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**PLANNING COMMISSION  
RECOMMENDATION TO THE CROOK COUNTY COURT  
COMPREHENSIVE PLAN AMENDMENT  
217-22-000777-PLNG**

**I. INTRODUCTION**

**Date:** October 12, 2022

**Applicant:** Pulguero Rock and Stone Co., LLC  
PO Box 8115  
Bend, Oregon 97708

**Agent/Attorney:** J. Kenneth Katzaroff  
Joseph Gaon  
Scwabbe Williamson & Wyatt  
1420 5<sup>th</sup> Avenue  
Seattle, Washington 98101

**Subject Property:** Tax Lot: 171600001900

**II. PROPOSAL**

Applicant proposes to amend the Crook County Comprehensive Plan to add a 98.7-acre portion of property identified as Tax Lot No. 1716000001900 to Crook County's inventory of Significant Mineral and Aggregate Sites ("Aggregate Inventory").

**III. PROCEDURAL STATUS**

Applicant submitted applications for this comprehensive plan amendment and a concurrent Conditional Use Permit ("CUP") on May 18, 2022. The applications were deemed complete on July 27, 2022. While the comprehensive plan amendment and CUP applications will be processed concurrently, this Recommendation only addresses the comprehensive plan amendment request. The Planning Commission is tasked with making a recommendation to the County Court, which is the final decision maker.

The hearing held on September 28, 2022, was the first evidentiary hearing for this request. The Planning Commission heard the CUP request at the same time. The CUP decision includes a condition of approval noting that it is not effective until the comprehensive plan amendment is approved by the County Court.

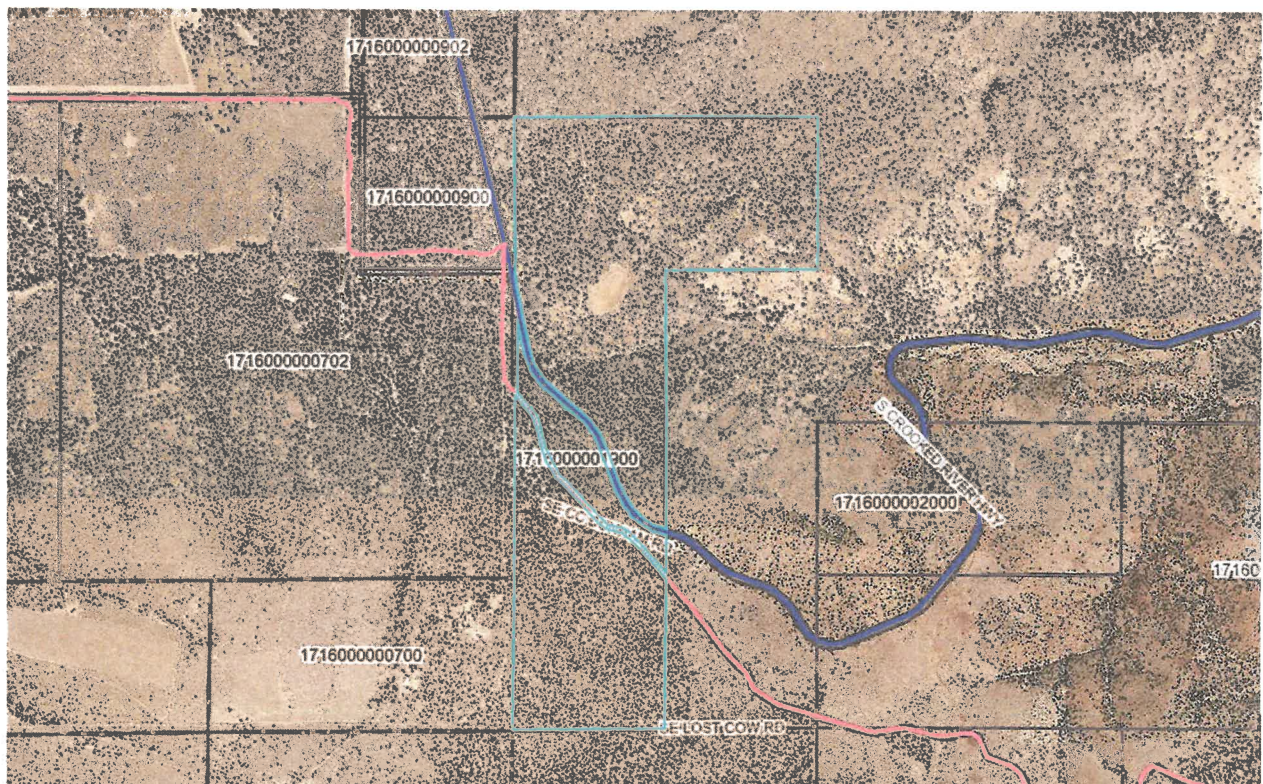
The required Post Acknowledgement Plan Amendment notice was sent to the Department of Land Conservation and Development on August 18, 2022 (DLCD File No. 002-22). Newspaper notice of the first evidentiary hearing was published in the Central Oregonian on September 6, 2022. Neighbor notice of the first evidentiary hearing was mailed on September 7, 2022.

#### IV. BASIC FINDINGS

##### A. Location

The subject property is approximately 15 miles south of the Prineville city limits. Highway 27 bisects the property between mileposts 24 and 25. The subject property has not been assigned an address. It is identified on the County Assessor's maps as Township 17S, Range 16E WM, Section 36, tax lot 1900. Figure 1 is a vicinity map depicting the subject property. The portion of the subject property proposed to be added to the Aggregate Inventory is the portion of the property north of Highway 27 (referred to herein as "Mining Area").

