOGAMI permit, therefore, the applicant must adhere to these conditions. Any discharge of stormwater from the site could only occur upon issuance of a stormwater discharge permit after satisfying DEQ requirements for such a permit.

Some of the testimony presented suggested that blasting would release arsenic and other chemicals into the groundwater. The Board finds that there is no scientific or factual basis for this concern. The same is true of fears of debris being thrown into the air. The Board finds that there is no credible evidence that objects could be propelled beyond 2100 feet from the mining area.

Opponents presented arguments asserting that a conflict would result from the “discharge of rocks and debris from gravel trucks on the public roads.” Any such discharge, should it occur, would not be a conflict originating within the “mining area.” As elsewhere discussed, the mining area does not include the haul road nor the public roads used to transport aggregate.

The Board acknowledges that there is much testimony in the record concerning dust caused by trucks on the haul road but this part of the rule contemplates impacts from only the mining area. The potential of release of dust into the air by the mining and processing activity is addressed by the requirements of the Lane Regional Air Pollution Authority (LRAPA) permit under which the processing equipment operates. The level of release of particulate into the air must meet DEQ standards as locally regulated by LRAPA and involves the wetting of materials during the processing. The record contains a copy of the applicant’s minimal Air Contaminant Discharge Permit setting forth the determination that the source qualifies as a minimal source. The issue of dust on Cedarcroft Road will be addressed by the applicant even though that is not required by the applicable criteria.

The Board finds that other impacts of truck traffic on Cedarcroft Road and Bear Creek Road are not conflicts from the mining and processing operation and only the specific local road conflicts considered under OAR 660-023-0180(4)(b)(B) as discussed below, may be considered.

A neighboring property owner to the north has expressed concern for potential mud slides due to blasting on the site, referencing past earth movements from the larger Bradford property ownership subsequent to logging

operations. No specific information regarding the location of these movements was submitted and no potential for slope instability in the mining area has been identified in the record. The quarry site is comprised of rock and all mining will occur behind berms created by the overburden. There is no evidence to suggest that should any earth movement occur, it would cause discharge from the mining area beyond the limits of the impact area established by other information submitted as part of the application.

Exhibit 178F includes a large body of evidence from the record of a previous unrelated application of Eugene Sand & Gravel. That application involved the mining of aggregate on a scale many times greater than that proposed in the subject application. It also included an asphalt batching plant and the production of concrete, both producing substantial particle emissions. The dust produced by the operation reviewed in that application emanated from the "mining area" and impacted adjacent agricultural activities. The evidence has no relevance to the present application or the record herein which contains no evidence that particulate matter will emanate from the mining area.

With respect to the impacts of the mining and processing activities, in summary, the Board finds there are no conflicts with existing and approved uses and associated activities due to noise, dust or other discharges within the impact area.

OAR 660-023-0180(4)(b)(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 site 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 the capacity that haul other materials;"

The applicant contends there are no adopted county standards available to determine potential conflicts to local roads under this provision of the Goal 5 Rule. As a starting point, the applicant contends no standards have been adopted, the standards used by county staff are not clear or objective and the standards used are not equivalent to those used for other trucks. In addition, the applicant contends the mitigation recommended to minimize conflicts with local roads identified by staff is not proportional to the impact of the additional

truck traffic projected by the proposed mining activity. For the reasons stated below, the Board concludes those assertions are not supported by evidence or authority in the record.

The standards used for assessing highway system needs and projected traffic impacts of new development on roads are American Association of State Highway and Transportation Officials (AASHTO) standards initially adopted in the 1980 Lane County Rural Transportation Plan (adopted by Lane County Board of Commissioners enactment of Ordinance No. 3-80 on May 21, 1980) as a component of the Lane County Comprehensive Plan. The 1980 Lane County Rural Transportation Plan provides the foundation of Goals, Objectives and Recommendations necessary for meeting the County transportation system and Statewide Planning Goal 12 requirements. The foundation in the 1980 Lane County Rural Transportation Plan, which was subsequently amended slightly and adopted as part of the Lane County General Plan Policies in 1981 and by the 1984 Lane County Rural Comprehensive Plan, provides the basis for a uniform assessment of road needs. Lane County has a legitimate interest in assuring the county road system remains adequate and safe in the face of demands placed on that system by new development. Analyzing the effect of new development proposals on the existing road system fulfills that interest and is required by the Goal 5 Rule on Mineral and Aggregate Resources.

The 1980 Lane County Rural Transportation Plan includes among the plan recommendations the following:

“Road System.

“The following recommendations are made to promote the achievement of Plan goals and objectives.

“ * * * *

“14. AASHTO uniform standards for highway design along with typical section and right of way guidelines in local road design requirements should be utilized by Lane County Department of Public Works, unless excepted for substantial reason, in order to provide needed safety, capacity, and uniformity of the highway system.”

The standards referenced in this Recommendation are applicable to all aspects of highway design regardless of whether Lane County is designing a road or analyzing the effect of new development on existing roads. As the plan describes, the AASHTO design standards provide a clear and objective basis for addressing highway system safety and capacity. Analysis of how proposed new development will affect the roadway is done through analysis of the various parts of the AASHTO standards applicable to the design of highways. Use of

the AASHTO standards provides a uniform basis for determining whether a proposed new development will impact the existing highway system and, if so, what mitigation should be required to address that impact.

Item 4 of Goal 12, Transportation, as contained in the Lane County Rural Comprehensive Plan, General Plan Policies adopted by enactment of Ordinance No. 883 on February 29, 1984, (replacing identical language in Lane County General Plan Policies adopted by enactment of Ordinance No. 870 on November 10, 1981) stated:

“The adopted Lane County Rural Transportation Plan is a special-function Plan concerned with Goal 12 requirements, and containing a number of Goals, Objectives and Recommendations on various components of the County’s transportation system and Goal 12 requirements. The 1980 Rural Transportation Plan, as amended, shall continue to be used as the primary guideline toward transportation matters. Goal and Objective statements within it are incorporated into the above County Policies, and Recommendations within it shall be applied where appropriate; these Recommendations shall be considered to be mandatory actions which are ultimately binding on the County.”

The application addresses potential conflicts to local roads used for access and egress to the mining site within the area to include the intersection with the nearest arterial identified in the local transportation plan. The nearest arterial identified by Lane County Transportation Planning staff is Interstate 5, more than a mile from the entrance to the mining site. Beginning at the entrance and progressing to Interstate 5, Cedarcroft Road (County) is identified as a local road. Bear Creek Road (County) is classified as a minor collector and Cloverdale Road (State) is classified as a major collector. The Board concludes all three of those roads should be considered “local roads” for purposes of determining potential impacts under this provision of the Goal 5 Rule for Mineral and Aggregate Resources. The applicant’s initial traffic impact analysis addresses connection to the nearest arterial and establishes that acceptable levels of service are maintained assuming maximum traffic generation by the proposed mining use. Exhibit 1. According to the applicant, the maximum traffic generated by the proposed mining is 40 trucks and 3 employee vehicles per day for a total of 86 trips per day. Although level of service is typically a measure used to determine whether a plan amendment will significantly affect traffic facilities under Statewide Planning Goal 12, the analysis is also helpful in answering the traffic engineering part of traffic flow road capacity conflicts under the Goal 5 Rule. It does not answer the entire equation, however, as indicated below.

The evidence establishes that there are no conflicts pertaining to site distance, level of service road capacity, or horizontal and vertical alignment of

affected local roads. Evidence in the record does establish potential conflicts with structural road capacity, cross section elements, and other similar items addressed by the AASHTO standards adopted in the 1980 Rural Transportation Plan. As described more fully below and in the evidence presented by staff, the potential conflicts primarily arise based on the impact of additional loaded truck traffic on the roadway structural capacity to withstand that additional traffic. Those conflicts can be minimized, however, by mitigation measures recommended by staff that will adequately reduce the conflicts to a level that is no longer significant. See Exhibits 46, 102, 103, 107, 108, 110 and 113. Failure to minimize the conflicts and adequately provide for impacts of the proposed mining could result in denial of the application. With mitigation the applicant can comply with the Goal 5 Rule and fulfill the county interest in keeping roadways safe and adequate for the traveling public.

The report of Branch Engineering establishes that sight distances at the intersection of Cedarcroft Road and Bear Creek Road exceed the AASHTO standards. The record reflects that since the time of the Planning Commission hearing, a stop sign has been placed on Cedarcroft Road at its intersection with Bear Creek Road. The Branch Engineering report also establishes that the sight distances at the Bear Creek Road/Cloverdale Road intersection exceed AASHTO standards.

The Board acknowledges that the sight distance to the right for vehicles turning left from Bradford Road onto Bear Creek Road is less than would be indicated in the AASHTO standards. Bradford Road, however, is not a road used for access or egress to the mining site, therefore, this intersection is not subject to the above stated administrative rule. The situation at this intersection represents a pre-existing condition that is unchanged by the proposed additional mining use of the subject site. The Board notes that Bear Creek Road has long been used by log trucks and other loaded trucks and no evidence has been received of a notable accident history at this intersection. The Board has directed staff to consider a speed study that may lead to a reduced designated speed for the area and directed staff to explore possible improvements within the right-of-way to maximize sight distance, including clearing of vegetation.

As stated above, the Lane County Transportation Plan adopted in 1980 and amended slightly for inclusion in the Lane County General Plan Policies and subsequent 1984 Lane County Rural Comprehensive Plan indicates AASHTO uniform standards shall be used for highway design analysis and related issues to provide needed roadway safety, capacity and uniformity, including analysis of impacts to county roads from new development. Those clear and objective standards further legitimate county interests in safe and adequate roadways, are mandatory and are ultimately binding on Lane County. They also provide the context for analyzing potential conflicts to local roads, regardless of the type of traffic. As applied, the standards allow analysis of the

impact of new truck traffic uniformly whether the trucks are hauling material from a mine or any other new proposed use. In that way, the standards used for determining local road impacts of trucks from a proposed mining operation are the same as the standards used for determining local road impacts from a new use that involves hauling with trucks of the same or equivalent size, weight or capacity. The same uniform standards for highway design are used for analysis of new uses or a change in use that is subject to either land use approval or a facility permit approval involving access to a county road.

The AASHTO methodology and development of pavement design is primarily specified in the AASHTO Guide for Design of Pavement Structures, which is also mentioned in the pavement portion of the Cross Section Elements chapter in the AASHTO Policy on Geometric Design of Highways and Streets. The use of AASHTO standards necessarily includes all aspects of highway design. As the applicant's expert indicated, structural strength of a roadway would be part of civil engineering analysis of road capacity and could include the quality and strength of the surfacing material. In addition, staff for the AASHTO seems to confirm that pavement surface is part of cross section analysis, even though the structural and material design is provided for in other parts of the AASHTO standards documents. The applicant provided initial data and some analysis on the roadway structure of Bear Creek Road and Cedarcroft Road. The traffic analysis provided by the applicant left to Lane County the roadway structure impact analysis and the determination of any necessary mitigation. That traffic analysis was done using the applicable AASHTO uniform standards for highway design, including road capacity, cross-section and other similar items in the AASHTO standards as adopted by the 1980 Lane County Rural Transportation Plan.

The Lane County staff determined the potential conflicts and developed a pavement design necessary to accommodate the increased use of county roads by trucks removing aggregate from the subject quarry. The AASHTO pavement design guide was used in this assessment as described above. The design recommended by staff was based on the applicant's projected loaded truck usage and its effects on roads traveled from the site. Without the additional traffic the staff analysis concluded the affected county roads would not need any additional structural work over the next twenty years. The staff analysis has determined that a 2.5-inch structural AC overlay is needed to accommodate the additional mining related truck traffic on Cedarcroft Road that is projected by the applicant for the quarry operation over the next 20 years. The use of the road for quarry access will result in a conflict to that road requiring mitigation by the applicant in order to reduce the conflict to a level that is no longer significant. A condition is imposed requiring the applicant to pave the road with a 2.5 inch thick asphalt pavement overlay to County specifications through application for, and compliance with, a facility permit prior to commencement of quarry operations. That requirement will

further traffic safety and is related solely to the effect of the new mining operation traffic on the county road facilities.

The County staff also prepared an analysis of possible impacts of the additional new quarry traffic on Bear Creek Road and in the process of doing so projected the probable life of the present pavement design on Bear Creek Road. Using as part of the analysis the applicant's assumption that the full maximum allowable 40 loaded trucks per day will exit the quarry each day for 250 days a year over 20 years, the staff has determined that Bear Creek Road will need an asphalt overlay sometime within 5 to 10 years of the commencement of mining operations. The projected cost of that overlay is \$34,000. The staff computations are based solely upon the effects of loaded trucks on Bear Creek Road resulting from the mining. In consideration of the applicant bearing full costs of paving of Cedarcroft Road, the reduced impact of empty returning trucks on Bear Creek Road, and Bear Creek Road's classification as a minor collector, the Board finds that contribution of \$17,000 within 5 years to the County for the cost of improvement of Bear Creek Road will sufficiently mitigate the impacts to the road. This requirement will assure continued traffic safety, capacity and uniformity based on the effect of the proposed mining operation traffic on Bear Creek Road. The Board has elected not to include engineering costs for this overlay nor to escalate the costs to a projected construction year since that exact year is not known. As a result, applicant's contribution is much less than the full amount necessary to cover the impacts of additional mining traffic on all county road facilities.

The Board concludes the potential conflicts to local roads as described by staff have been determined based on clear and objective standards consistent with the Goal 5 Mineral and Aggregate Rule. The mitigation described above is adequate to reduce the potential conflict to a level that is no longer significant. The conditions address legitimate county interests in having safe and adequate roadways, advance those interests by requiring the new traffic generator to provide necessary improvements and the requirements are proportional and directly related to the impacts from the proposed new mining operation traffic on the county roadway facilities.

OAR 660-023-0180(4)(b)(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;”

There are no public airports within the impact area.

OAR 660-023-0180(4)(b)(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;”

This portion of the rule references only “Goal 5 resource sites” within the impact area which are shown on an acknowledged list of significant resources. There are no such sites in or near the impact area that are on such a list which would have to be part of the Comprehensive Plan or adopted by a land use regulation, except for the big game ranges identified and adopted in the 1982 Lane County Working Paper on Flora and Fauna, revised and updated in 1983 and made part of the Lane County Rural Comprehensive Plan by references in the Goal 5 Flora and Fauna policies. [See OAR 660-023-010(9).]

