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Planning Division**
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**CROOK COUNTY BOARD OF COMMISSIONERS DECISION
COMPREHENSIVE PLAN AMENDMENT
217-24-000070-PLNG**

I. INTRODUCTION

Date: April 8, 2025

Applicant: Greenbar Excavation, LLC
PO Box 7
Prineville, OR 97754

Agent/Attorney: Lisa Andrach
Fitch and Neary, P.C.
210 SW 5th St., Suite 2
Redmond, OR 97756

Property: Tax Lot: 1616120000500

II. PROPOSAL

The Applicant proposes to amend the Crook County Comprehensive Plan to add approximately 226,000 cubic volume of basalt aggregate located on a 4.9-acre site identified as Tax Lot No. 1616120000500 to Crook County's inventory of Significant Mineral and Aggregate Sites ("Aggregate Inventory"). The request is a modification of an existing site already listed in the County's Aggregate Inventory, the Bartels Site.

III. PROCEDURAL STATUS

The Applicant applied for this comprehensive plan amendment on April 09, 2024. The application was deemed complete on May 09, 2024. The Planning Commission is tasked with making a recommendation to the Board of County Commissioners, which is the final decision maker.

The required Post Acknowledgement Plan Amendment notice was sent to the Department of Land Conservation and Development on June 12, 2024 (DLCD File No. 002-24). Newspaper notice of the first evidentiary hearing was published in the Central Oregonian on July 2, 2024. Neighbor notice of the first evidentiary hearing was mailed on July 3, 2024.

There was an initial evidentiary public hearing on July 24, 2024. The record was left open for additional written testimony. The open record period closed on July 31, 2024. The rebuttal period closed on August 7, 2024. Final argument from the Applicant was due August 14, 2024. The Planning Commission held a second hearing on August 28, 2024, for the purpose of deliberations only. The Planning Commission voted in favor of recommending approval to the Board of County Commissioners, with a site specific ESEE Analysis and Program to achieve in the document dated September 11, 2024.

Notice of two public hearings before the Board of County Commissioners, October 16, 2024, and November 6, 2024, was posted in the Central Oregonian October 1, 2024. Notice of the two hearings to Parties and Neighbors were mailed October 3, 2024. The Board of County Commissioners held two public hearings on October 16, 2024, and November 6, 2024. The Board unanimously voted to add the site to the Aggregate Inventory as a 3C site and adopt the recommendation from the Planning Commission with additional findings and recommendations to the ESEE Analysis and Program to Achieve as laid out in this document.

The Applicant submitted a Request for Reconsideration on February 6, 2025 (Ex. 51), stating that there was a misunderstanding regarding the setback agreed to during the Board of Commissioners' final meeting. The Board of Commissioners considered Applicant's request at a March 12, 2025 Work Session and moved to withdraw the final motion on Ordinance 346, Application No. 217-24-000070-PLNG, made November 6, 2024, and to reopen the record for a third public hearing to consider the limited issue of "the setback for the mining operation to the dwelling on taxlot 501/lot 14 of the Cimarron Hills subdivision owned by Carter" on April 8, 2025 at 1 p.m.

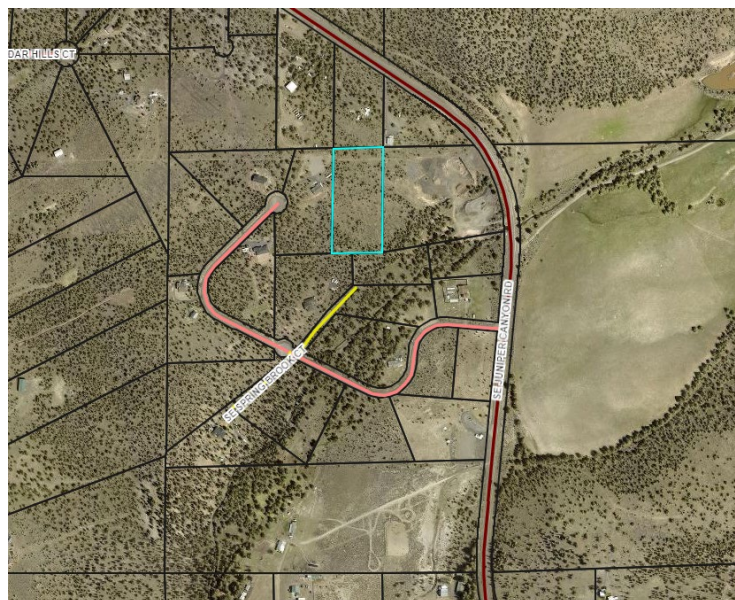
Notice of the third public hearing, for April 8, 2025, was posted in the Central Oregonian on March 18, 2024. Notice of the hearing was mailed to Parties and Neighbors on March 19, 2025.