Figure 1



Property Lines are Approximate

##### B. Zoning and Overlays



The subject property is zoned Exclusive Farm Use (EFU-1) and is designated as agricultural land in the County's Comprehensive Plan. The subject property is in general deer winter range, but not located within sage grouse, critical deer winter range, antelope, or elk habitat. There are no floodplains mapped on the property.

### C. Site Characteristics

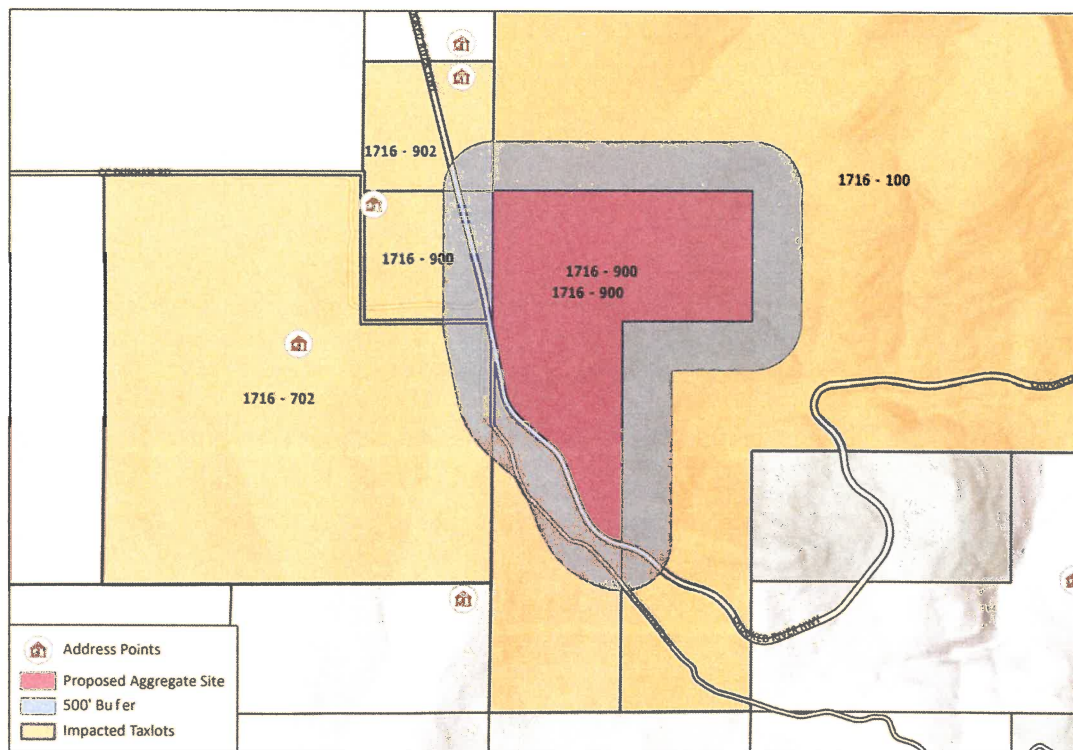
The subject property is listed as 192.17 acres in the Crook County Assessor's records. Based on available Oregon Department of Geology and Mineral Industry ("DOGAMI") records, mining operations on the property previously operated under an exclusion certificate that limits surface mining to 5,000 cubic yards per year or less and the quarry was assigned Site # 07- 0183 by DOGAMI. There are no dwellings or other structures on the property. The property is not in farm use and not within an irrigation district. There are sparse juniper trees and bunch grasses with other native vegetation.

The proposed Mining Area is north of Hwy 27 and 98.7 acres.

### D. Surrounding Area

The area surrounding the subject property is depicted on Figure 2 (below)<sup>1</sup>. The figure depicts the Mining Area, a 500-foot impact area, approximate locations of dwellings based on address data points (maintained by County GIS) as well as the acreage. All properties within the impact area are zoned EFU-1. There are no known dwellings or structures within the 500-foot impact area.

Figure 2



<sup>1</sup> Figure 2 was prepared by Crook County GIS.

To the north and east of the property is an undeveloped 17,299-acre parcel that is owned by the United States. To the south and west of the property are EFU-1 zoned parcels ranging in size from 40 to 320 acres, some of which contain dwellings and/or accessory structures. The portion of the subject property south of Highway 27 is not proposed for development.

Table 1, below, lists four properties affected by the 500-foot impact area as measured from the Mining Area. Table 1 includes information indicating the distance from the proposed Mining Area, the primary use, and ownership.

**Table 1**

| Map Tax Lot   | Owner                       | Site Address              | Acres    | Zone | Existing Dwelling                       | Primary Use                   | Approx. Distance from Home Site to Mining Area |
|---------------|-----------------------------|---------------------------|----------|------|---|-------------------------------|--|
| 1716000000902 | JB LAND HOLDINGS LLC        | 26812 S CROOKED RIVER HWY | 37.55    | EFU1 | No*                                     | Recreational/Residential      | 1200'  |
| 1716000000100 | UNITED STATES               | 21040 S CROOKED RIVER HWY | 17299.33 | EFU1 | No                                      | Public                        | N/A  |
| 1716000000702 | MUCK DOUGLAS TOM JR TRUSTEE | 27733 SE CC DUNHAM RD     | 320.00   | EFU1 | Yes                                     | Farm/Recreational/Residential | 1990'  |
| 1716000000900 | BRAWAND DAVID               | 26926 SE CC DUNHAM RD     | 35.90    | EFU1 | Yes                                     | Recreational/Residential      | 1190'  |
|               |                             |                           |          |      | *Dwelling approved, but not constructed |                               | *Based on approved home site                   |

#### **E. Access**

There is existing access to the Subject Property, including the Mining Area, from Highway 27 (Crooked River Highway), which is a state owned and maintained road highway.