The Board notes that testimony was received pertaining to possible impact on elk in the major big game range within which the quarry site is located. In response to the referral sent by Lane County, ODFW described its plan to reduce elk numbers in the area and expressed the conclusion that the rock quarry does not conflict with the department’s management objective of maintaining elk at low population densities in the area. The existence of the game range does not render impacts in the area, if any, a conflict with a Goal 5 resource site as contemplated by the Administrative Rule. The same is true of open space. There is no specific inventory or resource list identifying the open space resource sites in Lane County and there are no identified conflicts in the mining impact area.

Opponents contended that the County had not adequately addressed conflicts with riparian resources in the wetlands. Again, such resources must be identified on an acknowledged inventory. Lane County’s riparian inventory (the 1980 maps) acknowledged by the state do not show any Class I Streams in the impact area. Wetlands identified on the State Wetlands Inventory Maps are limited to the small stream crossing under the existing haul road. Provided no widening of the road occurs, no impact to wetlands has been identified. If widening does occur, any conflict with the wetland resource will be minimized by compliance with the applicable Removal/Fill Law requirements of the Division of State Lands.

It is noted the opponents urge that potential harm to upper Willamette Spring Chinook must be evaluated because there may be impact to water quality of several streams. This is not a conflict to be considered in the Goal 5 process except indirectly under the review of conflicts with the riparian resources. That review, as indicated above, is limited to streams identified in the Plan on an acknowledged inventory. Water courses identified by the opponents are not listed on the inventory. It is further noted that potential impacts to water resources are addressed by Exhibit 44.

OAR 660-023-0180(4)(b)(E):

“Conflicts with agricultural practices;”

OAR 660-023-0180(4)(b) requires local decisionmakers to “determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and ... [to] specify the predicted conflicts.” Under that rule, in “determin[ing] whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed.” OAR 660-023-0180(4)(c).

ORS 215.296, in turn, provides in part:

“(1) A use allowed under ORS 215.213(2) or 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands and devoted to farm or forest use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213(2) or 215.283(2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions....”

ORS 215.203(2)(c) defines the term “accepted farming practice” as follows:

“As used in this subsection, ‘accepted farming practice’ means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.”

As held in Eugene Sand & Gravel v. Lane County, 189 Or App 21 (2003):

“ ‘Agricultural practice’ has the same meaning as ‘accepted farming practice’ in ORS 215.203(2)(c): a mode of operation, commonly used on similar farms, necessary for profitable operation, and customarily used in conjunction with farm use....”

The only testimony that could relate to issue of conflict with agricultural practices would be that which suggested that farm animals are sensitive to noise, vibration and similar disturbances and the testimony of one landowner to his plans to plant several acres of grapes on his property. This landowner

expressed concerns with dust in the area and the effect it would have on the grapes that the property owner would intend to harvest for wine.

First, the evidence cited above addressing OAR 660-023-0180(4)(b)(A) relative to noise and vibration, which includes evidence that the mining activity would involve a fairly constant sound at moderate levels and that blasting would be barely audible at a distance of ¼ mile, belies the suggestion of any impact on the referenced farm uses. The evidence establishes that there will be controls in place relative to the discharge of water, particulate matter into the air and sound levels which, even relative to residential use, would eliminate or bring all potential impacts within acceptable limits.

Second, no conflict with agricultural practices, as above defined, were identified in the testimony. There is no testimony that would point to any potential changes in any agricultural practices or any increase in the cost of those practices that would be caused by the mining use.

OAR 660-023-0180(4)(b)(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;”

ORS 517.780 states that the provisions of ORS 517.702 to 517.989 and the rules and regulations adopted thereunder shall not supersede any zoning laws or ordinances in effect on July 1, 1972. There are no such Lane County ordinances that would, by these terms, supersede the DOGAMI regulations.

OAR 660-023-0180(4)(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.”

The Board finds that no conflicts due to noise, dust or other discharges, with Goal 5 resource sites or agricultural practices have been identified within

the impact area of 2100 feet from the mining and processing activity, therefore, no measures are necessary to minimize conflicts with that activity.

The Board finds that there are conflicts to local roads as a result of the impact of loaded aggregate trucks using those roads to exit the site. The Transportation Planning staff has determined that the existing roadbed of Cedarcroft Road is inadequate to support the additional quarry truck traffic proposed and that the existing roadbed of Bear Creek Road will need improving at an earlier time due to the anticipated quarry use.

The impact to these roads will be minimized by the previously discussed reasonable and practicable measures requiring improvements to or monetary contribution to the County for road costs directly related to the proposed mining truck traffic. Those measures described above will be conditions of this approval and part of the ordinance adopted approving this PAPA.

Step 4: Weigh ESEE analysis.

OAR 660-023-0180(4)(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 government 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.”**

The Board finds that the only conflict identified, that pertaining to conflict to local roads, can be minimized in the manner described previously and required as conditions made applicable to the proposed mining operation, therefore, an ESEE analysis is unnecessary.

Step 6: Develop a program to allow mining.

OAR 660-023-0180(4)(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;”

The Board finds that sufficient information was provided in the PAPA application and that the application is complete. The Board’s action herein sets forth clear and objective measures to address the only identified conflict, that pertaining to roads.

“(B) Not requested in the PAPA application;”

Additional land use review is not required. Any new proposal other than that requested in the PAPA application would be reviewed under the Site Review Provisions of LC 16.257 as required by the quarry and mine operations zone.

“(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.”

A change in the operation from that reviewed under the PAPA application would be reviewed under site review provisions of LC 16.257 as required by the quarry and mine operations zone.

“(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 government 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.”

The Board finds that the post-mining use will be forest use under the reclamation plan filed with DOGAMI. Forest uses are a permitted use within the Quarry and Mining operation zone as per LC 16.216(4)(f).

“(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 criterion is inapplicable to the proposal.

OAR 660-023-0180(5):

“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.”

The provisions of OAR 660-23-0180(5) direct local governments, mostly pursuant to OAR 660-23-040(2)-(4), to determine whether any new uses which may occur within the potential impact area will conflict with the mining of the significant resource site.

OAR 660-023-0040(2)(a) provides:

“If no uses conflict with a significant resource site, acknowledged 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.)”

OAR 660-023-0010(1) sets forth the following definition:

“ ‘Conflicting use’ is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.”

The site and adjacent parcels sharing boundaries with the site on the west, east, and south sides are zoned F-1, Nonimpacted Forest Lands Zone. The uses permitted outright or conditionally in that zone are not such that they will conflict with mining. The permitted uses found at LC 16.210(2) include primarily forest operations or practices and uses auxiliary to those uses, farm use, exploration for natural resources in the ground, and hunting and fishing operations. None of these uses will adversely impact the mining and processing use.

LC 16.210(3) sets forth additional uses subject to planning director approval. These include logging equipment repair and storage facilities, parks, campgrounds, transmission towers, cemeteries, temporary asphalt and concrete batch plants and distribution lines. These uses do not have the operating characteristics that would conflict with the mining and processing use. This issue is not left to chance, however. LC 16.210(3) provides that the uses in subsections (a) through (u) must meet the requirements of LC 16.210(5). That section contains several criteria including the following:

“(d) For uses authorized above in LC 16.210(4), the proposed uses will not significantly conflict with the livability and appropriate uses on adjacent and nearby lands.”

This criterion prevents uses which might otherwise be authorized from being authorized if they will conflict with appropriate uses on adjacent lands, which would include the mining and processing use. It is additionally noted that, with respect to home occupations, which are subject to director approval, those uses have a specific applicable criterion as follows:

“Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.210(2) above.” LC 16.210(3)(n)(v).

Subject to Planning Director approval, a temporary mobile home in conjunction with an existing dwelling or mobile home may be allowed pursuant to LC 16.210(3)(o). As stated above, this approval is subject to the criterion that would prevent its approval if it would interfere with the existing uses on nearby lands. As set forth previously, there are only two residences existing remotely near the impact area that could be the location for a hardship mobile home. Both residences are outside the impact area and a hardship dwelling must share the same septic system as the existing dwelling, therefore, there is no potential conflict.

The uses listed at LC 16.210(3)(v) through (bb) are not subject to the criteria of LC 16.210(5) but they are of a nature that will not conflict with the mining use. The uses include uses to conserve soil, air and water quality and to provide for wildlife and fishery resources, distribution lines, temporary portable facilities for processing of forest products, construction of roads and

temporary forest labor camps. None of these uses will conflict with the mining use.

The F-2, Impacted Forest Lands Zone (F-2 RCP), allows many of the same uses as the F-1 district but does allow forest management dwellings and non-forest dwellings. There is F-2 land northeast and southeast of the subject property. One of those parcels presently has a mobile home single-family residence, therefore, is developed to the extent possible. Although the other is presently vacant, the requirements for establishment of a template dwelling are not capable of being met, therefore, a residential use could not be established on this parcel.

Tax lot 700, north of the subject property is zoned Exclusive Farm Use Zone (E-RCP), 30 acre minimum. The parcel already has a residence situated well beyond the impact area. The uses allowed in the farm zone will not conflict with the quarry uses.

It is noted that in the QM Quarry and Mining District both forestry uses and farm uses are permitted uses, which is an indication of the legislative judgment that such uses do not conflict with the mining use. Considering the uses allowed in the EFU zone, there is no reason to consider the agricultural uses as conflicting.

No conflicting uses which could be established within the impact area have been identified. Acknowledged policies and land use regulations are considered sufficient to protect the resource site. Therefore, any further ESEE analysis is not necessary.

OAR 660-023-0180(7) provides:

“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 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 Board finds that Lane County has not amended its comprehensive plan and land use regulations to include procedures and requirements consistent with the new Goal 5 Rule for consideration of PAPAs, therefore, the Goal 5 rule is directly applied. E. Statewide Planning Goals.

Positive findings are made on the Statewide Planning Goals as follows.

Goal 1: Citizen Involvement

To provide for widespread citizen involvement.

This goal requires that citizens and affected public agencies be provided an opportunity to comment on the proposed plan amendment and zone change. Public notification in the form of a mailed notice was sent by Lane County to affected public agencies, including Department of Land Conservation and Development (DLCD), Oregon Department of Fish and Wildlife (ODFW), Department of Forestry, Department of State Lands and DOGAMI. No negative responses have been received. All owners of record within 500 feet of the subject properties have been notified. Public hearings were provided both at the Lane County Planning Commission level and before the Lane County Board of Commissioners.

Opponents urge that Goal 1 has been violated by the amount of time in processing of the PAPA application. LUBA opinions have recognized that Goal 1 does not provide due process protections nor does it dictate the conduct of local government hearings. See Dobson v. Polk County, 22 Or LUBA 701, 710, n12 (1992). Conduct of local land use hearings and procedural due process for those hearings are prescribed in ORS Chapter 215 for counties and claims relative to procedure cannot be based upon Goal 1 itself. Goal 1 addresses only the citizen involvement program that must be adopted as part of each jurisdiction's comprehensive plan.

In this instance, notification of surrounding property owners and agencies occurred in accordance with Lane Code Chapter 14 at the time of the original submittal and hearings before the Planning Commission. Said notice list was updated prior to the mailing of notice for the Board of Commissioners hearing in April 2003. These procedures allowed all interested parties the opportunity to participate in a review of this application at each step of the process.

Goal 2: Planning

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

This goal requires governmental units to adopt land use plans and implementation ordinances after public hearing as has been done in Lane County. The County legislation is required to provide for review and comment by citizens and affected governmental units during any revision of the adopted plans and implementation ordinances. Lane County's planning documents specifies certain criteria which must be met to justify an amendment to the comprehensive plan. The criteria are addressed in this application, therefore, the amendment is consistent with Goal 2.

A concern was expressed by the Creswell School District pertaining to possible conflict between school buses and trucks hauling aggregate from the site, particularly in the morning when buses would be picking up children along the roadway. The proposal contemplates that mining operations will not commence until 7:00 a.m. at the earliest. The result will be, therefore, that trucks will not be loaded until approximately 7:30 a.m. or later and not be utilizing Bear Creek Road at the time children are picked up by school buses for school. It is also noted that Bear Creek Road has been used for many years for such vehicles as loaded logging trucks and that school buses have operated on those roads safely.

It must be recognized that there are limitations upon the County's control of the hours of operation so as to control the time trucks from the mining operation will utilize public roads. By a limitation in the Goal 5 rule, the County must use standards for analyzing potential new traffic conflicts to local roads that are equivalent to standards used to analyze new traffic conflicts from other similar vehicles. The needs of the school district have been considered and accommodated to the extent possible.

The second part of Goal 2 relates to exceptions to Statewide Goals. An issue raised concerning the necessity of an exception to Goal 4 is discussed below.

Goal 3: Agricultural Lands

To preserve and maintain agricultural lands.

This goal recognizes the importance of maintaining agricultural lands as those are defined under the goal. In western Oregon, agricultural land consists of predominantly Class I through IV soils identified by the Soil Conservation Service and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm and irrigation purposes, existing land

use patterns, technological and energy input required for accepted farm practices.

The Soil Conservation Service and Soil Survey identifies soils on the subject parcel as containing only 1.126 acres Class III soil and 7.954 acres Class IV soil. This means that approximately 4.5 percent of the entire parcel is the Class II soil and 28.5 percent is the Class IV soil with the remainder of the site not being agricultural soils.

It should be noted that, while there are some amounts of Class III and IV soils on the 40-acre site, those soils are not in the immediate vicinity of the quarry operation itself. If there is long-term value to those soils, it will be unaffected by the mining use which will be followed by reclamation of the site for forest use.

The information submitted also establishes mineral resources on the site of the quantity and quality that, pursuant to Goal 5 and the Oregon Administrative Rules adopted thereunder, the site is a significant resource site for aggregate purposes. The statutes and administrative rules recognize that such resources can be mined in the area of agricultural soils.

OAR 660-023-0180(4)(b)(E) specifically requires that conflicts with agricultural practices be addressed as part of a PAPA application. The potential of such conflicts has been addressed in the findings pertaining to the Goal 5 Rule and is incorporated herein by reference.

Goal 4: Forest Lands

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

Contained in the original application is a detailed "Timber Management Plan" addressing the timber production capability of the entire 256-acre site owned by Ross Bradford. Of particular note is Area 10, the area specifically involved in this application. The description of the area states: "[t]his is a cleared area consisting of rock." The timber "growth potential" is described as: "Rocky site. No growth potential."

