

PASSED

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)

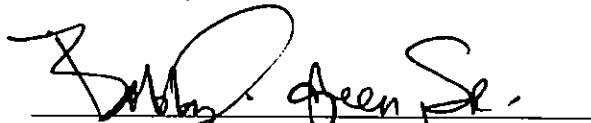
Section 3. A 40-acre portion of tax lot 3500 of map 19-02-00 (30), is rezoned from "F-1/Non-Impacted Forest Lands" (Lane Code 16.210) to "QM/Quarry and Mine Operations" (Lane Code 16.216), such territory depicted on Rural Zoning Plot 440B, and further identified as Exhibit "B" attached and incorporated 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.

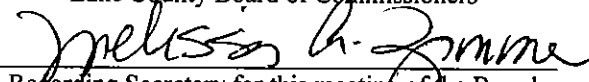
The prior designation and zone repealed by this Ordinance shall remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

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 20<sup>th</sup> day of OCTOBER, 2004

  
Bobby Green, Chair

Lane County Board of Commissioners

  
Recording Secretary for this meeting of the Board

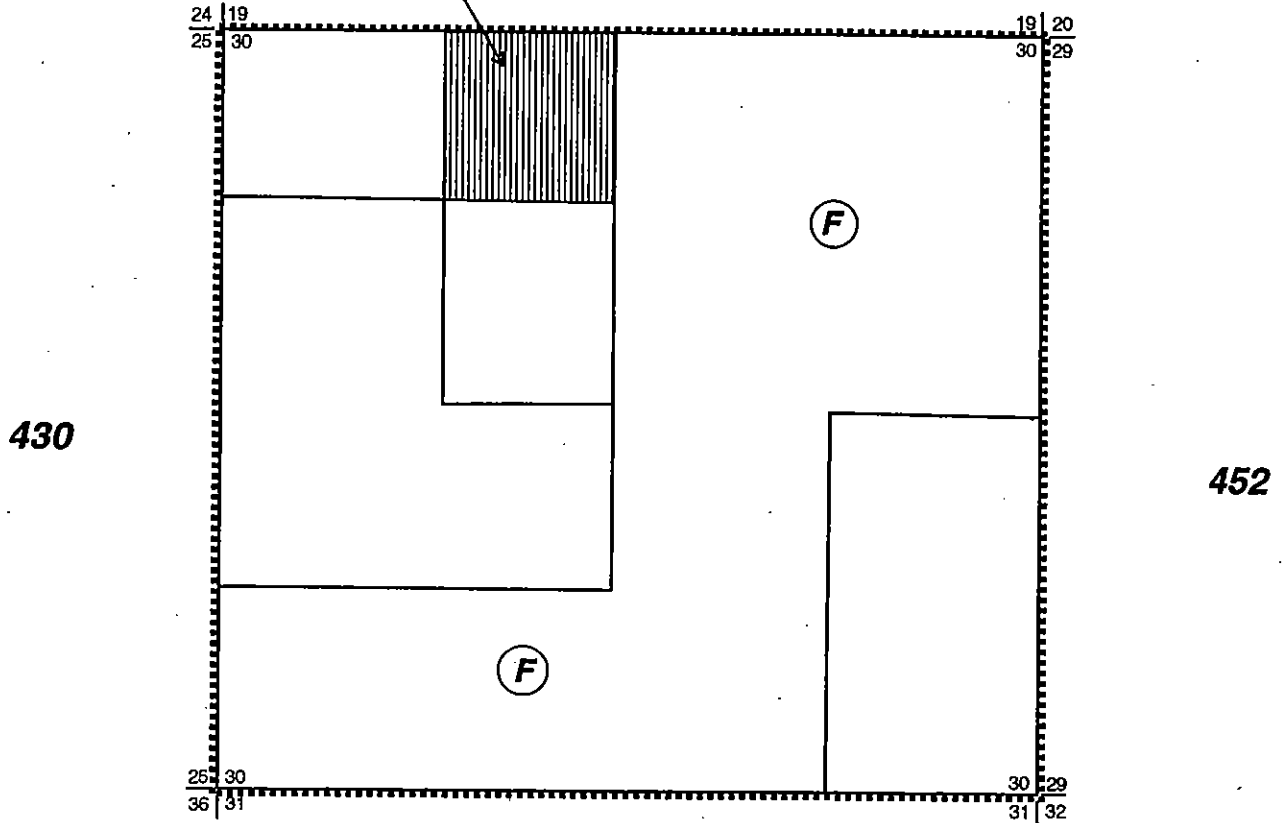
APPROVED AS TO FORM


Date 3-11-2003 Lane County

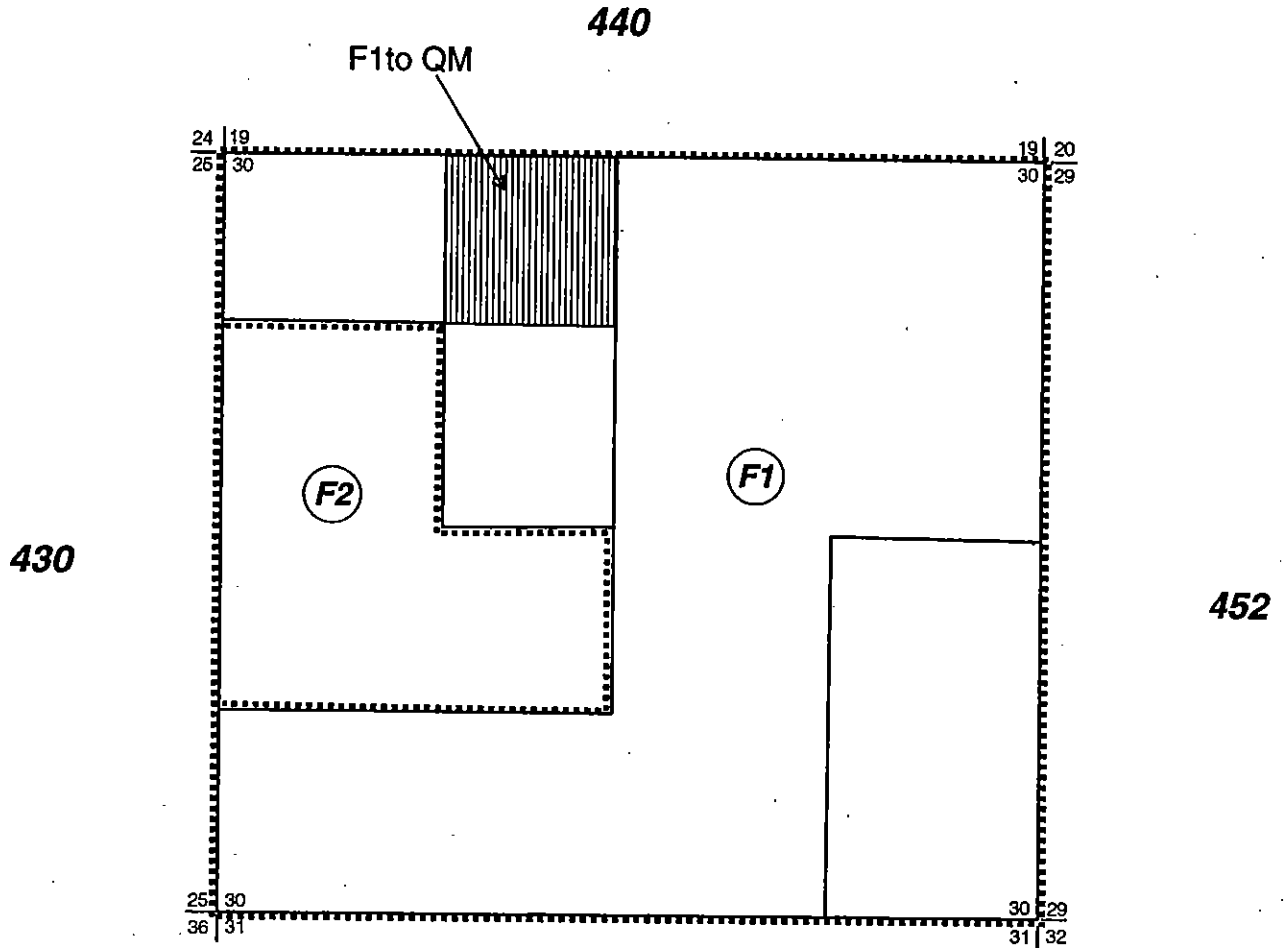
  
OFFICE OF LEGAL COUNSEL


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)

FOREST to  
NATURAL RESOURCES **440**



	<b>OFFICIAL PLAN MAP</b>	<b>PLOT #440B</b>
Twnshp Range. Section <u>19 02 30</u> / _____		
ORIGINAL ORD. #	PA 884	DATE <u>2/29/1984</u> FILE # _____
REVISION #	ORD# _____	DATE _____ FILE # _____



	lane county		<b>OFFICIAL ZONING MAP</b>		<b>PLOT #440B</b>	
	Twnshp Range Section <b>19 02 30</b>					
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. 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.