#### **F. Other Information**

There are no mapped natural hazards on the subject property. The property is not in a mapped special flood hazard area.

### **V. CRITERIA AND ANALYSIS**

#### **A. Character of the Request**

Applicant's comprehensive plan amendment request is characterized as a Post-Acknowledgment Plan Amendment ("PAPA") to the Crook County Comprehensive Plan. Applicant requests that the County Court add the Mining Area to the Aggregate Inventory. Before the County may issue a conditional use permit to authorize operating a mine on the Subject Property, the PAPA must be approved, and the site added to the Aggregate Inventory (see CCC 18.144.040).

#### **B. Applicable Approval Criteria**

- **Oregon Administrative Rules (OAR) Chapter 660, Division 16<sup>2</sup>**

<sup>2</sup> Many jurisdictions now apply Division 23 (the "new" Goal 5 rule) to implement their Goal 5 program. However, Crook County continues to apply Division 16, as permitted by OAR 660-023-0180(9):

(9) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for consideration of PAPAs (post-

- **Crook County Comprehensive Plan. Ordinance No. 55, Comprehensive Plan Mineral and Aggregate Policies**
- **Ordinance No. 43, Crook County Goal 5 Resources (Mineral and Aggregate Elements) (to the extent consistent with Ord. 51 and Ord. 55).**

These plan policies provide a framework for County decisions regarding mineral and aggregate sites. In prior aggregate proceedings, County Counsel has recommended the following order for reference while reviewing the current application: (1) OAR 660-016 (“the old rule”), (2) ordinance 51/55 and (3) ordinance 43. OAR 660-023 (“the new rule”) should be considered only if the other policies provide no guidance and the guidance in OAR 660-023 is consistent with OAR 660-016 and County plan policies.

### **C. Summary of Decision-Making Process**

As established in prior aggregate proceedings, the decision-making process is as follows when deciding whether to add a site to the Aggregate Inventory:

Step One: Determine Whether the Resource Site is Significant

Step Two: Identify Conflicts

Step Three: Analyze Economic, Social, Environmental and Energy (ESEE) Consequences

Step Four: Develop a Program to Achieve Goal 5

The below findings of fact are presented step-by-step, as outlined above.

### ***STEP ONE (DETERMINE IF SITE IS SIGNIFICANT)***

#### **OAR 660-016-0000(2):**

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acknowledgement plan amendments) concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:

- (a) Such regulations were acknowledged subsequent to 1989; and,
- (b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-23-0250(7).

Crook County Ordinance 51, a comprehensive plan amendment including provisions governing the County’s compliance with Goal 5, was adopted and acknowledged by the Oregon Land Conservation and Development Commission in 1991. It was amended by Ordinance 55 in 1992. Crook County has not since entered periodic review. Therefore, the County’s consideration of a PAPA to add the subject property to the County’s Inventory is not subject to the OAR 660, Division 23. The provisions of OAR 660, Division 16 continue to apply.

***A “valid” inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of location must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.***

Ordinance 43 includes specific policies to establish the location, quality and quantity of mineral and aggregate resources. These policies are consistent with OAR 660-016-0000(2).

#### Location -

Ordinance 43 identifies information that provides supporting evidence of the location of a resource site. The location is determined by the best information available to Crook County at the time of the determination. Ordinance 43 requires the information to include at least:

- (a) A legal description of the site;
- (b) The highway/mile post designation (if available)
- (c) A description of the impact area (if different); and
- (d) A map of the boundaries of the resource site and the impact area to be affected (if different).

**Finding:** The request for a site-specific resource must include description or map of the boundaries of the resource site and of the impact area to be affected. Applicant included in the application materials, a legal description of the site (Applicant’s Exhibit 4, pg. 2), a map depicting the resource site and a 500’ impact area (See Applicant’s Exhibit 2, pg. 1). Per Applicant, the Mining Area is located at approximately mile marker 24 of Highway 27.

Ordinance 43 defines “impact area” as the area surrounding and near a Goal 5 mineral and aggregate resource site wherein the presence or application of a conflicting use that is allowed outright or conditionally in the surrounding broad zoning district would adversely impact the resource site by limiting the mining or processing of the resource. The Ordinance goes on to state, “[u]nless otherwise indicated in the text of this Plan or on the respective resource site and impact area map, the impact area is that property extending outward from the resource site boundary to a distance of five hundred (500 feet).” There is no evidence suggesting that an impact area of greater than or less than 500 feet is appropriate.

A determination as to location and impact area may be made based on evidence in the record.

#### Quality -

OAR Chapter 660 Division 16 does not include standards specifying the minimum quality and quantity of an aggregate resource that constitutes a significant resource. Rather, it describes quality in terms of the site’s relative value compared to other examples of the same resources found in the jurisdiction.

#### **OAR 660-016-0000(3):**

***The determination of quality requires some consideration of the resource site’s relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of***

***quantity requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or “obtainable.”***

Ordinance 43 directs the County to consider the following when evaluating the quality of mineral and aggregate resources:

- (1) All available information concerning test results;
- (2) The resource site’s relative value as compared to other examples of the same resource existing in at least Crook County.<sup>3</sup>

Ordinance 43 includes a process to assign a relative value to mineral and aggregate resources:

1 = resource material meeting at least the following ODOT specifications

- (a) Resistance to abrasion
- (b) Sodium sulphate soundness
- (c) Air degradation

2 = resource material not meeting the rank of 1, but is such quality that it is used for roads;

3 = resource material that is used for roads and fill; and

4 = resource material that is used only for fill.