A view of the site bears out what is described in the report. The quarry site is located on a rocky knoll. While some soil covers the rock, particularly on the lower portions of the knoll, the poor conditions are demonstrated by

existing small trees that are the result of replanting. Growth has been minimal. Additionally, under the conditions of the Department of Geology and Mineral Industries Permit, upon conclusion of the quarry operation, the reclamation plan must be put into effect which will require the replacement of soils.

The Board further finds that the administrative rules pertaining to Goal 4 Forest Lands demonstrate that an exception is not necessary. Those rules provide there are five general types of uses that may be allowed in the forest environment subject to the standards in Goal 4 and the administrative rules. Those include:

“(c) Locationally dependent uses, such as . . . mineral and aggregate resources, etc.,” [OAR 660-006-025(1).]

OAR 660-006-025(4) provides:

“The following uses may be allowed on forest lands subject to review standards in Section (5) of this rule:

- (f) Finding and processing of oil, gas, or other subsurface resources . . . and mining and processing of aggregate in mineral resources as defined in ORS Chapter 517;”

The referenced subparagraph (5) allows the uses as long as they do not force a significant change in forest practices, increased fire hazard and would allow forest operations on adjacent land. The use of this site for aggregate extraction will not force a significant change in forest practices or increase fire danger. Forest operations on adjacent lands will be unaffected.

The PAPA process assures that there will not be conflicts between the forest use and the aggregate use in that the PAPA process requires that the aggregate use does not adversely affect or conflict with the surrounding uses, including forest uses.

The Lane County Land Management staff has contacted DLCD and the DLCD staff confirmed that it is their view that an exception is not necessary to allow mining on lands previously designated Forest Lands under the Goal 5 Rule. The Board concurs with and adopts this position and interpretation of applicable law.

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

To protect natural resources and conserve scenic and historic areas open spaces.

As previously stated, the new Goal 5 Rule for mineral and aggregate resources specifically addresses the other Goal 5 resources and limits consideration to "Goal 5 resource sites" that have been identified in the County's Comprehensive Plan.

Beyond the fact that the new Goal 5 Rule specifically limits the considerations regarding Goal 5 resources to identified sites, no conflicts have been identified. In response to the referral sent by Lane County, ODFW described its plan to reduce elk numbers in the area and expressed the conclusion that the rock quarry does not conflict with the department's management objective of maintaining elk at low population densities in the area.

There are no wetlands identified on the 40-acre site nor will any wetlands offsite be affected by activity allowed by the new zoning district.

Goal 6: Air, Water and Land Resources Quality

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

As applied to this specific application, this goal would require adequate protection measures for preservation of air, water and land quality.

The Board finds that LRAPA rules and permit requirements regulate the release of particulate matter into the air and require water be used in processing material to control any dust emissions that might be associated with the operation of the equipment. The same is true with regard to wastewater discharge from the site. Such discharge is prohibited under administrative rules and the requirements of the specific permit held by the applicant and the evidence establishes that the operations will comply with the applicable regulations. There are no onsite systems for domestic water or sewage disposal. As is noted above, a reclamation plan has been prepared and approved by DOGAMI with respect to restoring land quality.

The hydrologist's report, Exhibit 44, establishes that groundwater will not be adversely affected by mining practices.

Goal 7: Areas Subject to Natural Disasters and Hazards

To protect life and property from Natural Disasters and Hazards.

Under this goal, areas of natural disasters and hazards are described as areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding,

groundwater, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.

The Board finds that this area is not subject to such hazards and the risk of such hazards are not increased by the activity allowed by the plan amendment and rezoning. A condition of the DOGAMI permit restricts areas of storage of materials so as to minimize any potential for landsliding.

The site is not subject to stream flooding, erosion or other particular natural hazards.

Goal 8: Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including Destination Resorts.

The inventories of state and local recreational facilities indicate no recreational facilities on the site. The site is not a likely one for the siting of a destination resort. As explained elsewhere, campgrounds cannot be located on forest land near the site.

Goal 9: Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

The goal contemplates that comprehensive plans and policies will contribute to a stable and healthy economy in the state. The goal primarily addresses commercial and industrial development within urban areas. To the extent the goal is applicable to the application, the operation will contribute to the economy of the local area by its employment of persons and by providing the natural resource for construction of roads, which in turn facilitate the economy of the state.

Goal 10: Housing

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

This application does not directly relate to the housing goal of the state except to the extent an adequate supply of aggregate facilitates the construction of housing in the form of foundations, driveways, and streets and roads to provide access to such housing.

Goal 11: Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

This application does not directly relate to this goal. The public facilities and services in the form of roads exist to provide access to and from the site. The approval does not result in the extension of public facilities and services beyond those existing.

Goal 12: Transportation

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

The application contains both the initial traffic impact analysis and a supplemental analysis that addresses the sufficiency of the transportation system to accommodate traffic associated with this use. A subsequent report (see Exhibit 179B, C, and D) extends this analysis to a 20-year horizon. The traffic impact analysis establishes that the plan amendment will not “significantly affect” any transportation facility with regard to Level of Service standards within the meaning of OAR 660-12-0060. The pavement analysis showed that the quarry operation will “significantly affect” the pavement structures of both Cedarcroft Road and Bear Creek Road in the sense that the design lives of both of these pavement structures would be significantly shortened by the increase in heavy axle loads over the twenty year analysis period without mitigation. The Board finds that the required conditions for pavement overlay work on both these roads will mitigate this impact.

Cloverdale Road is a county road providing connection between Creswell and Pleasant Hill. The roadway is 32 feet wide and the project vicinity has a posted speed of 55 miles per hour. Cloverdale Road at its intersection with Bear Creek Road is a State highway. Lane County does have jurisdiction of Cloverdale Road in the section north of Hendricks Road to Highway 58.

Lane County Ordinance No. 3-80 adopted the 1980 Rural Transportation Plan as a component of the County comprehensive plan. The Transportation Plan designated Cloverdale Road a major collector from Hendricks Road to Highway 99.

Interstate 5 is not functionally classified in the 1980 Rural Transportation Plan. It does meet the criteria of an “arterial” as defined in LCDC Goal 12, OAR 660-012-0065(2)(b)(C).

The Board finds Interstate 5 is an arterial for the purposes of the Goal 12 analysis.

Bear Creek Road is a county roadway extending east from Cloverdale Road. The road is paved with a 24-foot width in the project vicinity. There is no posted speed. State "basic rule" provisions with a 55 mph maximum are in force. Land surrounding Bear Creek Road is zoned for residential, agricultural and forest uses. Cedarcroft Road is a rural county roadway extending south from Bear Creek Road. The roadway has a paved width of 24 feet. (see note page 9) The paved 24-foot-wide portion of Cedarcroft Road was established as a public road in conjunction with the approval of Cedarcroft PUD, a residential subdivision. The record shows the road was constructed of two inches of asphaltic concrete over ten inches of crushed aggregate base. This construction is typical of the minimum County requirements for a public road to serve light residential passenger vehicle loads unless a greater structure is indicated by the subdivision designer's engineer to accommodate greater vehicle loads or compensate for poor soil conditions.

A stop sign has been placed at the intersection of Cedarcroft Road and Bear Creek Road. The traffic impact analyses demonstrate that the level of service (LOS) will remain at LOS A for the affected roads and that sight distances are adequate to serve trucks entering the roadways relative to acknowledged standards. At the intersection of Bear Creek and Cloverdale Roads, the sight distance is 940 feet. The AASHTO street design manual indicates a minimum 550 feet is needed for a 55 mph design speed on wet pavements. Sight distance at the intersection of Cedarcroft and Bear Creek Roads were measured at 580 feet to the west and 680 feet to the east. Again, these distances exceed AASHTO minimum 550-foot distance for a 55 mph design speed.

In conclusion, the Branch Engineer traffic impact analysis report notes that the quarry and rock crushing operations is projected to generate a maximum of 86 roundtrips per day and 11 trips during the PM peak hour. The number of trucks is limited by the proposal. The traffic analysis indicates the additional vehicle trips would not reduce the Level of Service performance standards below those identified in the County Transportation System Plan. The evidence establishes this will be the case for a period of 20 years from the date of the application.

As previously stated, sight distance to the right for traffic exiting Bradford Road turning left onto Bear Creek Road has less than optimum sight distance. Bradford Road, however, will not be used for access to and from the site by aggregate trucks. It is further noted that there is posted an "intersection ahead" symbol sign warning drivers approaching Bradford Road on Bear Creek Road and the staff has been directed to explore possible improvement within the existing right-of-way and taking such measures as the clearing of vegetation to maximize sight distance.

As noted in the report of the applicant's traffic engineer, Bear Creek Road and Cedarcroft Road have been used as timber and rock haul roads for many years. Sight distances, grades, and radii of curvature on these roads were found to be suitable for large trucks. The new Goal 5 Rule also has set forth specific items to be evaluated in determining impact of traffic associated with the mining and processing operation on existing roads. The findings which address OAR 660-023-0180(4)(b)(B) are incorporated herein by reference. The Board finds that there is substantial evidence that the existing road system is suitable provided the identified conflicts are minimized as described above. The Board further finds that the application is also consistent with Goal 12.

Opponents contended that the Traffic Impact Analysis previously submitted by the applicant and supplemented on two occasions by Branch Engineering was not adequate in that it did not address the 20-year "horizon" said by opponents to be required by Goal 12. Branch Engineering did submit a supplement to the Traffic Impact Analysis to include a 20-year planning horizon which predicts Level of Service (LOS) A and B in the year 2018, 20 years from the date of the original application.

As noted above, the 20-year analysis extends from the date of the application and not the date of Commissioners' consideration of the application. The evidence properly goes to an analysis of conditions existing and projected from the date of the application. It is noted that the record does not appear to reflect that the opponents raised this issue while the record was open. Even if raised, in addition to relying on the adequacy of evidence required at the time of the application, it is noted that to require analysis from the date of Board consideration would yield an absurd result. The record was closed several months prior to the first meeting for Board deliberations with the result that a 20-year projection, if required, could not be submitted.

Opponents argue that the analysis must look at a potential worst case scenario of 500 trucks per day. The application proposes a maximum of 40 loaded trucks per day leaving the site and all traffic analyses are based upon that maximum figure. Any proposal to increase the number of trucks would require a new application and additional analysis.

At various points during the process, the applicant argued, since Lane County did not have a Transportation System Plan (TSP), developed in accordance with OAR 660-0012, at the time of the application and was relying on the adopted 1980 Transportation Plan, that Lane County lacked the authority to require the traffic analysis at all and for a 20 year period. The applicant further argued that Lane County lacked the authority to require mitigation for pavement impacts from the quarry operation.

The Board finds that the 1980 Transportation Plan, including the referenced policy on AASHTO standards provides sufficient basis to require the

analysis of both the Level of Service-related impacts of the application, the geometric and sight distance issues raised during the process, and the pavement structure-related impacts to Cedarcroft Road and Bear Creek Road. These arguments and responses are further articulated in Exhibits 46, 102, 103, 107, 108, 110, 113, 122, 124, and 129. Additional rationale for the Board conclusion is also provided in the Goal 5 and Goal 5 Mineral and Aggregate Rule findings incorporated here by this reference.

Goal 13: Energy Conservation

To conserve energy.

This goal contemplates that land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

To the extent that this goal is relevant to this application, the application will make aggregate resource available close to an area where substantial road construction will take place in the near future, thus reducing fossil fuel use for transportation purposes.

Goal 14: Urbanization

To provide for an orderly and efficient transition from rural to urban use.

The subject property is not within an urban growth boundary and is not urbanizable, therefore, this goal does not have relevance to this application.

Goal 15: Willamette River Greenway

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

This property is not located within the Greenway boundary nor in proximity to the Willamette River, therefore, this goal is not applicable to this application.

Goals 16, 17, 18 and 19.

These goals are geographically oriented to coastal resources, therefore, are not applicable to this application.

F. Conclusion.

The Board finds the criteria for a PAPA are met and the Rural Comprehensive Plan designation for the subject site shall be amended from "Forest" to "Natural Resource" plan designation and the subject site rezoned from "F-1 (Non-Impacted Forest Land)" to "QM (Quarry and Mine Operations)" pursuant to LC 16.400 and 16.252 for property at Assessor's Map 19-02-00(30), tax lot 3500. The site is added to the County's inventory of significant mineral and aggregate resource sites. Because the application meets the requirements of the Goal 5 Rule and mining shall be allowed, the plan and zone amendments are necessary to comply with the mandate of state law.

The application proposes operation of the quarry from 7:00 a.m. to 4:30 p.m. five days a week with occasional Saturday operation as well. Access to and from the quarry will be by means of Cedarcroft Road. The applicant proposes to apply a dust abatement substance which meets federal, state and local laws and standards for use in application procedures to the haul road for a distance of 200 feet from the end of the pavement on Cedarcroft Road at regular intervals to control dust. The applicant is bound by these aspects of the proposed operation which are part of the application.

The applicant will also be bound by the provisions of the Quarry and Mine Operation Zone (QM-RCP), LC 16.216. Those requirements include requirements to follow explosive regulations and use commonly acceptable engineering standards based on physical conditions and atmospheric conditions of the site so as to prevent injury to persons and damage to public and private property and to maintain blasting records.

Lane Code specifies notice requirements for blasting. The code requires that when blasting is to be done within 500 feet of an occupied building, the operator must notify all occupants that a blast is to be initiated and the notice is to be given not more than 6 hours nor less than 30 minutes prior to detonation.

Lane Code further provides for setbacks of 20 feet for property development. The application, however, specifies that setbacks of 50 feet from the property line will be maintained on all quarry perimeters.

Some conditions recommended by the Lane County Planning Commission to mitigate certain aspects of the mining use are not adopted by the Board. Some of those conditions are addressed by the fact the proposal itself limits the use and addresses the concerns. Other of the recommended conditions are contrary to the provisions of OAR 660-023-0180 in that they would address perceived impacts beyond the established 2300-foot impact area from the mining area or potential conflicts with local roads.