IV. BASIC FINDINGS

A. Location

The subject property is approximately 7 miles south of the City of Prineville on Juniper Canyon Road, adjacent to an active aggregate quarry located at 1616120000400. The subject property has not been assigned an address. It is identified on the County Assessor's maps as 1616120000500. Figure 1 is a vicinity map depicting the subject property. The entirety of the property is proposed to be added to the Aggregate Inventory.

Figure 1



Property Lines are Approximate

B. Zoning and Overlays

The subject property is zoned Recreation Residential Mobile Zone (RR(M)-5) and is designated as Recreation Residential in the County's Comprehensive Plan. The subject property is in general deer winter range, but not located within sage grouse, critical deer winter range, antelope, or elk habitat. There are no floodplains mapped on the property.

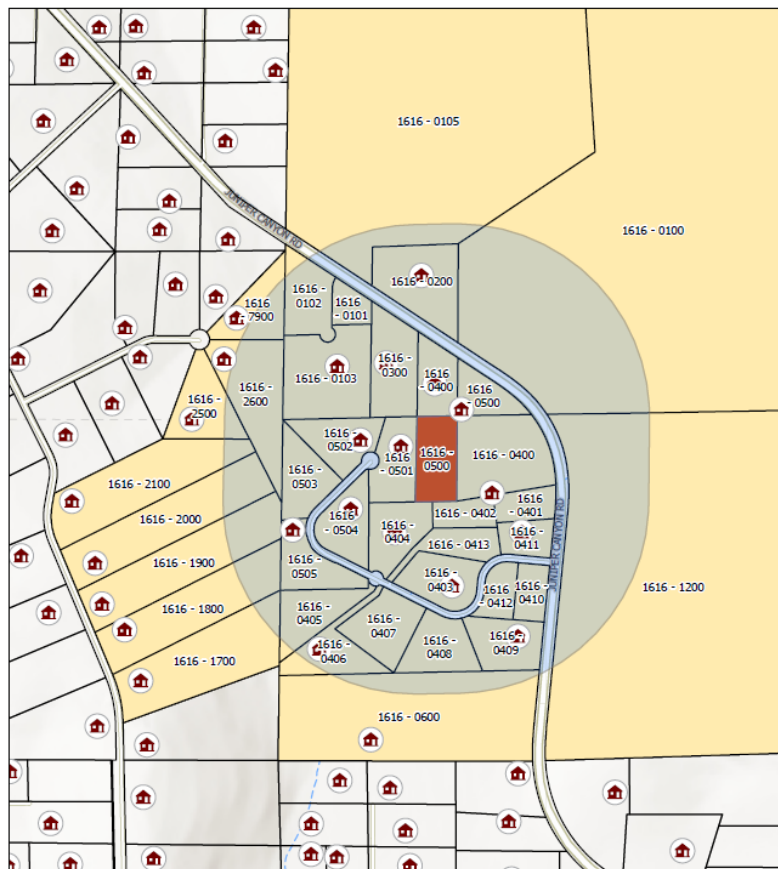
C. Site Characteristics

The subject property is listed as 4.9 acres with the Crook County Assessor's records and is directly west of the existing 10.01-acre Bartels Site. There are no dwellings or other structures on the property. The property is not in farm use and not within an irrigation district. The applicant describes the property as having a gentle to moderately sloping terrain that is covered in native grasses, brush and trees.

D. Surrounding Area

The area surrounding the subject property is depicted on Figure 2 (below)¹. The figure depicts the Mining Area, a 1,500-foot impact area, and the approximate locations of dwellings based on address data points. All properties within the impact area are zoned RR(M)-5. There are fifteen (15) dwellings within the 1,500-foot impact area.

Figure 2



¹ Figure 2 was prepared by Crook County GIS.

Southeast Juniper Canyon Rd. bisects the 1,500-foot impact area to the north and east of the subject property. Three existing single-family dwellings are located north of the proposed site, south of SE Juniper Canyon Rd., they range from 6.62 acres to 3.29 acres. Three vacant lots are located northwest of the proposed site, south of SE Juniper Canyon Rd., ranging in size from 2.0 acres to 10.61 acres. The closest lot (10.61 acre) has a development approval for a dwelling, which has not yet been built.