Ordinance 43 states that the determination of quality on each resource site is based on the best information available to Crook County at the time of the determination.

**Finding:** Applicant provided information about the mineral resource available at the Mining Area (see Applicant’s Ex. 3). The mineral resource was tested for quality relative to Oregon Department of Transportation (ODOT) specifications as part of the Mineral Resource Evaluation (the “Report”) from Wallace Group prepared by Lisa Splitter, a Geotechnical Engineer, and R. Scott Wallace, a Professional Geologist. The Report describes sample collection and testing protocol and concludes that the aggregate resource on the subject property meets ODOT specifications for resistance to abrasion, sodium sulfate soundness and air degradation. The Report was based on 21 borings from 34 to 58 feet. The Report was also based on aerial topographic surveys. Detailed results are included in the tables provided in the Report (Applicant’s Ex. 3).

As stated in the Report, the property contains approximately 1,396,400 cubic yards of in-situ rhyolite (Applicant’s Ex 3, pg. 9). Specifically:

Samples were tested for durability in accordance with Oregon Department of Transportation (ODOT) test methods. The samples were subjected to abrasion, air degradation, sand equivalent, and unit weight testing. The ¾- inch minus crushed aggregate samples met the ODOT abrasion requirements of ASTM C131 (maximum of 35% loss by weight), sand equivalent requirements of ASTM D2419 (not less than 30), and the air degradation requirements of ODOT TM 208 (less than 30% passing the #20 sieve

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<sup>3</sup> Ordinance 43 states that “All sand has potential value and has not been given a ranking value.”

and sediment height not exceeding 3.0 inches). The gravel from the site was also tested. The average percent of gravel greater than  $\frac{3}{4}$ " from the tested samples was 14%. While that fraction is generally too coarse for use in PCC concrete, it could be crushed and incorporated into concrete aggregates as is done currently at the Woodward site.

OAR 660-016-0000(3) notes that determination of quality also requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. This is consistent with the County's plan policy adopted as Ordinance 43. Because material from the subject property meets the specified ODOT standards, the quality of materials from the site has a relative value of "1" using the ranking system in Ordinance 43.

Several other sand and gravel sites were included in the County's original inventory of aggregate resources in Ordinance 43. Although testing information was not generally available, most sites were ranked as "2" with material being sufficient for fill and concrete. The "O'Neil Sand and Gravel site" was ranked as "1" as were several small ODOT-owned sites along the Paulina Highway. The County recently added the Vanier site (Knife River) to the County's Inventory as a 1C site, based on a total of 1,509,281 cubic yards of aggregate resource available at the site.

As a result, based on the quantity and quality of the aggregate located on the property, the County can find that the property is a significant resource (1C) for inclusion on the County's Goal 5 Surface Mineral & Aggregate Inventory.

Based on information provided in the Report (and summarized above), the resource meets ODOT specifications and the aggregate resource on the Mining Area has similar value to other sites in the County. Thus, the quality of the aggregate resource meets the requirements of OAR 660-016-0000(2)-(3).

#### Quantity –

A determination of quantity requires consideration of the relative abundance of the resource. (OAR 660-016-0000(3)).

**Finding:** The subject property is 98.7 acres in size. As noted, the Report estimates the property contains a total of 1,396,400 cubic yards of in-situ rhyolite. For comparison to the minimum quantity threshold at OAR 660-023-0180(3), cubic yards must be converted to tons: 1 cubic yard = 1.6 tons. The recoverable aggregate resource will be reduced by required 100' setbacks. The Report appears to base calculations on a 100-foot setback on all sides. Based on the information provided by Applicant, there is more than the minimum quantity (500,000 tons east of the Willamette Valley) required to be considered significant under OAR 660-023-0180(3). The evidence in the record establishes that the Mining Area contains a quantity of aggregate resource that is "significant."

#### **OAR 660-016-0000(5):**

***Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:***

***(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the***



*inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information;*

*(b) Delay Goal 5 Process: When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment;*

*(c) Include on Plan Inventory: When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.*

**Finding:** There is sufficient, undisputed evidence in the record for the County to determine the location, quality, and quantity of the aggregate resource at the Mining Area. Based on the information in the record, and in accordance with OAR 660-016-0005(5), the County can find that the location, quality, and quantity of the resource, and place the Mining Area on the Crook County Aggregate Inventory as a significant 1C site.

**Crook County Ordinance No. 51 (as amended by Ordinance No. 55):**

**Policy 3:**

*The County shall insure that significant inventory sites are designated for mineral and aggregate.*

**Finding:** The County maintains an inventory of significant aggregate and mineral sites. The above findings indicate that the Mining Area meets the requirements for location, quality, and quantity and should be added to the Aggregate Inventory as a significant site.

**Policy 4:**

*An abundance of a Goal 5 mineral or aggregate resource shall not be used as the basis to deny placement on the County plan inventory list.*

**Finding:** Evidence of other mineral or aggregate resources has not been used as justification or a basis to deny placement of the Mining Area on the Aggregate Inventory list. The Mining Area should be placed on the inventory list.