The Board adopts the following conditions and mitigating measures:

1. Mining, processing, and hauling shall be limited to Monday through Friday, 7:00 A.M. to 4:30 P.M. with occasional operation on Saturdays and no more than the equivalent of 40 loaded trucks shall leave the site on any single day of operation.
2. Access to and from the site shall be limited to Cedarcroft Road.
3. The rock crushing machinery shall be operated in accordance with both the DOGAMI permit and LRAPA permit, including restrictions upon the release of particulates into the air.
4. Discharge of water at the site shall be limited by the DOGAMI permit.
5. The applicant shall apply a dust abatement substance which meets Federal, State and local laws and standards for use and application procedures to the haul road for a distance of 200 feet from the end of the pavement on Cedarcroft Road at regular intervals to control dust.
6. The applicant shall perform blasting only as described in the application and these findings and comply with all applicable county regulations, including the following requirements of LC 16.216 regarding blasting records:

“Each operator shall maintain a record of each blast for at least two years. These records shall be available to the County, the State Department of Geology and Mineral Industries and other governmental agencies with appropriate jurisdiction upon request. Such records shall show the following for each blast:

- “(i) Name of quarry or mine.
- “(ii) Date, time and location of blast.
- “(iii) Description of type of explosives and accessories used.
- “(iv) Time interval of delay in milliseconds.
- “(v) Number of different delays.
- “(vi) Number of holes per delay.
- “(vii) Nominal explosive weight per hole.
- “(viii) Total explosive weight per delay.
- “(ix) Total weight of explosives per blast.
- “(x) Blast hole diameter, depth, spacing and stemming height.”

7. The applicant shall maintain a 50-foot setback from adjacent properties for all mining and processing operations.
8. The applicant is required to restore the site to forest use consistent with the reclamation plan upon conclusion of the mining operation.
9. To mitigate the new mining truck traffic impact on Cedarcroft Road, the applicant shall pave the road with a 2.5 inch thick asphalt pavement overlay to county specifications through application for, and compliance with, a facility permit from Lane County prior to commencement of operation. The applicant shall pay the sum of \$17,000 to Lane County, in a manner acceptable to Lane County, to mitigate the new mining truck traffic impact to Bear Creek Road and payment shall be made within 5 years of commencement of operation.
10. Any aspect of operation of the subject site at variance with the use as proposed by applicant and as allowed by this ordinance is subject to enforcement pursuant to LC 16.262.
11. Any proposal for modification to any mitigation measures or other physical aspects or operational characteristics of the use shall be subject to site review procedures as set forth at LC 16.257.

The Board adopts the following conditions and mitigating measures:

1. Mining, processing, and hauling shall be limited to Monday through Friday, ~~7:30-00~~ 7:30-00 A.M. to ~~54:300~~ 5:30-00 P.M. with occasional operation on Saturdays and no more than the equivalent of 40 loaded trucks shall leave the site on any single day of operation. ~~during the school year, and 7:00 A.M. to 5:00 P.M. during the summer months (June 15 to the day after Labor Day).~~
2. Access to and from the site shall be limited to Cedarcroft Road.
3. The rock crushing machinery shall be operated in accordance with both the DOGAMI permit and LRAPA permits, including restrictions upon the release of particulates into the air.
4. Discharge of water at the site shall be limited by the DOGAMI permit.
- ~~5. The applicant shall provide prior notice of the time and date of blasting at the site to all residents north of the mining site and south of that portion of Bear Creek Road between its intersection with Cedarcroft Road and Cloverdale Road by means of letter postmarked three business days prior to the blasting date and by posting a sign at a central, visually prominent location.~~
- ~~6. Blasting shall only be conducted between the hours of 10:00 A.M. and 4:30 P.M., Monday through Friday.~~
- ~~7. Seismographs will be set at the two nearest dwellings to the site (82452 and 82704 Bradford Road) to monitor all blasting operations.~~
85. The applicant shall apply a dust abatement substance which meets Federal, State and local laws and standards for use and application procedures to the haul road for a distance of 200 feet from the end of the unpavement and portion of Cedarcroft Road at regular intervals to control dust.
- ~~9. The applicant shall direct all drivers using Cedarcroft Road to not use jake brakes in the vicinity of residences.~~
106. The applicant shall perform blasting only as described in the application and these findings and comply with all applicable county regulations, including the following requirements of LC 16.216 regarding blasting records:

Each operator shall maintain a record of each blast for at least two years. These records shall be available to the County, the State Department of Geology and Mineral Industries and other governmental agencies with appropriate jurisdiction upon request. Such records shall show the following for each blast:

- (i) Name of quarry or mine.
- (ii) Date, time and location of blast.
- (iii) Description of type of explosives and accessories used.
- (iv) Time interval of delay in milliseconds.
- (v) Number of different delays.
- (vi) Number of holes per delay.
- (vii) Nominal explosive weight per hole.
- (viii) Total explosive weight per delay.
- (ix) Total weight of explosives per blast.
- (x) Blast hole diameter, depth, spacing and stemming height.

~~117.~~ The applicant shall maintain a 50-foot setback from adjacent properties for all mining and processing operations.

~~128.~~ The applicant is required to restore the site to forest use consistent with the reclamation plan upon conclusion of the mining operation.

~~139.~~ To mitigate the new mining truck traffic impact on Cedarcroft Road, the applicant shall pave the road with a 2.5 inch thick asphalt pavement overlay to county specifications through application for, and compliance with, a facility permit from Lane County~~will pay to Lane County the sum of \$12,500.00 no later than one year after~~ prior to commencement of operation. The applicant shall pay the sum of \$17,000 to Lane County, in a manner acceptable to Lane County, to mitigate the new mining truck traffic impact to Bear Creek Road and payment shall be made within 5 years of commencement of operation.

~~1410.~~ Any aspect of operation of the subject site at variance with the use as proposed by applicant and as allowed by this ordinance is subject to enforcement pursuant to LC 16.262.

1511. Any proposal for modification to any mitigation measures or other physical aspects or operational characteristics of the use shall be subject to site review procedures as set forth at LC 16.257.

**BOARD OF COMMISSIONERS'
REGULAR MEETING**

February 11, 2004

9:00 a.m.

Commissioners' Conference Room

APPROVED 3/10/04

Commissioner Bobby Green, Sr., presided with Commissioners Bill Dwyer, Don Hampton, Anna Morrison and Peter Sorenson present. County Administrator Bill Van Vactor, County Counsel Teresa Wilson and Recording Secretary Melissa Zimmer were also present.

1. ADJUSTMENTS TO THE AGENDA

Morrison requested an item that was discussed at AOC on Monday be put under Commissioners' Business. Dwyer requested a letter to the E-Board also be put under Commissioners' Business.

2. PUBLIC COMMENTS

Bruce Tate, 465 Hunsaker Road, Eugene, stated he owns a piece of property at 88780 Fisher Road. He wanted to put a house on the property and had applied for an agricultural permit, which he received. He said since he received the permit, the County stated they would take a portion of his land and also his driveway. He noted his land runs 1,323 feet on the east side and has a u-shaped driveway coming off Royal onto Fisher. He didn't want to lose his driveway with no place to enter his property.

Mona Lindstromberg, 87140 Territorial, Veneta, stated in 1996 a moratorium on development was put into effect by the City of Veneta because of an inadequate water and sewer system. She said that moratorium was lifted a couple of years ago. She noted since then there has been rapid development. She said there was a recent attempt by the city to grant itself a blanket variance to its own wetland protection ordinance. She noted that Veneta residents were suffering from increased flooding from excess runoff due to poorly planned and executed development. She requested the Board do what it can to make sure that its constituents do not suffer the affects of Veneta's lack of judgment.

3. EMERGENCY BUSINESS

None.

4. COMMISSIONERS' REMONSTRANCE

Dwyer commented that Home Rule only applies within city boundaries. With regard to ambulance service, he said state law pre-empts Home Rule and directs them the responsibility of determining the boundaries. He noted the Santa Clara Fire District was something negotiated with the City of Eugene. He added Lane County didn't meddle in the Peace Health decision even though the impact is of a regional nature. He noted Lane County contributed \$5.2 million toward the roadway even though the city changed the zoning. He said they need to work together.

Sorenson reported The Register-Guard of February 11, 2004, editorialized that Representative Jeff Kruse passed the 100-day mark living out of his district. He wanted the Board to put on its agenda a period of time to confer with legal counsel about what role Lane County government has in trying to effectuate the Oregon Constitution that requires state legislators to live in their districts.

Wilson said if the Board wanted to make that an assignment, she would be willing to work on that.

Sorenson wanted to not only define what role county government has but also what role the Board of Commissioners might have with the legislative delegation. He thought there could be things the legislators could do separate from what county government could do.

5. RESOLUTIONS

a. RESOLUTION 04-2-11-1/In the Matter of Proclaiming the Week of February 9, 2004 as Family Resource Center Week.

MOTION: to approve RESOLUTION 04-2-11-1.

Morrison MOVED, Hampton SECONDED.

Green read the resolution into the record.

VOTE: 5-0.

6. COMMISSIONERS' BUSINESS

a. AOC Report.

Morrison explained the legislative group met on Monday. She noted that a special task force was formed last spring regarding government relations around tribal negotiations, and they have had continuing discussions. She stated a representative from California is attempting to get NACo to pass a resolution and to start the movement toward federal legislation on having counties and local governments more involved in compacts that are negotiated in the state. She noted there is a special workshop in Washington, D.C. and she and Colleen MacLeod will be attending for Oregon. She discussed a document that will be presented in Washington, D.C. (copy in file). She requested the Board read the document and submit any comments to her. She said if they did put together a resolution, it would not be acted on until July at the annual NACo meeting.

b. Letter to E-Board to Restore the Oregon Health Plan Plus Benefits and Gambling Addiction Services.

Dwyer read the letter into the record. He wanted the letter to be sent to the Board.

MOTION: to move to send the letter to the E-Board.

Dwyer MOVED, Sorenson SECONDED.

Tony Bieda, Intergovernmental Relations, indicated in the Lane County delegation, the only E-Board member that has a district in Lane County is Senator Messerle. He said he would send the letter to all the members of the emergency board who come from other parts of the state.

Dwyer said his motion would be to send it to all members of the E-Board.

Morrison suggested tweaking the letter.

VOTE: 5-0.

7. COMMITTEE REPORTS

a. REPORT BACK/Lane Metro Partnership Proposal.

Jack Roberts, Lane Metro Partnership, reiterated that they are recommending that Lane County agrees to pay \$15,000 toward the study with the total cost not to exceed \$50,000. He said they are asking the Cities of Springfield and Eugene to match Lane County's contribution. He added they were asking Lane County to be the lead agency to put this together. He said they are recommending that the study be contracted out instead of asking staff to undertake it.

Dwyer asked what information they based all their reports on.

Roberts responded the information they received was the testimony of people who appeared at the five publicly-held hearings. He said issues were raised about adequacy of land supply. He said they recommended an inventory be done and recommended the Board follow up on it. He said they were suggesting that under the land use laws, there is a requirement of local governments to ensure there is an adequate land supply for commercial, industrial and residential lands. He said they have reason to believe it had not been met in the past and asked the Board to accept the responsibility.

Dwyer commented there was a provision in the law requiring them to do a natural resource study and they hadn't been able to find the money to do this study.

Sorenson asked why the private sector wasn't paying for the study.

Roberts responded that when it would be delivered that people would complain that there was a vested interest in the private sector paying for the study.

Sorenson asked why they needed to do a study of industrial lands when they have unused industrial park space.

Roberts stated they had to have capacity in outlying areas to market the entire county. He didn't think there was evidence they could meet the land supply if there was not available land in the metro area.

Hampton thought there should be partnerships where the private sector puts up money. He encouraged the outlying areas to be included.

Green said it would be up to the Board to ensure the product is what they are asking for. He didn't see any problem with public agencies funding it.

Dwyer said the natural resources study was important and he wanted to find a way to do it.

Green explained the motion before the Board was about industrial lands. He said if they want to have a discussion about how and when to fund the natural resource study, they need to give the assignment to the agenda team and they will have the discussion.

VOTE: 4-1 (Sorenson dissenting).

Dwyer asked the agenda team to flag the issue on how they could move forward with other studies that are required.

8. COUNTY ADMINISTRATION

a. Announcements

None.

9. PUBLIC WORKS

a. RESOLUTION AND ORDER 04-2-11-2/In the Matter of Acquiring Fee or Other Interests in Certain Real Properties or Portions Thereof for the Reconstruction and Improvement of Royal Avenue (County Road No. 28) at Fisher Road (County Road No. 668) Intersection.

Frank Simas, Public Works, explained that this project would normally be on the consent calendar but since the Board hadn't received information on the project, he wanted to show the Board what was being proposed. He noted the project location is at the intersection of Royal and Fisher. He said both roads are local collector roads. He noted the average daily traffic is 2,500 vehicles per day on both roads. He indicated the predominant turning movement is from Royal to Fisher. He added it serves as a shortcut from Greenhill to West 11th. He stated the particular location had experienced 12 accidents since 1988 and has been on the capital improvements program as a safety improvement. He said they want to construct this later in the spring.

Simas noted that with the accidents they had, nine had involved cars proceeding westbound on Royal and ending up at the dead-end. He added one of the accidents was a fatal one. He said they had three accidents that involved cars proceeding north on Fisher and running off the end of Fisher instead of completing the turn to head to the east back toward Greenhill.

Simas explained the project is proposed to create a 35-mile-per-hour curve and will have an elevation to facilitate cars wanting to make movement in that location. He said that Royal Avenue will be brought in to make a 90-degree intersection with Fisher and Royal in order to provide the site distance and safety in that area. He noted the estimated construction cost for the project is about \$250,000 but the right-of-way costs might be slightly higher than anticipated. He added the total cost would be around \$290,000.

Dwyer thought that roundabouts could save property acquisition and impacts on drainfields. He asked why they didn't discuss roundabouts as a design concept.

Mike Russell, Public Works, noted the predominate movement is a left-hand turn and not straight through. He said when they looked at what they could do, the idea was to make the predominate move as free as possible. He said in order to do that, their recommendation was to make it a 35-mile-per-hour curve.

Morrison was opposed to a roundabout. She didn't think it could be handled in the dark.

Dwyer asked if they could find a cheaper and more practical way to deal with this issue. He wanted the project scaled back.

Russell indicated they could go back and review the accidents that had occurred where people are going straight through to find out why they missed the turn. He thought if they put the roundabout there it would solve the problem of missing it. He noted the board order today authorized the acquiring of right-of-way. He said they could deal with that issue today and come back with more of a refined design with options.