To the east is tax lot 1616120000400, which is the 10.01 acres piece owned by the applicant and currently operating as an active aggregate quarry pit. East of SE Juniper Canyon Road separates the is the Lyster Land and Livestock farm operation consisting of over 500 acres.

South of the subject property is phase one of Cimarron Hills subdivision consisting of twelve residential lots between 4.95-5.53 acres.

To the west is phase two of Cimarron Hills subdivision that consists of six (one being the subject lot) residential lots between 4.76 and 4.9 acres.

Table 1, below, lists thirty-nine (39) properties affected by the 1,500-foot impact area as measured from the Mining Area. Table 1 includes information indicating the distance from the proposed Mining Area, the primary use, and ownership.

Table 1

Map Tax Lot	Owner	Property Class Description	Acres	Existing Dwelling	Approximate Distance From Site
1616120000409	BARTELS RICHARD W TRUSTEE	Commercial Improved	5.01	Yes	1159.57
1616010000100	LYSTER LAND & LIVESTOCK LLC	Farm Non-EFU Unimproved	394	No	
1616120001200	LYSTER LAND & LIVESTOCK LLC	Farm Non-EFU Unimproved	157.3	No	
1616010000105	LYSTER LAND & LIVESTOCK LLC	Farm Non-EFU Unimproved	193.9		
1616120000501	CARTER ROBBY D & BRENDA L	Residential Improved	4.89	Yes	122.27
1616110002000	HAMILTON BLAKE L & KRISTINE A	Residential Improved	13.67	Yes	2543.34
1616120000404	SCHMIDLIN ADAM ANTHONY& SHAUNA	Residential Improved	5	Yes	289.28
1616110002500	WIEGELE ROBERT C & PETERSON PATRICIA L	Residential Improved	5.96	Yes	1756.67

1616120000411	GRIFFIN ROBERT JAMES & FAWN	Residential Improved	2.62	Yes	562.28
1616120000502	KRAU ANTHONY AUKAHI & MICHELLE MALANI	Residential Improved	4.94	Yes	438.01
1616020007900	WATSON GARY & DONNA J	Residential Improved	5.23	Yes	1605.54
1616110002600	JOHNS STANLEY	Residential Improved	9.53	Yes	1570.92
1616120000406	HOLMES JASON	Residential Improved	4.99	Yes	1370.24
1616120000403	GILBERT SCOTT E	Residential Improved	5.01	Yes	661.28
1616110001800	TERPENING LOYD M & DIANE M	Residential Improved	12.69	Yes	2477.98
1616120000504	TILLERY TIMOTHY M & LISA O	Residential Improved	4.77	Yes	507.39
1616110001900	ARNOLD JAMES II	Residential Improved	13.67	Yes	2570.53
1616110001700	BRYANT STEVEN G AND BRYANT MARY B	Residential Improved	14.36	Yes	2557.33
1616120000505	MYERS FAMILY REVOCABLE LIVING TRUST	Residential Improved	4.77	Yes	981.50
1616110002100	NELSON TRAVIS P & JOY S	Residential Improved	13.68	Yes	2679.09
1616120000401	BARTELS RICHARD W TRUSTEE	Residential Unimproved	2.64	No	
1616120000412	PEDERSEN RITA L TRUSTEE	Residential Unimproved	2.5	No	
1616120000500	GREENBAR EXCAVATION LLC	Residential Unimproved	4.85	No	
1616120000413	JACOBSON JOHN EDWARDS & JENSEN JOY ANN	Residential Unimproved	3.51	No	
1616120000407	ROSA KEVIN J & DANA L	Residential Unimproved	5.53	No	
1616120000408	PRICE CLIFF & PRESCH SABINE	Residential Unimproved	5.01	No	
1616120000402	BARTELS RICHARD W TRUSTEE	Residential Unimproved	2.51	No	