**Policy 6:**

***A mineral and aggregate resource site that is not on the Crook County Goal 5 inventory or that is listed as a 1B site shall be placed on the inventory of significant sites and shall be conserved and protected for surface mining after all the following conditions are met:***

- (a) A report is provided by a certified geologist, engineer or other qualified person or firm verifying the location, type quantity and quality of the resource.***
- (b) The site is determined to be a significant 1C site after reviewing all the evidence regarding location, quality, and quantity of the mineral and aggregate resource and site is added by amendment to the comprehensive plan;***
- (c) There are no conflicting uses [or] the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and [other] applicable statewide planning goals.<sup>4</sup>***

**Finding:** The Mining Area is not currently listed as a Goal 5 resource on the County's Aggregate Inventory. To be conserved and protected as a 3A site, the conditions in subsections (a)-(c) must be met.

As discussed above, Applicant has provided a report by a certified geologist verifying the location, type, quantity, and quality of the resource. Based on the above findings, the County Court can find that the conditions in subsection (a) of Ordinance 55 are met.

Upon finding that the site is a significant 1C site based on the evidence described above, the County will adopt an ordinance amending the Comprehensive Plan to add the Subject Property to the Aggregate Inventory. Thus, the requirement of subsection (b) can be met.

The conditions of subsection (c) (conflicting uses and ESEE analysis results) are addressed below. As noted below, the ESEE analysis results in a determination that there are conflicting uses relative to the resource. Thus, since there are conflicts, the site cannot be added to the Aggregate Inventory under the above provisions as all three conditions for Policy 6 are not met.

**Policy 9:**

***Crook County's plan policy is to classify, each significant resource site according to current available data on location, quality and quantity, and regulate each site according to its classification. Crook County will not allow expansion of any site without additional data. Therefore, in order to expand mining operations on a mineral or aggregate site into an area not currently designated for mining, the operator must provide the best information available regarding quantity, quality, and location of the resource in the proposed expansion area to update plan data. An ESEE analysis shall be required if the expansion area is found to be a significant Goal 5 resource based on location, quality, and quantity information.***

**Finding:** The Mining Area would be added to the County's Aggregate Inventory as a separate site; not an expansion site. Nonetheless, as explained above, Applicant has provided substantial evidence regarding

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<sup>4</sup> Policy 6(c) is addressed in Step 2.

location, quality, and quantity to identify the Mining Area as a significant (1C) aggregate site. An ESEE analysis is required and discussed below.

**[Step Two Begins on the Next Page]**

**STEP TWO**  
**(IDENTIFY CONFLICTS)**

**OAR 660-016-0005(1):**

It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences.

**Finding:** The County must identify negative impacts on the resource site; not negative impacts from the resource site on surrounding land uses unless the County finds those negative impacts may eventually come back to negatively impact the resource site. The County may consider any present or potential future allowed land uses in the impact area and any incidental uses reasonably connected to those allowed land uses. For instance, the evidence in the record of neighbors of the resource site frequently or potentially contacting DOGAMI/DEQ/the County with complaints regarding the resource site's operation and/or permit violations, thus forcing a change in behavior of the resource site operator, is an appropriate example of an identification of conflicts. Similarly, "if operation of an aggregate mine (a Goal 5 resource) were predicted to engender social protests or economic boycotts because of perceived negative impacts of the resource on local residents, such activity might be deemed a 'negative impact' on the Goal 5 resource itself." *Hegele v. Crook County*, 190 Or. App. 376, fn. 4 (2003).

Appendix A of Crook County Comprehensive Plan (Ord. 43, pg. 20) identifies the following conflicting uses in the EFU zones:

Uses Permitted Outright: Farm dwellings

Conditional Uses: Public or private schools, Churches, Commercial activities in conjunction with farm use, Secondary farm dwellings, Private parks, Campgrounds, Fishing and hunting preserves, Public parks and playgrounds, Home occupations, Boarding horses for profit, non-farm dwellings, Personal use airports

Aggregate mining is a conditional use in an Exclusive Farm Use zone (Crook County Code 18.16.015(11) and ORS 215.283(2)(b)). Potential conditional uses in the EFU zone could include schools, churches, parks, campgrounds and home occupations, equine facilities, private airports, renewable energy sites, farm stands and other conditional and permitted uses. Any of these uses could result in negative impacts to mining operations if future developers were to complain about the mining operation resulting in changes to their operations or increased costs for operations.

In summary, there are four (4) tax lots affected by the 500' impact area (Table 1). Three of those four tax lots contain dwellings (or have approval for a dwelling). There are no dwellings within the impact area (or within 1000' of the boundary for the Mining Area). Per EFU-1 zoning, which typically limits residential use, it is unlikely additional dwellings will be constructed in the impact area. Accordingly, the existing residential uses in the area are conflicting uses. Existing farm uses within the impact area may be

considered a conflicting use as are allowed or conditional uses per the EFU zoning ordinance that could be developed in the future (e.g. public park, hunting preserve, etc.).

Since there are potential conflicts, the impacts of the resource use on the adjacent and nearby uses must be examined through an ESEE analysis (Step 3).

**Ordinance 43, Section 3(B)(1)(a),(c), (d)**

**Definition of Conflicting Uses.** Conflicting uses are those existing or potential uses, allowed outright or conditionally within a zoning district, which, if allowed within the impact area surrounding a resource site, could negatively impact that Goal 5 resource site by impeding the extraction of the resource, or which could impose limitations on efficient and economic mining activities

**Definition of Impact Area.** The impact area is that area surrounding and near a Goal 5 mineral and aggregate resource site wherein the presence or application of a conflicting use that is allowed outright or conditionally in the surrounding broad zoning district would adversely impact the resource site by limiting the mining or processing of the resource.

**Description of Impact Area.** Unless otherwise indicated in the text of this Plan or on the respective resource site and impact area map, the impact area is that property extending outward from the resource site boundary to a distance of five hundred (500) feet.