Dwyer was concerned they were authorizing right-of-way for a design.

Hampton asked if they lighted the intersection if it would reduce accidents.

Russell responded the County's policy is to construct lighting as part of the general construction project but someone has to agree to take over the lighting cost for maintenance and they hadn't identified an agency.

MOTION: to approve RESOLUTION AND ORDER 04-2-11-2.

Morrison MOVED, Green SECONDED.

Sorenson asked what the alternative would be if they didn't go ahead with this.

Russell stated they could go back to staff to look at a roundabout option. He added they could come back to the Board and compare the two.

Green commented he heard that roundabouts didn't work. He asked why they should come back with a roundabout.

Simas noted the properties that would be affected would be the same in constructing a roundabout.

Dwyer didn't think the engineers discussed the roundabout option in a serious way. He wanted the cheapest design that would address the safety issue.

Hampton was concerned that it was premature to purchase the right-of-way when there is no clear indication of what they were going to do. He wanted more information to concur that this was the best design.

VOTE: 2-3 (Hampton, Dwyer; Sorenson dissenting). MOTION FAILED.

Sorenson said he voted no because he wanted to wait a week for them to talk to the engineer.

b. ORDER 04-2-11-3/In the Matter of Amending Chapter 60 of Lane Manual to Revise Land Management Division County Surveyors Office Fees (LM 60.853 and 60.854), Effective July 1, 2004.

Dwyer noted this came to the Finance and Audit Committee and they examined the fees and how they related to the overall delivery of the services.

Morrison recommended that these fees be approved.

MOTION: to approve ORDER 04-2-11-3.

Dwyer MOVED, Morrison SECONDED.

VOTE: 5-0.

c. FOURTH READING AND DELIBERATION/Ordinance PA 1188/In the Matter of Amending the Lane County Rural Comprehensive Plan to Revise the "Significant Mineral and Aggregate Resources Inventory", Redesignate from "Forest" to "Natural Resource: Mineral", Rezone from "F-1/Non-Impacted Forest Lands" to "QM/Quarry and Mine Operations" and Allow Mining for 40 Acres of Land Pursuant to Lane Code 16.400 and 16.252 and the Goal 5 Oregon Administrative Rules (OAR 660-023), and Adopting Savings and Severability Clauses (File PA 98-5144; B.J. Equipment Company). (NBA &

PM 3/19/03 & 4/30/03)

Thom Lanfear, Land Management, explained they left off at Step 4 where staff was presenting a report addressing the documents that came in after the public hearing in April. He noted they got as far as the conflicts due to noise and discharges.

Lanfear stated the next step would be for the Board to go through the Goal 5 steps and deliberate on each part to determine if the information is adequate, if the resource site is significant, and to address the conflicts on impact area issues. He said they discussed the noise issue, where the houses are, and what type of distance the noise is traveling. He noted there was a question asked by a Board member on what the distance to the closest house was. He said the latest number they have is 2,112 feet, taken by the applicant's sound engineer using a GPS device at the nearest house and from the center of the existing mining area that is close to the southern boundary of the property. He said some of the interpretive issues for the Board that had been raised are whether that is to be considered a new noise source or an existing noise source that determines whether the noise has to comply with the ambient degradation rule. He said there was an issue raised and the record indicates it is an existing source.

Lanfear noted the Goal 5 Rule has a section where they try to determine that conflicts are minimized. He said a set of impacts they look at are due to conflicts to dust and noise, called discharges.

Impacts to Local Roads

Lanfear stated the primary issues are the roads being used. He noted that Cedarcroft Road is a public road off a local road and the impacts to that road have been calculated. He said it is suggested by staff that some pavement overlay occur prior to the use of the road by the gravel company because it will degrade the road surface by use of the project. He added that Bear Creek Road is also used to get to Cloverdale Road and it is recommended by staff that there should be a payment made to the County to cover the cost of the overlay when it is needed. He said the issue before the Board is whether this is an appropriate exaction for the use that is being proposed and how much money should be paid and when.

Green asked how they would determine the cost.

Lanfear responded the issue for the applicant is whether they could require it at all. He said the rule calls out certain characteristics of local roads that are under view with this rule. He stated they are recommending to the Board that a condition, which is attached, requires the pavement being taken care of.

Tom Stinchfield, Public Works, explained the County pavement lab did an analysis in March 1999 and compared the impacts of existing traffic with the quarry traffic on Cedarcroft and Bear Creek Road. He said the result of that was a recommendation that Cedarcroft get a 2-½ inch overlay before the quarry operated. He noted the difference with Bear Creek is that it is a county collector and the pavement conditions are better there. He added the lab predicted an impact to that road over time but their preference would be to have the overlay done later by the County when the pavement conditions warrant it. He said they are recommending there be a payment made instead of the applicant putting down asphalt.

Sorenson asked what the number of trucks was that they based the need for the overlay on.

Stinchfield responded they use the assumptions in the applicant's traffic report that was 80 trucks per day, 250 working days per year, 40 loaded trips, and 40 unloaded trips to be loaded up to legal limits, fully loaded at 10-yard loads. He added they assumed that most of the trucks were 10-yard dump trucks

and four or five per day were with trailers.

Sorenson asked if the payment issue was contested between the applicant and the opponents on the repaving of the road.

Vorhes explained it is more of a contention between the applicant and staff.

Sorenson asked if they were recommending the payment.

Vorhes said his reading of the rule is that there is an opportunity for the Board to address the impact to the road from the traffic that is generated by the approval if the Board approves this change to the comp plan. He noted the level of the impact is up to the Board. He said there is justification for some contribution to the roads. He thought the analysis of staff on what it is and how much it should be is reasonable.

Sorenson asked if there was a requirement of a posting of a bond to pay for the likely additional cost to the County road system if this were approved.

Vorhes responded only if the Board were to elect to use that as a method to address the payment for the costs of the road. He said it is not generally or specifically required under the Goal 5 Mineral and Aggregate Rule but it could be part of the Board's findings to minimize a conflict in terms of the impact on the proposal on public roads. He said if the Board wanted to structure it in that way, they could include that.

Sorenson asked how the County would be paid.

Lanfear noted the proposed condition as written requests up-front payment for Cedarcroft Road before operation begins and some money to be paid into the county funds within five years for Bear Creek Road.

Stinchfield noted for Cedarcroft the 15% estimate with engineering is \$14,375, and for Bear Creek the payment with engineering is \$39,100.

Vorhes explained the proposed condition in the packet and part of the proposed findings attached to the order states to mitigate impacts on Cedarcroft, the applicant will pay to Lane County the sum of \$12,500 no later than one year after commencement of operation. He said the applicant shall pay the sum of \$17,000 to Lane County to mitigate impact to Bear Creek Road within five years of commencement of operation. He noted this was the applicant's proposed condition.

Morrison asked if this was a one-time-only fee.

Lanfear responded it was a one-time fee.

Stinchfield noted staff's proposal was that this was a one-time analysis and is a 20-year pavement design consistent with their pavement design methods and consistent with what the Board had previously done. He noted the 10-yard dump trucks would be 52,000 pounds gross weight loaded and the multi-unit 15-yard belly dumps would be at 80,000 pounds, based on legal access loads of 18,000 pounds per single load or 34,000 for dual axle.

Dwyer asked how they rationalize the exaction issue.

Vorhes said it comes down to the analysis of how does this specific proposal and the change in use in this specific area affect that particular roadway, recognizing that the background analysis of what the deterioration of that road would be is something that would be covered by the taxes that are paid. He added it is a focus on this particular area and how the change could affect it instead of the more general broad aspect that the road mile taxes are designed.

Bear Creek/Bradford S Intersection

Lanfear said there is currently a site distance problem that had been raised in the record. He noted something needs to happen at that intersection to improve the site distance or request that the state look at reducing the speed limit along the stretch of road so the site distance would be adequate. He said the intersection has been cleaned up since the start of the process but it doesn't meet the ASHTO standards. He said there are comments in the record from the landowner on the corner that is objecting to this on the basis that if the road intersection has to be widened, it might impact their septic system that is nearby. He noted it was not caused by this proposal; it was an existing situation that might make it worse at that intersection. He asked the Board what they should do for that issue. He said they hadn't recommended any conditions.

Dwyer asked if they should ask the Speed Control Board for a variance in this matter.

Stinchfield said they wouldn't be asking for a variance but for them to issue an order to create a new speed zone there. He thought it was possible to do that but one problem is that it is approaching Cloverdale Road and the state wants to establish speed zones that are a half-mile long. He said their proposal would have to be for most of Bear Creek Road for it to be long enough to meet their criteria. He said they need to study the speeds of existing traffic to see if a reduction in speed is consistent with how the road is being used. He added there is an "Intersection Ahead" sign, coming down Bear Creek, approaching Bradford South. He thought they could look at a supplement to that signing and look at the curvature to consider some kind of speed device. He didn't know if the state would lower the speed zone. He said they could use signage that combines a curve with an intersection.

Green asked if not for this application, how would they fix the problem and who would be responsible.

Stinchfield said they would do what they had done: cutting the brush back for visibility. He said ultimately it is the County's responsibility if it is determined improvements are needed.

Dwyer said they need to fix the problem whether or not the application goes forward. He said if there is a safety issue, they need to address it. He said it was unreasonable to put all of the responsibility on the applicant if the project is allowed.

Traffic Impact Analysis

Lanfear noted there is disagreement about when the 20-year period should begin and end. He said the application came in 1998 and the applicant had provided a 20-year analysis from that date forward. He said the opponents wanted to see it for 20 years from now. He indicated the general principle is they address the requirements in effect at the time they make the application and they are looking at the 20-year analysis as covering the appropriate time period.

Sorenson asked why they couldn't put the requirement of looking at the analysis when the rock is starting to move. He asked why they should have arbitrary dates that can't be predicted.

Vorhes said the study is necessary for the Board to determine whether there is compliance with the

criteria as part of the decision making. He said they need to know the result of the analysis in order to reach the conclusion regarding the criteria of approval under the Administrative Rule. He noted the time frame would need to be known and addressed by all the parties in advance of the Board's decision. He said if there is an interest in establishing a date different than what the applicant has addressed, they might want to discuss what that date should be. He added they should reopen the record so that could be addressed by the applicant and everyone else to know that is the window of opportunity that should be the focus for the Board to analyze and review the record and make a decision on the criteria for approval.

Lanfear noted they need to review what is being approved. He said what is being requested is to run 80 trucks a day. He said the way the conditions are written, there is limitations placed on this approval, that there would not be the ability for the applicant to run 500 trucks per day without being in violation.

Vorhes commented that if the Board thinks it needs to be different, it might be worthwhile to reopen the record and allow people to give the analysis so they can review it and determine if there is compliance with the applicable criteria. He added the period of study may utilize some of the same information that was utilized for purposes of analyzing the impact on the road structure, but there are different calculations and analysis. He added they might not be able to use all of the same information.

Sorenson asked what the Board had to decide on this issue.

Lanfear responded the issue for the Board is whether there is an impact to the level of service on the roads within the 20-year time period. He said Goal 12 pushes it instead of Goal 5 criteria for conflicts to local roads.

Vorhes said they need to know what the conflict is in order to articulate findings, or for the Board to decide there is and what it would take to minimize it.

Sorenson asked if they used the numbers the applicants submitted, if there would be any reason to do a higher number.

Stinchfield noted what is in the record is the analysis through 2018 showing the level of service is okay at the Cedarcroft/Bear Creek and at Bear Creek and Cloverdale. He said they are predicted to be for all movements the level of service A or B. He said the analysis was done based on assuming growth rates from Cloverdale Road. He noted the quarry operation impacts are structural, not congestion related because of the small number of vehicles involved.

Lanfear noted that the level of service for intersections includes the number of vehicles and how they move on the road. He stated it wasn't tied to the exact issue of payment overlay.

Dwyer commented they could find that the standard for the level of service has been met because they control any expansion regarding the number of trips. He added the size of the quarry itself limits future capacity without another application. With regard to weight, he could also find that there might be an impact on Cedarcroft but there will be an impact on Bear Creek to a lesser extent because it is a major arterial instead of a local collector, so the standards of construction are different. He said it was built originally to a higher standard than a local road. He asked what they could reasonably do to maintain that standard beyond degradation that they could directly attribute to the applicant in excess of what he already pays in weight mile fees. He thought the issue had been addressed.

Conflicts with Goal 5 Resource Sites

Lanfear noted the opponents are raising issues that there are riparian resources that need protection in the area. He said the Goal 5 Rule contains specific language that if they are going to look at the resources, they have to be on an existing county inventory. He said their riparian maps were from 1980 and do not show any riparian streams within the impact area or near the quarry itself. He noted there are wetlands identified on the state inventory that are considered part of the county inventory and are limited to a small water crossing of the haul road. He stated there wasn't any proposal to alter that road surface across the wetland area. He said they hadn't identified any impact to the wetland as part of this process.

Sorenson asked if the staff memo addresses whether or not there is a conflict with riparian resources.

Vorhes said it is the identification of a Class 1 stream as the acknowledged list of significant resources that the current Rural Comprehensive Plan identifies as Goal 5 riparian resources to be protected. He said there are riparian resources along Class 1 streams. He said that is the way the policies in the Rural Comprehensive Plan and the inventory of riparian resources were identified when the Rural Comprehensive Plan was acknowledged. He added if there is not a Class 1 stream within the impact area by definition or by operation of the Rural Comprehensive Plan, the description of what the riparian Goal 5 resources protected by that plan results in the conclusion that there are none in the impact area because there are no Class 1 streams. He said that was the indicator that the Rural Comprehensive Plan uses to find the riparian resources within Lane County that are then subject to the riparian regulations in Lane Code that design the protection program under Goal 5 for those riparian resources. He added that the Goal 5 Rule for mineral and aggregate resources that has specific language that tells the Board how to address conflicts with other Goal 5 resource sites governs this. He said it looks only to those within the impact area that are shown on an acknowledged list of significant resources. He said they have to go to the Rural Comprehensive Plan to get the list. He noted it was the map that was acknowledged in the early 80's about Lane County's Goal 5 riparian resource inventory, and that is the limit of the Goal 5 Mineral and Aggregate Rule that says those are the resources that are looked at and because there are not Class 1 streams within the impact area, limits the review for riparian resources.

Sorenson asked if the 1996 amendment to the Goal 5 Rule applied.