1616120000405	GREENLEY BRANDON R & JENINE E TRUSTEES	Residential Unimproved	4.96	No	
1616120000410	BARTELS RICHARD W TRUSTEE	Residential Unimproved	2.5	No	
1616120000503	DURKEE JARED NATHANIEL & EWING-DURKEE CA	Residential Unimproved	4.88	No	
1616010000500	ADAMS JENNIFER	Tract Land Improved	3.31	Yes	60.01
1616120000600	TILLIA CHRISTOPHER JAMES & VALERIE ANNE	Tract Land Improved	31.65	Yes	1888.79
1616010000200	ADAMS CLIFFORD T	Tract Land Improved	8.29	Yes	1101.80
1616010000300	KISER CLIFFORD	Tract Land Manufactured Structure	6.63	Yes	483.24
1616010000400	ADKINS BRANDON	Tract Land Manufactured Structure	4	Yes	254.02
1616010000103	BELCASTER ANGELA MARIE	Tract Land Unimproved	10.61	Yes	736.81
1616010000101	BELCASTER ANGELA MARIE	Tract Land Unimproved	2.01	No	
1616120000400	GREENBAR EXCAVATION LLC	Tract Land Unimproved	9.99	Yes	276.67
1616010000102	BELCASTER ANGELA MARIE	Tract Land Unimproved	5.16	No	

E. Access

The Subject Property has access via a 50-foot access and public utility easement from Riverdance Road as shown on the recorded plat for Cimarron Hills subdivision Phase 2 (MF2007-219604), also recorded in a written easement (MF2007-219777). The applicant has stated in their Burden of Proof that they intend to consolidate the existing aggregate pit site and the subject lot upon approval. The existing aggregate site has access via Juniper Canyon Rd.

F. Other Information

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

G. Public Comment

Prior to the staff report dated July 17, 2024, ten (10) exhibits were submitted with a total of seventeen (17) people in opposition. The most common concerns reported were contradictions with the Covenants, Conditions, & Restrictions of Cimarron Hills Subdivision; noise, dust, potential water contamination, air pollution, quality of life for the surrounding neighbors, and past issues with blasting and lack of notice. Other concerns brought up included concern that owners bought nearby properties or homes under the assumption the existing Bartels Site was nearing the end and would enter reclamation, lessening the concern for potential well water quantity issues, well and structural integrity issues of nearby buildings from blasting, property values, view impediments, habitat and wildlife impacts, and traffic.

Prior to the hearing, the Applicant submitted additional information (Exs. 18 and 23) regarding the proposed site being a significant resource based on location, quantity and quality. The Applicant noted the CC&Rs do not apply to Lot 15 and further noted that Lot 15 (the subject property) can be developed for residential use after reclamation.

Also, just prior to the hearing, written testimony was submitted by several folks in opposition. The stated concerns include the safety of the Applicant's access to Juniper Canyon, impact to traffic, impact from blasting including shaking and vibration that may damage structures, and negative impact to property values.

Additional comments were submitted that reiterate concern about dust, suggesting the impact area needed to be larger, statements that blasting was damaging homes, and express concern about damage to wells. They also expressed concern about impact to livestock, contamination of the nearby creek from dust, potential violations of the existing land use permit from the County and violations of the operating permit from DOGAMI.

At the public hearing and during the open record period, many of the same concerns described above were restated. Per Planning Commission request, during the open record period, staff submitted emails from County Code Compliance Officer Louis Seals and DOGAMI. Mr. Seals noted that the County had not received any calls or written complaints regarding the existing pit since 2020. DOGAMI noted it had no active complaints.

Additional argument was received during the open record period that included further explanation that not all property owners are subject to the Waiver of Remonstrance recorded on certain lots within Cimarron Hills, that all of the processed aggregate does not stay in Crook County, and inconsistent information regarding the number of truck trips from the site.

During the open record period, the Applicant submitted information regarding the Title Report for Lot 15, waiver of remonstrance, and the benefit of the resource to the area.

Subsequently, during the rebuttal period, information from opponents relating to wildlife, Lot 15 being advertised as a view lot, concern about how the original Bartels site was permitted, and information regarding other nearby aggregate pits was received.

The Applicant submitted information indicating the process of transferring the permit from the prior to operator to Greenbar (the Applicant) with DOGAMI has been initiated, noting limits for truck trips per the approval for the existing site, and discussing dust abatement efforts and wildlife protection.

In their final argument, the Applicant contends that evidence regarding other aggregate sites is not evidence that can be used to find a site is not significant and that opposition complaints are not enough to tip the scale to find that non-resource uses (residential uses) must be protected at the expense of the aggregate resource.

At the first hearing held by the Board of County Commissioners, testimony included concerns of potential water contamination, potential damage to private wells during blasting and operations, additional property damage, setbacks, wildlife, the lack of response from current and former mine operators, and fugitive dust.