**Finding:** The definition of “conflicting uses” in Ordinance 43 is consistent with how the County applied OAR 660-016-0005(5)(1) above. Moreover, Applicant has suggested a 500’ impact area consistent with Ordinance 43 (see Figure 2). This request is consistent with Ordinance 43.

**OAR 660-016-0005(2):**

***Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which ensure preservation of the resource site.***

**Finding:** This section is not applicable because there are conflicting uses as found above.

**Policy 6:**

***A mineral and aggregate resource site that is not on the Crook County Goal 5 inventory or that is listed as a 1B site shall be placed on the inventory of significant sites and shall be conserved and protected for surface mining after all the following conditions are met:***

\*\*\*\*

- (c) ***There are no conflicting uses [or] the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and [other] applicable statewide planning goals.<sup>5</sup>***

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<sup>5</sup> Policy 6(c) as written in Ordinance 55 is as follows:

*There are no conflicting uses of the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and thither applicable statewide planning goals.*



**Finding:** As noted when previously discussing Policy 6, there is no dispute that there are conflicting uses. Thus, the Mining Area cannot be added to the County's Aggregate Inventory as a 3A site. Instead, because of the conflicting uses, the County must complete an ESEE analysis (Step 3).

This concludes Step Two. The next step is complete an ESEE analysis.

**[Step Three Begins on the Next Page]**

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The two identified apparent errors, as indicated by [ ] make the Policy unclear and are inconsistent with how the Policy was stated in Ordinance 55. Therefore, staff inserted the original language from Ordinance 55.

**STEP 3**  
**(ESEE ANALYSIS)**

**OAR 660-016-0005(3):**

*Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.*

**Finding:** Applicant acknowledges in the Narrative Statement, on page 8, that conflicting uses have been identified and the ESEE consequences of the conflicting uses must be determined. Based on the analysis in Step 2 (above), it concurs that there are conflicting uses.

A proper ESEE analysis is even-handed and applies the significant, relevant evidence in the record from both sides to consider fully the economic, social, environmental, and energy consequences in a two-way conflict analysis. The County's ESEE analysis is discussed below.

The intent of an ESEE analysis is to weigh the economic, social, environmental and energy consequences (both positive and negative) of protecting the aggregate site as a significant Goal 5 resource. The ESEE analysis provides the basis for the County to weigh the values of competing uses and the consequences of permitting or prohibiting resource and conflicting uses. The ESEE analysis considers not only the consequences associated with protecting the resource but also considers the consequences of mining and processing the aggregate resource. The ESEE analysis applies to all conflicting uses within the 500' impact area surrounding the proposed mine site. As discussed, there are four (4) properties affected by the impact area. The uses on these properties are identified on Table 1.

Staff reviewed the Applicant's Narrative Statement and the generic and specific ESEE analyses provided in the Comprehensive Plan for other inventoried aggregate sites. Based on that review, the Planning Commission recommends the following ESEE analysis.

**A. Economic Consequences**

Property values on adjacent lands are always a concern with a mining operation. The area surrounding the Mining Area is all zoned EFU. There are no residential uses in the impact area. It is possible that there are existing farm uses in the impact area.

The land holdings that are affected by the impact area include a 17,299 acre federally owned tax lot, two tax lots that are 35+ acres, and a larger farm tract totaling over 600 acres.

Given the stated limited visibility of the Mining Area from surrounding parcels, the ownership pattern in the area, the size of the holdings, the effect from allowing the mining operation on property values should be negligible.

The economic benefit of allowing the mining operation include having aggregate resource available to support economic development in Crook County and surrounding area. Not allowing mining on the site will potentially reduce the economic return on the land for the owner of the Mining Area.

While aerial photos and assessor records indicate there are farm uses on adjacent parcels, there is no evidence in the record as to how those farm uses may be negatively impacted by the aggregate use. Moreover, while certain conditional uses are allowed in the EFU zone, given the isolated area, large federal land holding on two sides of the mining area, and a state highway serving as a partial buffer to adjacent uses on private lands, it seems unlikely that there will be a significant negative economic impact on those potential conflicting uses from the mining operation.

Complaints from conflicting uses could have a negative economic consequence on the mining operation by requiring changes to operations.

## **B. Social Consequences**

Positive social impacts of the proposed mining operation will include continued opportunities for employment, tax revenue and local aggregate supply produced by the operation. The mining operation will also provide an employment opportunity.

It is common for resource uses to create negative impacts including a reduction in the rural quality of life, heavy truck traffic, noise and dust. Fugitive dust may impact existing farm uses and potential uses. Although Applicant does not propose blasting at this time, blasting can negatively impact the rural quality of life. The evidence in the record indicates there will not be a significant impact on scenic vistas.

## **C. Environmental Consequences**

Potential negative environmental impacts from allowing the use often include increased dust and disruption of wildlife by noise and mining activities. ODFW submitted a letter that states the site is within general deer winter range and that blasting and crushing during winter could adversely impact wildlife. ODFW recommends restrictions on winter operations as a mitigation measure. Any existing farm uses and potential uses in the impact area could be negatively impacted by dust. Additionally, where there is increased human activity, there is a risk of increased fire risk.

Applicant states dust can be controlled by watering and use of proper excavation techniques, which will be regulated by DOGAMI.

There is no surface water on the site that will be impacted by the mining operation. Based on the record, there would be no negative consequences on water quality or availability of water in the area from allowing the resource use on the site. There is no indication that groundwater will be encountered during mining operations. However, if it is, this could negatively affect the groundwater in the area.

Applicant states environmental impacts from not allowing mining at the site could include greater impacts resulting from use of alternative sites.