Lanfear noted when they were coming up with the changes to the Goal 5 Rule in 1996, Lane County was just entering periodic review. He said they were not directed to the new goal rule provisions during periodic review.

Vorhes stated those provisions that related to riparian resources are not applicable because of what Lanfear described. He said the provisions that describe how to address this application for a post acknowledgement plan amendment for mineral and aggregate uses are subject to the 1996 amendments to the Goal 5 Rule that relate to mineral and aggregate resources that define the parameters of the conflicts with other Goal 5 resources the Board needs to address in the context of the application.

Dwyer commented as this relates to significance and the impact area, they are outside the 1,500 feet. He added that they are limited except where factual information indicates significant conflicts beyond that distance. He asked where in the record it showed a significant conflict beyond that distance as it relates to the riparian area.

Lanfear stated there were none close by.

Recessed at 12:00 p.m.

Returned at 1:30 p.m.

Green asked if there were any ex parte contacts from the Board.

Green stated he had not received any written mail or e-mail.

Dwyer stated he received an e-mail. He said he didn't read or respond to it. He said he chastised the person for sending it to him.

Morrison stated she had none.

Hampton stated he received an e-mail but he did not read it.

Sorenson stated he received an e-mail, he read it and he received an e-mail from Dwyer about his response to the e-mail.

Issue of Impacts to Upper Willamette Spring Chinook

Lanfear stated it doesn't appear to be addressed in the Goal 5 Rule. He said that Lane County doesn't have an inventory that lists this. He said indirectly they get to the Class 1 streams and riparian resources. He said whether there is a take or potential harm to the Spring Chinook is something that is regulated by the National Marine Fisheries Service and doesn't have any liberty to cause any harm to the fish regardless of what the county does with this application. He noted the applicant has submitted a report by EGR & Associates that claims there is no impact to water resources in the area.

Sorenson asked if there was a requirement that the applicant must be in compliance with all applicable laws.

Vorhes responded that it was not a specific criteria under the Goal 5 Mineral and Aggregate Rule, but as a practical matter, he has to be in compliance with applicable laws.

Lanfear explained as a result of the Eugene Sand and Gravel decision going to LUBA, they found that it preempts all of the local regulations, even the plan amendment requirements. He said they have to follow the Goal 5 Rule and they can't tack on local criteria.

Sorenson asked if the County by approving this is getting into a conflict with the listed or threatened endangered species.

Vorhes noted the difficulty they have is they don't have a means under the Goal 5 Mineral and Aggregate Rule to look at the question of whether the County issuing the permit will violate the Endangered Species Act.

Sorenson asked if the approval of an aggregate or mineral application is an action that is governed by county or federal law.

Vorhes responded to the extent the federal law covers a take in whatever fashion it occurs, there is a possibility that someone could make a claim that because of the county permit there was a take. He said what was difficult to establish and make stick is when another actor's conduct might ultimately be the result. He added there are some circumstances that could have arrived where conditions of the county permit might be the contributing part of a take. He said DOGAMI might get into those kinds of issues under the Mineral and Aggregate Rule of Goal 5. He indicated the Board must find compliance or a set of regulations on the Endangered Species Act and whether the issue of the permit will result in the take is not one of the criteria for approval of this.

Sorenson noted that Lanfear mentioned in his memo that the applicant presents the argument that they must evaluate the potential harm to the Upper Willamette Spring Chinook. He asked if there were any facts to support that.

Lanfear responded that Exhibit 174 is where that is presented (page 31, copy in file). He said it claims that the impact to local streams may violate the Endangered Species Act Rule. He noted the Spring Chinook is listed as threatened under the Act and requires conservation and recovery of habitat and any action by local governments may degrade the water quality and might result in harm to the species. He said that Lane County failed to address the required ESA protection of habitat when it failed to adopt the proposed Critical Habitat Conservation Zone in 2001. He added it would have addressed the requirements of the Goal 5 Rule. He noted the rule changed in 1996 and Lane County was not required to address the rule at that time and the Board has deferred the decision on that habitat conservation zone.

Sorenson asked if this was an example where the fish would be brought up on a case -by-case basis.

Vorhes commented that one of the reasons the regulations were developed was to seek to provide some protection under the Endangered Species Act. He didn't think it was the only driving force for it. He said the Board's action doesn't necessarily affect or reflect on this particular application because the Goal 5 Mineral and Aggregate Rule, the place where the analysis starts and stops, governs it. He said by having those regulations in place may not have had anything to do with this application. He said they have the limitations of what they can look at in this application.

Sorenson asked if there was any dispute about the status and the presence of the fish.

Lanfear responded he didn't see anything in the record that documents the presence of the fish in the stream on the property.

Green stated there was no evidence to support the opponents and would support the applicant's statement. He noted there was no evidence for the conflict.

Dwyer concurred.

Sorenson took the view that on the matter of the application of the law, the presence of federally listed endangered species or the Endangered Species Act would be something they should require compliance with. He didn't hear any evidence to support the view that there is Upper Willamette Spring Chinook present.

Conflicts with Agricultural Practices

Lanfear indicated there is discussion in the record of a holly farm at the end of Cedarcroft Road. He said this gets back to the issue of whether it is within the impact area or not. He noted it is not within the impact area of the mining but would be impacted from dust created from the haul road. He stated there were no specific details provided about the holly farm. He noted there was substantial material entered into the record from the Eugene Sand and Gravel record about dust studies. He said there were situations where dust from gravel roads could impact the production of farm produce and holly. He said there wasn't anything in the record to identify whether this is within the impact area or a significant change in the cost of doing the farming or in the practice of operating the farm. He said without that it is hard to find a conflict that needs to be minimized.

Dwyer commented it is out of the immediate area they need to consider. He said the record shows that

the dust (if it were created) would be created by the haul road and not by the operation. He added that the paving would mitigate some of the impacts of the dust.

Green supported this.

Sorenson found that the presence of the mining activity does extend to the haul road, that the haul road is near the mining area and that the measures that had been discussed to mitigate the impact on the production of the holly would find that the impact on the holly farm had not been demonstrated. He commented that the testimony in the record is insufficient to trigger a conflict with that agricultural practice.

Dwyer concurred.

Cavinee Property

Lanfear explained this is the only property in the immediate vicinity of the quarry that is zoned for agricultural use. He said there is a letter submitted by the new owner of the property that has a lack of detail that is similar to the one on the holly farm (Exhibit 192, copy in file). He said they plan to plant several acres of grapes on the property and have concern about dust and the effect it will have on the grapes they plan to harvest for wine. He added they have livestock and it might have an adverse impact on reproduction, health and well-being of the animals. He said there wasn't much information. He noted it wasn't an agricultural activity that was currently taking place. He added there wasn't much in the record in the way of demonstration that there is a lot of dust being produced by the quarry mining site itself and most of the discussion of the dust in the record is about the haul road. He didn't see evidence in the record that the dust from the mining would affect any on-going farming on the property.

Sorenson asked what the conflict was with agricultural farming because there is no vineyard.

Lanfear didn't believe there was a conflict. He noted this was placed in the record by the owner of the property maintaining there is a conflict. He said staff's position is that it is not a conflict that has risen to the level that could be addressed because there is a lack of information. He said there are Class 3 soils suitable for agricultural and the owner plans on actively farming the property and will be growing grapes and raising livestock. He added the dust that would affect this would not come from the mining but from haul road dust.

Sorenson found that the requirements would have to include a discussion of any conflicts with agricultural practices. He found that the property was within the impact area but didn't see a conflict with current agricultural practices.

Dwyer and Green agreed.

ESEE Analysis

Lanfear noted the need for an ESEE analysis would come up if they found conflicts that are not minimized and then they would have to address the ESEE analysis.

2 a, Page 4, Significance of Resource

Green found there was a significant resource.

Dwyer commented there was nothing in the record to state that it wasn't a significant resource.

Sorenson asked if there were other items in the record concerning the significance of the resource.

Lanfear responded that Exhibit 168 stated that Mr. Biacho raised an issue with the classification of soils. He recalled they are to use the NRCS soil survey for Lane County. He indicated that survey and Mr. Biacho were using soil ratings by the Department of Forestry and these were not the same system classification. He noted they couldn't find any evidence in the soil survey that there were Class 1 or Class 2 soils on the property where mining is to occur.

Sorenson asked if the quality and quantity of the rock met ODOT standards.

Lanfear noted there is a document attached to the ordinance, (a study from Century West Engineering Corporation) which documents the rock on the property meets ODOT specifications. He estimated the amount of material to be 2,560,000 tons.

Sorenson found there was a significant resource on the property.

Minimizing Conflicts

Impact Area

Sorenson thought the main issue is what the impact area is. He noted the applicant had introduced an issue of where the mining begins and ends. He said the rule says it is the mining area and the issue is how they get to the determination of what that is. He said if they find the mining area is small, then the impacts will be small. He thought the impact of the mining under the OAR is all or any part of the process of mining. He said it is including processing and the processing is not limited to crushing, washing, milling and screening. He thought the haul road was part of the mining area and he said they will have to see what the mining area is. He added by having a private haul road that is attached to the rest of the mining area, it becomes part of the overall mining operation

Lanfear noted there is a letter from DOGAMI in the record that states hauling the rock out is not processing. He said they call it "load out." He added in the definition of processing, it doesn't mention transportation. He said that mining has certain parts to it: the actual extraction of the mineral from the ground, the processing of the mineral, transportation and load out.

Dwyer commented the conflict didn't occur until the trucks got down to Cedarcroft. He noted there was a plan in the record for the applicant to mitigate the dust and other things associated with the haul aspect.

Lanfear stated that a main issue for the Board is to decide whether they are required to do that. He noted the applicant had voluntarily offered to control dust on that stretch of road by applying some material to keep the dust control substance. He stated on the staff level it is not required by the rule unless they determine that hauling out of material to the public road fits under the definition of mining area or processing.

Sorenson asked if blasting was part of mining.

Lanfear stated it is in the record.

Sorenson noted that mining is defined as the extraction and processing of the minerals and thinks the haul road is part of the mining operation.

Vorhes noted the applicant views the impact area to be limited to the mining site and not the transportation to be used as the haul road.

Green supported that.

Vorhes commented the rule talks of terms of conflicts from proposed mining. He noted that includes all or any part of the process of mining by the removal of overburden and extraction of natural mineral deposits thereby exposed by any method including open pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or offsite pits, except those constructed for use as access road. He said that transporting the materials from the mining hole in the ground is the issue of where and how you fit it into the definition of mining.

Sorenson stated that mining area includes where the materials are moved around on the property or under the control of the people who are running the mining operation.

Dwyer didn't agree with Sorenson. He said the mining operation starts at the mine, not where the road meets the mine.

Green agreed. He noted on page 5, the administrative rule limits the review of those conflicts produced at the mining area and it limits the review of any transportation conflicts to those road elements specified in the rule.

Sorenson asked about the term "mining" that Lanfear used on page 5 of the staff memo.

Lanfear responded that in the Goal 5 Rule it is defined in OAR and the mining area is the area of the site within which mining is permitted or proposed excluding undisturbed buffer areas or areas on a parcel where mining is not authorized. He stated that was the specific definition.

Green stated there are no conflicts that needed to be minimized, outside of the one the applicant had offered with mitigation.

Morrison added the mining didn't include the haul road.

B 1 Conflicts Due to Noise, Dust and Other Discharges

Morrison agreed with staff.

Dwyer commented that the applicant had to minimize noise. He asked how they were going to create a berm between the exposed sides of the hill. He noted that practice itself minimized the conflict from noise and dust.

Lanfear explained the applicant's engineer described the five to ten decibel reduction in noise working behind a berm. He said there were some issues raised in the Daly Standlee report that it would then cause it to reflect off. He believed the applicant's engineer started the analysis by measuring sound at the existing Saginaw site that has the rock wall reflecting capability. He believed they had addressed that issue. He said they made some analysis on site using some equipment that shows that the noise is reduced below the DEQ requirements without putting on the extra reduction in sound from the berm.

Sorenson stated the burden of proof is on the applicant to prove conformance to the DEQ noise regulations. He didn't believe the applicants had met their burden of proof because of the critique of the

noise study that Mr. Noxon did for the applicants. He said a Mr. Standlee performed the critique. He said in his opinion, Standlee said the study Noxon did does not sufficiently quantify the noise that could be expected to radiate from the quarry. Standlee added the study conducted by Noxon would not be enough to demonstrate compliance with DEQ regulations. He noted among the reasons that Standlee found was because Noxon used the Saginaw quarry crushing equipment that was expected to be used at the Bradford quarry. He said, however, the noise level provided for that equipment is less than that typically found by Standlee in his engineering firm. He added that Noxon didn't consider the ambient noise radiating from any sources typically found at a quarry such as a rock drill, dozier, front end loaders and blasting. He said that noise wasn't considered and the applicants couldn't meet the DEQ rule.

Green noted there was consensus with the staff on the noise discharge.

Haul Road Dust

Green noted it is not found in the area.

Dust

Green noted it is not part of the consideration under the Goal 5 Rule.

Lanfear stated there is a condition attached that requires dust abatement to the gravel on the road.

Mining Area for Dust

Lanfear said the Board needs to determine if there are conflicts from dust and noise in the mining area. He noted there was nothing in the record quantitative on the dust being generated offsite. He said there is an LRAPA permit that has been issued for this site. He added they have to comply with the LRAPA standards. He said there was nothing in the way of evidence suggesting that dust in compliance with LRAPA standards travels outward to any great distance to anything nearby since there is mostly forest practices occurring nearby.

Green agreed with the staff position that there is not a sufficient amount of information in the record to have this issue not go forward.

Sorenson asked where the record is on the mining area dust. He asked who had the burden of proof.

Lanfear responded the applicant has the burden of addressing the criteria. He said the objections have to be raised with enough specificity so the applicant can address the issue. He said there is discussion in the record of having to go through the LRAPA permitting process to operate the mine. He said the rule states that if the conflict is identified, it is considered minimized if dealt with within a local state or federal standard that applies to that conflict. He said there is a standard that LRAPA imposes and if they bring the level into conformance with that, then they have minimized the conflict.

Sorenson asked where in the record the applicant had demonstrated they would control the dust in the mining area.

Lanfear responded that on page 5 of Exhibit 189 a) the applicant discusses dust from the haul road. He added there is mention of the prevailing north and northwestern winds.

Sorenson asked if there was any burden the applicant had on dust.