The Applicant testified that they are requesting the site to be added to the inventory as a 3C site, meaning a balancing of the resource and surrounding uses. They reminded everyone that the current hearing is only for the comprehensive plan amendment at this time, they have not yet applied for a conditional use. They also spoke to the mailing lists for blasting, noting that many of the homes were built after the existence of the existing pit site. The Applicant stated that the plan is to only excavate to 60-feet deep, blasting will be done by a licensed blaster, any issues resulting from blasting should be addressed with the blaster, the typical crushing times will be abided by, and confirmed expansion will not go any closer to the nearest home.

Commissioners directed Staff to research and address specific questions between the two hearings. To address the Commissioners' questions, Staff reached out to various agencies and submitted a memo into the record on November 6, 2024. Staff inquired with DOGAMI for a copy of the reclamation obligations and was instructed to submit a public records request, which was not responded to prior to submitting the memo or prior to the second hearing. To address blasting requirements, Staff submitted with the memo an email response from Vaughn Balzer of DOGAMI, with two attachments: Explosive Materials Code and an example from Linn County. Staff consulted with Oregon Water Resources Department and spoke with Joseph Kemper, Hydrogeologist. Mr. Kemper did not identify the individual well types within the area. He stated that the construction method of a well is determined in part from the soil type and depth when they are drilled. Staff asked if the geomorphology of the soil type would be an indicator of rock fissure. Mr. Kemper explained that the individual well logs do show the ground composition and the depth of static water level which could be an indicator if the well was located in a rockier soil type. Staff asked if there was any information they could provide concerning the seismic effects on wells. Mr. Kemper said he would check with the well inspectors and send information along. Attachment 2 of the memo is email correspondence with Mr. Kemper and two resources for the Commissioners to review that were sent as result of Staff's conversation. Lastly, Staff determined that yes, if the Board determines the site should be added to the Goal 5 inventory as a 3C site, the impacts of the resource use and neighboring uses should be balanced. The setbacks can be increased if the even-handed ESEE analysis justifies it, and the setbacks are identified in the Program to Achieve.

The second hearing included testimony from the Applicant addressing setbacks and blasting safeguards. Jeb Abbas, a professional well driller, spoke on behalf of the Applicant regarding well type and depths within the area and how blasting should not impact the wells.

The record, including the application and materials, are being reviewed against the applicable County and State criteria. Any private CC&Rs or other recorded items are a civil matter. Many of the concerns raised by the public can be addressed in Step Four of the below process with the Program to Achieve.

V. CRITERIA AND ANALYSIS

A. Character of the Request

Applicant's comprehensive plan amendment request is characterized as a Post-Acknowledgment Plan Amendment ("PAPA") to the Crook County Comprehensive Plan. Applicant requests that the Board of County Commissioners add the mining area to the Aggregate Inventory. Before the County may issue a conditional use permit to authorize operating a mine on the subject property, the PAPA must be approved, and the site added to the Aggregate Inventory (see CCC 18.144.040). Applicant is not requesting conditional use approval at this time.

B. Applicable Approval Criteria

- **Oregon Administrative Rules (OAR) Chapter 660, Division 16²**
- **Crook County Comprehensive Plan. Ordinance No. 55, Comprehensive Plan Mineral and Aggregate Policies**
- **Ordinance No. 43, Crook County Goal 5 Resources (Mineral and Aggregate Elements) (to the extent consistent with Ord. 51 and Ord. 55).**

These plan policies provide a framework for County decisions regarding mineral and aggregate sites. In prior aggregate proceedings, County Counsel has recommended the following order for reference while reviewing the current application:

- (1) OAR 660-016 ("the old rule")
- (2) Ordinance 51/55
- (3) Ordinance 43.

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

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

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

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

- (4) OAR 660-023 (“the new rule”) should be considered only if the other policies provide no guidance and the guidance in OAR 660-023 is consistent with OAR 660-016 and County plan policies.