## **D. Energy Consequences**

The negative consequences of allowing mining operations would be an increase in energy consumption. Energy would be consumed in the form of fuel expenditures needed to run heavy equipment and processing equipment as well as fuel expended in transportation of the aggregate product to market.

Positive energy consequences include requiring additional energy consequences by requiring additional energy consumption in that resources located greater distances than this site from consumer market areas may have to be utilized.

#### **D. Conflicts with Statewide Planning Goals.**

OR 660-16-0005(3) requires local governments, in analyzing the ESEE consequences of conflicting uses, to also consider the applicability and requirements of other Statewide Planning Goals.

*Goal 1 – Citizen Involvement:* Crook County requires notice to adjacent property owners and public hearings before the Planning Commission and the County Court prior to adoption of any comprehensive plan amendment. In addition, public notice is provided through the local newspaper. Information relating to the hearing (e.g., the staff report and exhibits) are available on the County’s website and hard copies are available to the public when requested. Notice of the proposed plan amendment was also provided to the Department of Land Conservation and Development. The Planning Commission will conduct at least one hearing and the County Court will hold two hearings before approving or denying the amendment.

*Goal 2 – Land Use Planning:* This decision will be subject to the policies and processes of Crook County’s Comprehensive Land Use Plan and Ordinances and the County’s zoning code (Chapter 18) and applicable criteria in Oregon Revised Statutes and Oregon Administrative Rules and will meet the Goal 2 requirements regarding land use planning.

*Goal 3 – Agricultural Lands:* Aggregate operations are a permitted use on agricultural lands under Goal 3. Upon conclusion of the mining operation, the Mining Area will be reclaimed per DOGAMI requirements.

*Goal 4 – Forest Lands:* There are no forest lands in the vicinity of the subject property. Forest lands will not be impacted. There is no conflict with Goal 4.

*Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces:* Applicant proposes to add this site to the Goal 5 inventory of significant aggregate resource sites. Based on information from the Oregon Department of Fish and Wildlife (ODFW) and other resource management agencies, development of this site for aggregate production may negatively impact wildlife. The County has not identified any significant groundwater resources in the area surrounding the proposed mine site.

*Goal 6 – Air, Water and Land Resources Quality:* Goal 6 relates to protection of air and water quality. The operation of the aggregate mining site will be conducted in compliance with all other applicable state and local permits and regulations. DOGAMI has oversight responsibility for mining operations and final reclamation. Dust control is a required component of the operating plan. The Oregon Department of Environmental Quality (DEQ) permits will be required for stormwater management and a dust control plan will be reviewed by DEQ to address air quality concerns.

*Goal 7 – Areas Subject to Natural Disasters and Hazards:* The proposed mine site is not recognized as being an area subject to natural disasters or hazards. There is no conflict with Goal 7.

*Goal 8 – Recreational Need:* The proposed mining operation will not impact recreational needs or areas planned for recreation. There is no conflict with Goal 8.

*Goal 9 – Economy of the State:* Development of the aggregate site is consistent with Goal 9 because aggregate is a necessary commodity for road and building projects. A local source of aggregate provides an economic benefit to Crook County and the Central Oregon region.

*Goal 10 – Housing: Development.* The aggregate resource site will have no direct impact on the supply of housing in Crook County. Properties zoned for Exclusive Farm Use are typically unlikely to be approved for residential development.

*Goal 11 – Public Facilities and Services:* No new public services will be required to support development of the aggregate resource site. An existing state highway will be used for traffic associated with the site and no new connections to County roads are required.

*Goal 12 – Transportation:* Development of the proposed aggregate resource site does not conflict with the Crook County Transportation Plan or Goal 12. The site is located on an existing designated truck route less than ½ mile from Highway 26. No new access points are needed or requested. No new access to County roads is required.

*Goal 13 – Energy Conservation:* Development of an aggregate resource site in Crook County reduces the consumption of energy needed to move aggregate from locations farther away. The proposed site is consistent with Goal 13.

*Goal 14 – Urbanization:* This proposal does not include expansion of any urban growth boundary. This area has not been considered for UGB expansion. If the area is considered for urbanization in the future, the reclaimed site could be available for development.

With the adoption of the ESEE analysis, Step 3 is complete. The next step is to develop a program to achieve Goal 5.

**[Step Four Begins on the Next Page]**



**STEP 4**  
**(PROGRAM TO ACHIEVE GOAL 5)**

**OAR 660-016-0010(2)-(3):**

*Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must “develop a program to achieve the Goal.” Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to “resolve” conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan’s overall ability to protect and conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2), and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:*

*(1) Protect the Resource Site: Based on the analysis of the ESEE consequences, a jurisdiction may determine that the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site and possibly within the impact area identified in OAR 660-016-0000(5)(c). Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.*

*(2) Allow Conflicting Uses Fully: Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.*

*(3) Limit Conflicting Uses: Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.*

**Finding:** Based on the evidence in the record, the Planning Commission recommends that the resource use be allowed and that conflicting uses be limited. The site can be designated as a “3C” site, consistent with subsection (3) above. While evidence of actual conflict between the requested resource use and potential or existing conflicting uses is relatively limited, the existing farm uses and potential uses in the impact area should not be prohibited. Reasons for this determination relate to the potential impact to existing uses and potential uses within the proposed mining operation’s impact area. Impacts associated

with dust, noise, and potential impacts to groundwater resources are primary concerns. It is anticipated that these impacts can be mitigated to some extent.