Vorhes responded they have to give the information that shows what the conflicts are and what evidence there is establishing that there is a conflict. He said beyond that, they are responding to objections or issues raised with sufficient specificity. He added in order to convince the decision maker that those objections should not be sustained, there is a need to bring forward the evidence and testimony that responds to those objections.

Lanfear noted the issue of dust that is raised in the record is focused on the haul road and not directed at dust coming from the mining area.

MOTION: to approve a Fourth Reading and Setting a Fifth Reading and Deliberation for Ordinance PA 1188 on February 25, 2004.

Morrison MOVED, Dwyer SECONDED.

VOTE: 5-0.

d. ORDER 04-2-4-8/In the Matter of Certification of Final Assessments for Improvements to River Road (County Road Number 200) Between Mile Post 7.747 and Mile Post 7.366 and Setting Lien Values Against Properties. (NBA & PM 1/7/04)

Frank Simas, Public Works, reported he went back and reviewed all the materials from the assessment process. He noted when they originally came to the Board in July 2002, the Board directed staff to do an evaluation of the two methods of assessing the abutting owners for the project. He said the two alternatives were the City of Eugene's assessment policy, and Lane Code Chapter 15. He said they came back in October 2002 and at that time the Board directed them to go ahead and do the assessments under Lane Code Chapter 15.

Simas noted an issue that came up at the hearing last week was the issue of deferral of assessments. He mentioned there were some proposed amendments to Lane Code's assessment procedure coming before the Board within the next two months. He noted the amendments are generally modeled after the City of Eugene's, with the exception that the City of Eugene assesses for a portion of the pavement and for storm drainage. He added they recover more of the costs than Lane County does. He noted in the existing policy they have the issue of deferral assessments and there were two properties they were looking at. He noted under the existing policy if a property does not take access from the arterial, then the assessment is deferred. He said being deferred means it is still accruing interest at the rate of seven percent and it is still a lien on the property but it is not required to be paid off until the property takes access or it is extinguished at the end of 20 years.

Simas stated the proposed Lane Code amendments would have a provision whereby it was modeled on the City of Eugene's policy where large frontage parcels could take advantage of the deferral. He said the way it is currently written, it would be required for the property to have at least 200 feet of frontage before it could trigger the deferral of the assessments and then the 100 feet adjacent to a dwelling would be eligible to be deferred. He said he went back through the assessments for the River Road project and there are two properties that would be eligible under the new policy that are not now. He said the parcels are Mr. Malcom's property and the Dike property. He said they have slightly more than 200 feet of frontage. He noted that about 110 feet on each property could be deferred instead of having to be paid immediately.

Simas noted another issue they were looking into was the engineering costs. He said on this particular project, the notices had gone out to the property owners, and the board order that was approved had stated that the assessments were to include the engineering and administrative fee of 25%. He said it

should have read approximately 25%. He noted for this project the bid price from the contractor was favorable so the amount of the assessment improvements was lower than anticipated but the administrative engineering fees that went into it were still the same. He noted the administrative fee was 28% for the River Road project.

Dwyer asked what the actual amount of the administrative amount was on a project like this.

Simas responded they had gone across the county system and identified those items that are related to sidewalk, curb and gutter construction and on this matter it was 28%. He said it would have been a lower percent had the bid come in higher. He said costs are fixed and the engineering is the same. He added until they know what the construction actual bid prices are going to be, they don't know the percentage for the administrative fees.

Morrison was concerned that if they do this (depending upon the policy that comes in the future) that they would have to go back on other projects and they would get requests from those people. She was not in favor of waiting on this and wouldn't support the motion.

Dwyer commented the new policy was more beneficial. He said that holding this until they adopt a new policy was what he was supporting. He added they would adopt the provisions under the new policy and they are not retroactive.

Kardell said the Board could defer this action until the Board considers any new policy proposals and makes a decision on those.

Green stated that if they hold this over, he didn't think it would provide much of an advantage to some of the property owners because there would still be a deferral on the property plus a seven percent interest rate.

Sorenson was concerned about the changing policy, as other properties were assessed under the old policy. He said the roads are for other people to go through where these people live. He was against landowners having to pay when they didn't take access from the road.

Dwyer stated he would be voting against this. He said they need to implement the new policy, be prospective and allow people to participate and limit the administrative fee to 25%.

MOTION: to approve ORDER 04-2-4-8.

Morrison MOVED, Green SECONDED.

VOTE: 2-3 (Dwyer, Sorenson and Hampton dissenting). MOTION FAILED.

Dwyer recommended that Public Works brings back the new policy that would be prospective that includes any action taken after the policy and limiting it to a 25% administrative fee. He added they can't waive the assessments because the precedent they would set would be a greater damage.

Simas noted a draw back of letting these go too long is that they have been recorded as pending liens against the properties. He noted there are 130 parcels on Irvington that are in a similar situation. He said it is inconvenient to the owners of the property if they go to refinance or sell the property, it could cause a problem.

Green didn't know of a solution.

Van Vactor suggested separating the assessments from the new assessment policy and bringing it back to the Board.

10. CONSENT CALENDAR

A. Approval of Minutes:

May 1, 2003, Special Board Work Session
May 6, 2003, Work Session, Following Board of Health
July 30, 2003, Regular Meeting, 9:00 a.m.
July 30, 2003, Regular Meeting, 1:30 p.m.
December 10, 2003, Regular Meeting, 9:00 a.m.
December 10, 2003, Regular Meeting, 1:30 p.m.
December 17, 2003, Regular Meeting, 9:00 a.m.
January 14, 2004, Regular Meeting, 9:00 a.m.
January 14, 2004, Regular Meeting, 1:30 p.m.

B. Public Works

1) ORDER 04-2-11-4/In the Matter of Awarding a Contract to United Rentals in the Amount of \$80,000.00, for the Purchase of One (1), Used Truck-Mounted Bridge Inspection Crane.

MOTION: to approve the Consent Calendar..

Dwyer MOVED, Hampton SECONDED.

VOTE: 4-0 (Morrison excused).

11. CHILDREN AND FAMILIES

a. RESOLUTION AND ORDER 04-2-11-5/In the Matter of Appointing Crystal Argetsinger, Amanda Layton, and Tricia Lynch and Reappointing Elaine Walters and Bruce Abel to the Lane County Commission on Children and Families.

MOTION: to approve Resolution and Order 04-2-11-5.

Dwyer MOVED, Hampton SECONDED.

VOTE: 4-0 (Morrison excused).

12. HEALTH AND HUMAN SERVICES

a. ORDER 04-2-11-6/In the Matter of Delegating Authority to the County Administrator as an Authorized Representative to Sign Applications to Medicare and Medicaid Related to Mental Health Services.

Rob Rockstroh, Health and Human Services, explained since 1997 they had done these automatically. He said they had just received notice that they have to be turned around by February 15.

Dwyer MOVED, Hampton, SECONDED.

VOTE: 4-0 (Morrison excused).

13. **CORRESPONDENCE TO THE BOARD**

None.

14. **COMMISSIONERS' ANNOUNCEMENTS**

Green announced the Head Start art exhibit.

Dwyer announced there would be an MPC meeting this week.

15. **EXECUTIVE SESSION as per ORS 192.660**

To take place after the meeting.

16. **OTHER BUSINESS**

None.

There being no further business, Commissioner Green recessed the meeting into Executive Session at 3:30 p.m.

Melissa Zimmer
Recording Secretary

**BOARD OF COMMISSIONERS'
REGULAR MEETING**

February 25, 2004

9:00 a.m.

Commissioners' Conference Room

APPROVED 3/31/04

Commissioner Bobby Green, Sr., presided with Commissioners Bill Dwyer, Don Hampton, Anna Morrison and Peter Sorenson present. Assistant County Counsel Stephen Vorhes and Recording Secretary Melissa Zimmer were also present.

1. PUBLIC WORKS

a. FIFTH READING AND DELIBERATION/Ordinance PA 1188/In the Matter of Amending the Lane County Rural Comprehensive Plan to Revise the "Significant Mineral and Aggregate Resources Inventory", Redesignate from "Forest" to "Natural Resource: Mineral", Rezone from "F-1/Non-Impacted Forest Lands" to "QM/Quarry and Mine Operations" and Allow Mining for 40 Acres of Land Pursuant to Lane Code 16.400 and 16.252 and the Goal 5 Oregon Administrative Rules (OAR 660-023), and Adopting Savings and Severability Clauses (File PA 98-5144; B.J. Equipment Company) (NBA & PM 3/19/03, 4/30/03, 2/4/04 & 2/11/04).

Green asked if there were any ex-parte contacts.

Green stated he had none,

Sorenson stated that he had read the Register Guard article about the Bradford Quarry.

Morrison, Dwyer and Hampton had none.

Thom Lanfear, Land Management, recalled the last time the Board met they dealt with the conflict with riparian resources and went back to the significance of the resource and started at the beginning of the conflicts.

Discharges on Public Roads

Lanfear noted the opponents discussed the gravel trail of rocks and dirt falling from gravel trucks. He said it would seem to be an impact to a local road. He added it wasn't an item that was listed under the road conflicts, and it was also not a discharge from the mining area itself, but a subsequent discharge after the trucks reach the public roads. He didn't think it was something covered under the rule to be considered as a discharge conflict.

Green commented there was nothing in the record that would indicate that this would be a conflict that would need to be minimized. He supported the applicant's position.

Sorenson asked if the discharge on public roads was the same issue as the payment to the County for the overlay or additional stress on the road as a result of the trucks.

Lanfear didn't believe it was calculated into the figures from transportation planning when they figured the costs or the deterioration rate of the road. He noted that any additional material would be considered a discharge, but for purposes of the rule it is not a discharge from the mining area.

Sorenson asked what requirement they dealt with from that discharge.

Lanfear didn't believe there was a requirement.

Sorenson asked if there was a discharge onto public roads.

Lanfear responded that the opponent discussed in a general way that gravel trucks leave little bits of rock behind. He noted the applicant responded on page 13 of 177 and identified that if a truck has a sifting or leaking load that it is a Class B traffic violation from ORS 818.300.

Sorenson didn't see a conflict. He found that it didn't originate in the mining area.

Morrison didn't see a conflict.

There was consensus of the Board on that matter.

Fire Hazard

Lanfear stated this issue was raised in a general way. He said there is no rural fire protection district that covers the mining site. He said the proposed mine site and haul road would generate a significant increase in fire hazards. He noted there was no discussion of how it is done.. He stated the mining site itself is rocky and there is no vegetation. He said they were putting the haul road in with the mine site as a part of the hazard.He noted it wasn't clear in the record what the conflict was.

Dwyer commented the company could adopt a no smoking policy when the drivers are driving their trucks on the haul road. He said it could decrease the risk. He added if the company took action it could make the conflict non-existent.

Hampton noticed that the vegetation overhangs the haul road and needed to be trimmed. He thought that was also a fire danger on the haul road. He thought it should be remedied for the safety of the workers and for the local residents.

Sorenson asked if they could impose conditions on the operator for an area outside of the designated mining area such as no smoking on the haul road.

Vorhes said the distinction is where the conflict was significant. He said there was consensus that there is not a significant fire hazard. He noted if that was the case, then putting a condition to minimize conflicts is an extra step that doesn't follow the conclusion there is not a significant conflict. He added if there is a conclusion that there is a significant conflict and limited to the mining area, then the conditions that affect that within the mining area would make sense and could be a part of the Board's position.

Sorenson found there was a fire hazard on the haul road but not in the area of the immediate blasting and loading area.

Dwyer thought there might be an increased risk, but it didn't rise to the level of significant.

Green concurred.

Mudslides

Lanfear noted there is a neighbor that identified a concern for potential mudslides. He said it appears they might have had some earth movement in the past based on logging that occurred on their property but there is nothing in the record that leads to a conclusion that there is a potential for earth moving from this quarry site.

There was consensus that this was not an issue.

Property Values

Lanfear noted that property values were raised in the record in a few places, including the petition. He said there is a submittal by a realtor that makes an estimate on the decrease in property values. He said the discussion is based on the noise and dust emanating from the haul road. He said they have to determine if this is related to a discharge from the mining area or not. He said it didn't look like it was caused by the discharge in the mining area.

Sorenson didn't see a conflict within the mining area where the loading and blasting occurs. With regard to the haul road, he believed there was a significant issue and the property values would be adversely affected as a result.

Dwyer said he didn't see any comparables with demonstrated facts other than an opinion to support the argument that it would be significant.

Morrison didn't think it was a problem.

Hampton noted there was testimony from various people about trying to sell their property and not being successful. He added some people purchased property and found out after the fact that this application was in existence. He agreed that there was no statistical evidence.

Green commented there was nothing in the record to make the determination about loss of property values.

Conflicts with Local Roads

Lanfear explained the Goal 5 Rule has a specific provision for how they look at conflicts with local roads. He said they look at potential conflicts to local roads 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. He added that conflicts shall be determined based on clear and objective standards regarding site distances, road capacity, cross-section elements, horizontal and vertical alignment and similar items in the transportation plan that implements ordinances. He said 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 material. He noted the nearest arterial in this matter is identified as I-5. He said that Cedarcroft Road is a local road, Bear Creek Road is a County road and classified as a minor collector. He added that Cloverdale Road is a state highway and classified as a major collector.

Tom Stinchfield, Public Works, indicated the applicant submitted testimony that addressed the level of service for the roads involved to analyze the traffic volumes. He noted this was for Bear Creek, the intersection of Bear Creek and Cedarcroft, the intersection of Bear Creek and Cloverdale Road and found that the level of service would be either A or B for all of the movements at the intersection over a 20 year period, starting with the application date. He agreed with that analysis. He said they didn't find a congestion issue. He noted they had the County pavement lab perform an analysis based on the

projected truck traffic on the pavement and they found impacts to both Cedarcroft and Bear Creek. He said that led them to suggest the overlay requirements in the memo. He noted another engineer in the record looked at the site distance at both Bear Creek and Cedarcroft and Bear Creek and Bradford Road South. He said that Bradford Road South is a restricted site distance.

Dwyer asked how the County expected to mitigate that because the problem exists whether this quarry happens or not.

Stinchfield responded that the applicant's engineer suggested they approach the state and lower the speed zone so they could bring the speed of the traffic down to match the existing site distance. He said they could also look at additional signage to warn drivers on Bear Creek of the approaching intersection. He noted what he thought the County would do is review the vegetation and right-of-way lines at the intersection to see if maintenance work is required. He said it was their preliminary opinion that a capital project is not justified.