C. Summary of Decision-Making Process

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

- Step One: Determine Whether the Resource Site is Significant
- Step Two: Identify Conflicts
- Step Three: Analyze Economic, Social, Environmental and Energy (ESEE) Consequences
- Step Four: Develop a Program to Achieve Goal 5

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

STEP ONE

(DETERMINE IF SITE IS SIGNIFICANT)

OAR 660-016-0000(2):

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

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

Location -

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

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

Finding: The request before the County is for a site-specific resource, thus the determination of location must include description or map of the boundaries of the resource site and of the impact area to be affected. The Applicant included in the application materials, a legal description of the site (Applicant’s Exhibit. 5), a map depicting the resource site and a 1,500-foot impact area (See Applicant’s Exhibit 3 and 4). Per Applicant, the mining area is located approximately seven miles south of the City of Prineville on SE Juniper Canyon Rd., adjacent to the existing site. The applicant has stated that as the property is

landlocked, they propose to consolidate it with the existing aggregate site after an approval. The existing site has direct access to Juniper Canyon Road.

Ordinance 43 defines “impact area” as the area surrounding a Goal 5 mineral and aggregate resource site in which the presence or application for a conflicting use in the surrounding zone would adversely impact the resource site by limiting the mining or processing of the resource. The Ordinance goes on to state, “[u]nless otherwise indicated in the text of this Plan or on the respective resource site and impact area map, the impact area is that property extending outward from the resource site boundary to a distance of five hundred (500 feet).”

However, the Applicant has indicated a 1,500-foot Impact Area (Applicant’s Exhibit 4) and submitted Ordinance No. 179, Amendment to Appendix A, Crook County Goal 5 Mineral & Aggregate Elements, for the adjacent lot 1616120000400 owned by the applicant, (Applicant’s Exhibit 17) where the County Court (former name of the Board of County Commissioners) adopted the impact area to be 1,500 feet. Exhibit A – ESEE Findings states:

“The applicant identified a 1500 foot area surrounding the resource site as the Impact Area. The applicant submitted evidence that the 1500 foot area is standard under current Division 23 Rules of the Department of Environmental Quality and that moving for a consistent standard would serve the public interest, unless compelling circumstances (such as protection of another Goal 5 Resource, such as scenic value) are implicated. The applicant further submitted evidence that given the current configuration of the resource site the parties most likely to be affected would those within the 1500 foot area (due in part to the existing excavated nature of the resource area) especially with respect to noise and dust impacts. The County Road which bisects the proposed Impact Area and which would provide access point to the aggregate operation is the most significant portion of that roadway in terms of impact.

[...] Based upon its review of these sources of information, the Court found and confirms, its decision to utilize a 1500 foot Impact Area. The Cou[r]t finds that existing screening vegetation, the topography of the land and need to set a standard that remains consistent with State standards, in the absence of compelling reasons to deviate from the standard, all militate in favor of the 1500 measure. The allowance of an aggregate mining and processing facility is specifically allowed as a conditional use in the RR(M)-5 zone and there must be a balance between those more distant property owners and those more likely (by virtue of greater proximity) to be adversely affected by the use. The Court has earlier determined that the County is not bound by the 500 foot distance contained in obsolescent law and finds the greater distance (2500 feet or greater) is not justified.”

Although Ordinance 43 refers to a 500-foot impact area in most instances, given the nearby residential use and a prior finding in Ordinance 179 that 1,500 feet is appropriate in this circumstance, the Planning Commission recommends a 1,500-foot impact area. Moreover, the evidence in the record provides substantial evidence as to the location of the proposed expansion site. This standard is met.

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission’s findings as their own.

Quality -

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

OAR 660-016-0000(3):

The determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of quantity requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable."

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

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

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

1 = resource material meeting at least the following ODOT specifications:

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

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

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

4 = resource material that is used only for fill.

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

Finding: The Applicant has provided information about the mineral resource available at the Mining Area (see Applicant's Exhibits 7-12). The mineral resource was tested for quality relative to Oregon Department of Transportation (ODOT) specifications as part of the laboratory testing that Watkins Testing & Inspection (WTI) conducted on the 3/4" Base aggregate produced at the site. The Report describes sample collection and testing then concludes that the aggregate resource on the subject property meets ODOT specifications for resistance to abrasion, sodium sulfate soundness and air degradation. The Report was based on eleven (11) borehole samples collected at the site up to 46 feet deep (see Applicant's Exhibit 13).

³ Ordinance 43 states that "All sand has potential value and has not been given a ranking value."

As stated in the Burden of Proof and shown on the Topographic Survey and Volumetric Analysis submitted by the Applicant (Applicant's exhibit 7), the property contains approximately 226,000 cubic yards of aggregate material.