Based on an analysis of the ESEE consequences, the Planning Commission notes the following:

- The ESEE analysis identified both positive and negative consequences associated with mining operations.
- Economic consequences favor allowing the resource use fully. The evidence is that the proposed mining operation will have an economic benefit, while there is the potential risk the mining operation could have negative economic impact on surrounding uses. However, there is no actual evidence that the mine will have any negative economic impact.
- Social consequences favor balancing the conflict between the mining operation and the conflicting uses. The social benefits of allowing the resource use include employment opportunities, tax revenue, and local aggregate supply. The social consequences to the conflicting uses include a reduction in the rural quality of life from traffic, dust, and noise.
- Environmental consequences favor balancing the conflicts between the mining operation and conflicting uses. ODFW has stated a concern that mining operations may impact wildlife during the winter. No blasting is proposed, but crushing is proposed. Further, where there is increased human activity, fire risk increases. Reasonable conditions can be adopted to protect potential environmental impacts without significantly impact mining operations. Reasonable conditions relating dust to protect farm uses, as well as conditions relating to traffic without significantly impacting the mining operation.
- Energy consequences favor resource use. Energy impacts from or to the conflicting uses are minimal. Energy benefits from the resource use derive from the reduction in transportation of aggregate materials to local and regional construction projects.
- Based on the ESEE analysis, both the resource site and conflicting uses are important relative to each other, and the ESEE consequences should be balanced so as to allow the conflicting uses.

The Planning Commission recommends a Program to Achieve Goal 5, based on the ESEE analysis and other Statewide Goals, that the resource use and conflicting uses should be balanced relative to each other with a “3C Plan.” The subject property can be designated a 3C site on the County’s Inventory of Aggregate Sites.

The following conditions are adopted to achieve Goal 5:

PROGRAM TO ACHIEVE GOAL 5:

**General Requirements:**

**Site plan:** Applicant shall submit an updated site development plan to the Crook County Community Development Department reflecting required setbacks and consistent with applicable conditions of County land use approval.

**Water rights:** Applicant proposes a dry mining operation. However, if applicable in the future, Applicant shall submit evidence of water rights for mining and reclamation use to the Crook County Community Development Department prior to use of such water.

**Wildlife:** Applicant shall develop a mitigation plan to minimize impact to deer between November 1<sup>st</sup> and April 30<sup>th</sup> of each year.

**Fire Protection:** Applicant shall maintain on site a minimum 5,000-gallon water holding tank for wildfire protection.

**Quality of Life Concerns:**

**Setbacks:** To minimize impacts to neighboring properties, no active mining shall occur closer than 100 feet from property lines of the subject property. Overburden and topsoil may be placed in the setback so long as it is stabilized so that fugitive dust does not enter adjacent properties. No structures shall be placed in the setback area, nor shall any equipment be stored in the setback area.

**Traffic and Access:** Access to the subject property shall be limited to the existing access on Highway 27. On-site roads shall be maintained to Crook County Road standards. The road surface shall be treated regularly to minimize fugitive dust.

**Dust Mitigation:** Applicant shall control all fugitive dust emissions associated with all extraction and processing operations on the site. Excepting actively mined areas, Applicant shall stabilize all disturbed areas to minimize dust using hydro-seeding or other soil stabilization methods consistent with the Dust Management Plan. Internal roads should be water during operations if necessary to prevent fugitive dust from leaving the property.

A contact person representing the aggregate operator shall be named and all appropriate contact information shall be provided to Crook County Community Development and to any neighbor that requests such information so the aggregate operator can be contacted if dust is being released.

**Noise:** The County has no noise ordinance, but noise is regulated by the Oregon Department of Environmental Quality. To the extent applicable, Applicant shall comply with all noise regulations. Per Applicant, blasting is not proposed as part of this request. If Applicant seeks to conduct any blasting operations, it shall modify this Program to Achieve by amending this Comprehensive Plan Amendment.

**Reclamation:** Upon completion of mining, Applicant agrees to reclaim the Mining Area. Overburden and topsoil will be replaced in accordance with an approved reclamation plan from DOGAMI.

All reclamation activities shall be subject to a reclamation plan approved by DOGAMI. Applicant shall work with the property owner to ensure that reclamation is carried out in a manner that restores the property to its condition prior to the start of mining operations.

**Groundwater:** It is not anticipated that groundwater will be encountered while mining the Mining Area. However, if it is, Applicant shall notify the Crook County Community Development Department and seek an amendment to this Program to Achieve to ensure that the groundwater resource is protected.

**Land Uses**

**Mining Area:** The Mining Area shall be preserved and used for resource use, as described herein and in accordance with, this Program to Achieve and any related operating permit issued by DOGAMI and Crook County.

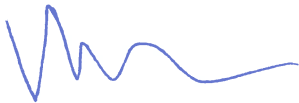
**Impact Area:** All allowed and conditional uses permitted by the applicable zoning ordinance may be allowed in the impact area. Reasonable conditions may be applied to limit conflict with the resource use on the Mining Area. A waiver of remonstrance shall be required from any applicant seeking approval of

an allowed or conditional use permit in the impact area confirming that they will not object or complain about the mining operation on the subject property.

**VI. CONCLUSION**

Based on the above findings of fact, the Planning Commission recommends amending the Crook County Comprehensive Plan to include the Subject Property as a 3C site and to include the ESEE analysis and Program to Achieve described above.

**Respectfully,**

A handwritten signature in blue ink, appearing to read 'Will Van Vactor', with a stylized, wavy line extending from the end.

Will Van Vactor, Director  
Crook County Planning Department

A handwritten signature in blue ink, appearing to read 'Michael Warren II', with a large, sweeping loop at the end.

Michael Warren II, Chair  
Crook County Planning Commission