Sorenson asked what the one-mile radius issue was.

Lanfear responded the one-mile reference is specific to the conflicts to the local roads provision in the rule. He said it was one mile from the entrance to the mining site.

Vorhes explained that the one-mile is just a starting point He thought it was farther than a mile in this matter.

Sorenson asked how many loads would be allowed by the approval of this.

Vorhes responded that there is not a condition that specifically limits the loads. He said the proposal is subject to review and was used for the purposes of the traffic analysis.

Hampton asked if the time of day was a limiting factor or just a proposal.

Lanfear responded that the applicant's proposal is to operate during all daylight hours. He said the Planning Commission had suggested a condition that limits the time based on some submittals by the school district concerning bus traffic on the road. He said if the Board finds they are going to approve the mining, then they could spend time on conditions of approval, making sure they match what the Board wants to occur. He said they could set a maximum of 40 loads a day to ensure it doesn't go beyond that.

Sorenson was concerned that the current state of the record is that there is not a limit on the number of loads per day. He wanted a lower number of trucks per day and a smaller impact fee to the applicant instead of having it open to the number of trucks per day and limiting their analysis of the impact to an arbitrary number.

Dwyer stated the analysis is based on the impact of the 40 trucks. He recalled the operating hours and the mitigation regarding the number of trucks was also part of the record in the application. He said, based on that evidence, he wouldn't have any problem making sure the impact to the County's system wasn't greater than that by restricting the load limit to the amount in the application. He thought this could be mitigated from the condition of the number of trucks needed to be part of what is allowed.

Green supported it.

Morrison supported the paving of Cedarcroft but she did not support paving Bear Creek.

Dwyer didn't think if there was damage to the road as a result of this business that the taxpayers should have to pay for it.

Stinchfield explained that the applicant had indicated they didn't agree with either overlay requirement. He said they were willing to take care of the paving of Cedarcroft, but they indicated they might appeal the requirement on Bear Creek. They didn't think it was justified. He noted that county staff did the analysis based on the procedures they had used previously when looking at the impact of businesses with large vehicles. He said the applicant had indicated that they have problems with the overlay requirement on Bear Creek but it is consistent with what they had done in the past.

Green asked what the County's plan was for Bear Creek, if not for this application.

Stinchfield stated the long-term maintenance plan is to monitor pavement conditions and periodically inspect the road. He said when the pavement conditions drop below a 70 out of 100, they look at the timing of an overlay to rehabilitate the structure and add strength to the road. He said it was their suggestion that Cedarcroft be done immediately. With regard to Bear Creek, they are recommending that some kind of payment to the County be made so the applicant could contribute to an overlay when the County decides it is needed. He didn't think it was immediately needed. He noted the cost would be \$14,375 for Cedar Croft and \$39,100 for Bear Creek.

Sorenson asked if they were to post any bonds for those amounts.

Vorhes responded if the Board reached a conclusion that there was a conflict, it could be found that it needed to be minimized by the contribution of the applicant to the cost of improving the roads.

Sorenson agreed that the state and county roads are affected by the impact on the county roads.

Dwyer commented they were already paying weight-mile taxes for a state highway. He said this would be an exaction. He said the applicant is against paving Cedarcroft, which he [Dwyer} thinks is reasonable. He thought any of the paving outside of the weight-mile could be an exaction. He didn't think it was unreasonable to ask them to take care of Cedarcroft because the standards to which that road was built was not to the standard it would be now. He thought it was reasonable to expect that they could limit the applicant to what he asked for, that the damage to the road that wasn't designed for the structural base should be taken care of, and if they could exact Bear Creek, then require that. He wasn't opposed to requiring it.

Hampton thought they had a strong argument for paving Cedarcroft but not for Bear Creek. He didn't think they should interfere in what the state wants to do concerning Cloverdale.

Green believed what was in the record for the overlay requirement appears to be a level of compromise by the applicant and the County in that the applicant would agree to pave Cedarcroft, but would object to Bear Creek. He thought there should be a sharing of costs.

Dwyer asked what the Planning Commission's recommendation was.

Lanfear responded the Planning Commission found that there was conflict with local roads. They didn't think they could have a discussion based on the Board's controlling of the road fund. He said they did not come to a conclusion as to what would solve the conflict.

Dwyer agreed to limit the applicant to the information in the record.

Green, Morrison and Hampton agreed.

Green thought the center of the Board would require the paving of Cedarcroft. He said there was not consensus to have the pavement of Bear Creek. He said they could require it but there wasn't agreement to push it.

Dwyer agreed about Cedarcroft. He suggested for Bear Creek, to pro-rate the expected life of the road and the percentage of use and come to a number over a period of time. He noted the standards of that road were built for truck traffic and the weight mile is contemplated on how they tax vehicles. He thought that could be construed to be an exaction.

Stinchfield indicated there was a comparison between a 20-year pavement design for the existing pavement structure with the existing traffic and another one adding the 40 loaded trucks per day for 20 years. He noted the difference was an inch and a half of asphalt would be needed within the next five to ten years to deal with the additional impact of the quarry traffic.

Green noted the question before the Board was whether they support the compromise that is in the record, or if they want to provide an additional requirement so they will be able to develop findings.

Dwyer supported the finding that there is an impact on Cedarcroft as staff has recommended. He also found that there might be an impact on Bear Creek but it has to be pro rated based on the amount of traffic generated or some scientific way to ascertain the damage done. He thought 70% of the expected cost would be a reasonable guess or assumption to recover the excess damage that might be done by the applicant.

Vorhes explained that regarding any amounts they assign to Cedarcroft, the argument could be made that it is not connected or proportional to the impact or not allowed under the administrative rules.

Stinchfield noted in Exhibit C, on page 10, there is a proposal stating that a condition should be imposed to require the applicant to pay for Cedarcroft the overlay amount of \$12,500. He added they also proposed splitting the Bear Creek overlay costs in half of \$17,500 to the County within five years for the cost of the improvement of Bear Creek.

Lanfear indicated that one of the focal points for the delay in the application was the discussion about how much was required and how much they would be willing to pay or if it could even be required. He noted that staff had a lengthy discussion with the applicant. He added the applicant wrote this into the findings because staff wanted it there. He didn't think the applicant wanted to do this. He added the applicant's latest submittal states if there were any requirements for Bear Creek, they would probably go to LUBA to get it changed.

Dwyer agreed with what the applicant had originally and to take that point.

Lanfear asked the Board if they wanted to put a condition on some pavement overlay at Bear Creek.

Morrison was against paving on Bear Creek.

Hampton thought if it was part of their suggested proposal that is where they should start.

Green wanted to go with what was in the record with what the applicant proposed with Cedarcroft. He was against paving on Bear Creek.

Dwyer didn't expect the applicant to pay for all of Bear Creek but there might be a proportionate amount that is reasonable. He stated as a condition, he was willing to put that on.

Green indicated there were three commissioners in favor of the applicant paying for Bear Creek.

Vorhes said they would consider that direction to draft findings that deal with the matter where the applicant's contribution would be \$17,500 for Bear Creek.

Intersection of Bear Creek and Bradford

Lanfear noted it was a pre-existing condition.

Green supported the letter in the record from the Creswell School District.

Dwyer supported and expected Public Works to improve the condition whether or not this application went through.

Hampton didn't agree with the time they had stated for start up during the school year of 7:30 a.m.

Dwyer was fine with the start time of 7:30 a.m.

Traffic Impact Analysis and Level of Services

Dwyer stated the Board agreed with it.

Lanfear noted the other part is whether it was required to go to the year 2024 or from 20 years from the initial date to 2018.

Dwyer thought they should go from the date of original application. He said it wasn't the applicant who was always at fault for the delay.

Morrison and Green agreed.

Sorenson asked what the Planning Commission's recommendation was on this topic.

Lanfear stated they didn't find any conflict with the level of service on the roads.

Vorhes indicated this was more an issue under Goal 12, if there is a significant affect or impact on existing facilities and traffic capacity. He said the applicant doesn't know when the approval will occur so they start with the date of the application.

There was consensus for the year 2018.

Lanfear explained they had gone through the issues raised in the supplemental memo. He said there might be some minor issues in the original packet that was before the Board at the hearing. He asked if there were any other conflicts the Board was willing to discuss. He said if they don't, then the Goal 5 Rule contemplates an ESEE analysis if they found any conflicts that could not be minimized. He stated the Board had determined that all of the conflicts could be minimized and there was no need for an ESEE analysis.

Lanfear noted the next step would be to determine the ESEE consequence of new uses that might conflict with the resource. He noted the properties along the roads were not in the impact area. He said the zoning around the mining area is F1 and F2. He added the existing zoning regulations place restrictions on what can occur within those zones. He noted it has been determined that there are not any uses that are allowed in those zones that could conflict with this use because of the provisions of the applicable zone that deals with citing standards or whether you can have the use or not. He said they didn't identify any new land uses that could come in close to the mining area that would conflict with the mine. He said there was no ESEE analysis done.

There was consensus with that.

Lanfear reiterated the Board determined that mining should be allowed on the property. He said the last step in the Goal 5 Rule is to make the determination that mining would be allowed and to set reasonable conditions. He noted that LUBA has decided that state goals do apply to the use of this rule, there needs to be a finding that it is in compliance with the other state goals.

Green concurred.

Dwyer concurred.

Sorenson commented he would be opposite of the Board's conclusion on this.

Lanfear noted there was a condition for limiting the hours of operation to Monday through Friday 7:30 a.m. to 5:00 p.m. during the school year and 7:00 a.m. to 5:00 p.m. from June 15 to the day after Labor Day.

Lanfear indicated the second condition (page 21 of the original cover memo) was limiting the access to and from the site to Cedarcroft Road only. He said it eliminates any confusion over whether Bradford Road would be used at all.

Lanfear noted the third condition is directing the applicant to operate the machinery in conformance with DOGAMI and LRAPA permits. He said it would make sure that the dust conflict was minimized.

Lanfear stated the fourth condition is any discharge of water at the site shall be limited by the DOGAMI permit. He noted DOGAMI has taken over the issuance of NPDES discharge permits that deals with storm water. He added there is not expected to be storm water discharge from the site but DOGAMI does monitor that through their permitting process.

Lanfear noted the fifth condition is a requirement that the Planning Commission wanted about giving notice about blasting to residents north of the mine site and along Bear Creek and Cedarcroft Road. He added it was mentioned in the DLCD letter as something that might not be authorized under the Goal 5 Rule because the places that are being directed to be notified are not within the impact area of the mining site. He said this condition requires them to send notice by means of a letter, postmarked three business days prior and posting a sign.

Lanfear stated the sixth condition is limitation on the hours of blasting to between 10:00 a.m. and 4:30 p.m. Monday through Friday. He noted the Planning Commission wanted seismographs to be set at the two nearest dwellings to the site on Bradford Road.

Dwyer asked if it was reasonable for the applicant to put and maintain a seismograph on private property they don't own and have no control over. He didn't think it was reasonable.

Lanfear indicated that DLCD doesn't think Lane County has that authority.

Dwyer didn't think it was reasonable.

Green didn't think that was a condition and it should be removed.

Lanfear stated the seventh condition is the applicant's agreement that they will put a dust abatement substance on Cedarcroft Road at the haul road. He said they would put a dust abatement substance on the unpaved portion of Cedarcroft Road at regular intervals to control the dust. He added there was an issue with the haul road.

Sorenson thought it was reasonable for them to put the requirement in as to Cedarcroft Road. With regard to the haul road, he said they have a policy choice to make by including the hauling road in the mining area. He said if not, then putting requirements within that seem problematic. He thinks they should include the haul road as part of the impact area but consensus from the rest of the Board is not to do so.

With regard to the dust on the haul Road, Dwyer said they already determined that the mining area does not include the haul road.

Lanfear noted the eighth condition is a condition directing all drivers using Cedarcroft Road to not use jake breaks in the vicinity of the residents.

Sorenson stated by including the haul road in the ownership and control of the applicant and by the applicant contending that the haul road is not part of the mining area, then it puts in question what ability the Board has to regulate what is an impact from the mining area, such as the use of jake brakes in the area. He thought they should state it is not in the mining area and they don't regulate it.

Green and Dwyer concurred.

Lanfear said the ninth condition was maintaining records of the blasting. He noted there are standards in the quarry and mine operations. He added the zone they are going to apply to this property has standards for keeping records about the blasting.

Lanfear noted the tenth condition is a requirement to maintain a 50-foot setback from adjacent properties for all mining and processing that comes from the proposal itself.

Lanfear stated the eleventh condition is about reclamation and the requirement to restore the site to forest use consistent with the reclamation plan that they had submitted to DOGAMI.

Lanfear said the twelfth condition is the road pavement requirements. He reiterated the Board decision would require the Cedarcroft Road pavement and base the pavement for Bear Creek Road on the \$17,500 that is in the packet. He noted originally the County proposal was for \$34,000 and the applicant suggested paying half. He added it got increased to \$39,000 because of engineering costs. He said this condition states they will pay the County the money for Cedarcroft no later than one year after commencement of the operation. He said they would pay the sum on Bear Creek within five years of commencement of the operation.

Lanfear said the thirteenth condition addresses neighbors' concerns about enforcement and what if the applicant doesn't operate as they said they would. He said this verifies that if they don't operate in

compliance with what they had reviewed and approved, it is subject to enforcement by the Lane Code provisions.

Lanfear said the fourteenth condition addresses any proposal for modification, subject to site review procedures. He noted it was for any changes to the mitigation measures or physical or operational characteristics of use. He added if they have to make any changes they have to come back for an approval.

Vorhes indicated they might take a closer look at the impact area and the conditions for approval and have an additional discussion when they come back with the final ordinance for review and action. He added they might want to express more detail in terms of how the road improvements and payments occur. He said the Board would take tentative action on the ordinance and direct staff to prepare revisions to the ordinance and the findings and conditions to reflect the Board's deliberation.

MOTION: to approve a Sixth Reading and Setting a Seventh Reading and Deliberation with the conditions subject to revised findings to be prepared for final action on Ordinance PA 1188

Dwyer MOVED, Morrison SECONDED.

VOTE: 5-0.

There being no further business, Commissioner Green recessed the meeting at 11:00 a.m.

Melissa Zimmer
Recording Secretary