Specifically:

"Per OAR 660-23-180 samples of aggregate material were tested and exceed Oregon Department of Transportation specifications for 3/4" Base Aggregate. (Exhibit 8) The laboratory testing and results are included as Exhibits 7-12. The analysis estimated that the additional area of the site would yield approximately 226,000 cubic yards of aggregate material. (Exhibit 7) A conversion factor of 1.9 tons per cubic yard indicates that on the order of 429,400 tons of aggregate is available. The laboratory testing indicates that the aggregate exceeds ODOT's specifications for base rock. (Exhibits 8-12) The basalt is the same as that which is actively mined at the Bartels Site and is considered high quality aggregate because it is hard and dense compared to much of the rock of Central Oregon. The County established the Bartel Site as a 1-C resource, and added it to the County's Mineral and Aggregate Inventory (Ordinance 172 and 179 (Exhibits 16 and 17)), the volume of aggregate located in the adjacent resource site is equally as important and significant and should be included in the county's inventory of Goal 5 resources. The quality and quantity test results for the Bartels Site that the County relied upon are Exhibit 15."

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

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

The Planning Commission notes that Applicant's Exhibit 14 indicates, at least as to the existing site, that the rock in the area can be "considered a high quality of aggregate because it is hard and dense compared to much of the rock in Central Oregon."

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

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

Quantity –

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

Finding: The subject property is 4.9 acres in size. As noted, the Report estimates the property contains a total of 226,000 cubic yards of aggregate material. For comparison to the minimum quantity threshold at OAR 660-023-0180(3), cubic yards must be converted to tons: 1 cubic yard = 1.6 tons. The recoverable aggregate resource will be reduced by the proposed 50-foot setbacks. The Topographic Survey and Volumetric Analysis appears to base calculations on a 50-foot setback on north, south, and west sides, presuming the proposal site will be combined with that of the existing site. The Applicant states that there are 435,761 tons when combined with the additional area to be mined in the Bartels Site.

Although Crook County is not subject to OAR 660-023 for purposes of inventorying aggregate resources, because OAR 660-016 does not include a numerical minimum, the County typically refers to the baseline of 500,000 tons cited in OAR 660-023-0180(3) for determining whether there is adequate quantity to justify a finding of “significance”.

The Applicant submitted additional information regarding the quantity of aggregate on the proposed site after the Staff Report was posted (Ex. 23). The Applicant notes that the original estimate was based on a business estimate and not to show the volume of the resource on the site. Accordingly, after recalculating, the Applicant states there is 436,328 tons (using the 1 = 1.6 tons ratio) or 518,139.50 tons (using the 1 = 1.9 tons ratio used by Carlson Engineering).

The Planning Commission considered the relative abundance of the resource in light of OAR 660-023, the evidence in the record, and high quality of the material. In this instance, it finds that the evidence supports a finding that the resource meets the relative abundance resource given the information provided by the Applicant. The Planning Commission notes that the 500,000 ton requirement in OAR 660-023 provides a guideline but is not a strict minimum requirement. Accordingly, there is relative abundance of the resource to meet the quality standards.

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission’s findings as their own.

OAR 660-016-0000(5):

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

(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information;

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

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

Finding: The Planning Commission determines that there is sufficient evidence in the record, to find the resource is significant based on location, quality, and quantity at the Mining Area, and finds it is 1-C site. The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

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

Policy 3:

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

Finding: The County maintains an inventory of significant aggregate and mineral sites. Since the Planning Commission finds that the Mining Area meets the requirements for location, quality, and quantity, the site should be added to the Aggregate Inventory as a significant site. The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

Policy 4:

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

Finding: Evidence of other mineral or aggregate resources has not been used as justification or a basis to deny placement of the Mining Area on the Aggregate Inventory list. The Mining Area should be placed on the inventory list. The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

Policy 6:

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

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

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

As discussed above, Applicant has provided a report by Ronald Watkins, verifying the location, type, quantity, and quality of the resource. The Applicant submitted Mr. Watkins certifications (Applicant's Exhibit 12) to the record. Based on the above findings, the Planning Commission finds that the qualifications are sufficient, a finding could be made that the conditions in subsection (a) of Ordinance 55 are met.

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

The conditions of subsection (c) (conflicting uses and ESEE analysis results) are addressed below. As noted, the ESEE analysis results in a determination that there are conflicting uses relative to the resource. Thus, since there are conflicts, the site cannot be added to the Aggregate Inventory under the above provisions as a 3A site, as all three conditions for Policy 6 are not met.

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

Policy 9:

Crook County's plan policy is to classify each significant resource site according to current available data on location, quality and quantity, then regulate each site according to its classification. Crook County will not allow expansion of any site without additional data. Therefore, in order to expand mining operations on a mineral or aggregate site into an area not currently designated for mining, the operator must provide the best information available regarding quantity, quality, and location of the resource in

⁴ Policy 6(c) is addressed in Step 2.

the proposed expansion area to update plan data. An ESEE analysis shall be required if the expansion area is found to be a significant Goal 5 resource based on location, quality, and quantity information.

Finding: The Mining Area will be added to the County's Aggregate Inventory as an expansion site. Applicant has provided evidence regarding location and quality of the resource. The Planning Commission finds that the County can identify the Mining Area as a significant (1C) aggregate site. An ESEE analysis is required and discussed below.

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

STEP TWO

(IDENTIFY CONFLICTS)

OAR 660-016-0005(1):

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

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

Appendix A of Crook County Comprehensive Plan (Ord. 43, pg. 21) identifies uses for the Recreation Residential Mobile Zones (RR(M)-2), which has since been rezoned to what the County has today of Recreation Residential Mobile Zone (RR(M)-5). As uses have also been updated, identified uses listed are from the Crook County Code, Chapter 18.40 Recreation Residential Mobile Zone:

Uses Permitted Outright: Single-family dwellings, farming, utility facility necessary to serve the area or county, public park, recreation area, community or neighborhood center, other public uses or buildings necessary to serve the recreation residential needs for the area, subdivisions, planned unit developments, land partitioning, church or other place of worship, noncommercial wind energy system, meteorological towers, and noncommercial photovoltaic energy systems.

Conditional Uses: Private parks, campground or picnic grounds, hunting and fishing preserves, commercial recreation use (including but not limited to stables, resort, gun club, traveler's accommodations, and recreational or organizational camp), dude or guest ranch, golf course, mobile home park, commercial activity directly related to recreation (including but not limited to motel, food and beverage establishment, recreation vehicle gasoline service station, recreation vehicle rental and storage facility and give or sporting goods store), water supply and treatment facility, solid waste disposal site and facility, airport or airfield, operations for the exploration, mining and processing of geothermal resources, aggregate and other mineral resources, home occupations, residential facility, noncommercial wind energy systems and meteorological towers that do not meet the requirements of CCC 18.162.010, noncommercial photovoltaic energy systems that do not meet the requirements of 18.162.020, and commercial power generating facilities.

Aggregate mining is a conditional use in Recreation Residential Mobile Zone, RR(M)-5, (Crook County Code 18.40.020(11)). Any of the permitted or conditional uses could result in negative impacts to mining operations if future developers or property owners were to complain about the mining operation resulting in changes to the mining operations or increased costs for operations.

In summary, there are thirty-nine (39) tax lots affected by the 1,500-foot impact area (Table 1). Twenty-four (24) of the thirty-nine (39) tax lots contain single-family dwellings, and fifteen (15) dwellings are within the impact area. Per RR(M)-5 zoning, which outright allows residential use, it is likely additional dwellings will be constructed in the impact area. Accordingly, the Planning Commission finds the existing residential uses in the area to be conflicting uses.

As stated in the Applicant's Burden of Proof (page 7):

"The Court found that the record clearly established a need for the aggregate resource in the Juniper Canyon area because the area was one of the fastest developing areas in the County and the demand for aggregate resources is and will remain high. Therefore, the Cou[r]t concluded the limiting access to this resource will negatively affect the development of the entire area. In addition, the conflicting uses will be beneficiaries of the resource in the material will be available for the support and development of the conflicting uses for road, foundation and other purposes.

The Court also found that the likelihood of complaints and enforcement issues would be remote given the lack of objection by those affected within the Impact Area to the resource use and the commitment of virtually all property owners within the Impact Area (by means of waivers of remonstrance) to not challenge the use. As such, the conflicting uses, while potentially having an impact on the site, will not significantly affect the use of the site.

The site is identified as having potential and actual conflicting uses or conflicting applicable requirements of other state-wide planning goals. The Applicant contends that the proposed site should be included as an inventoried site on the Crook County Comprehensive Plan."

The Planning Commission finds there are not recorded waivers of remonstrance as noted by the Applicant for, "virtually all property owners within the Impact Area". Since there are potential conflicts, the impacts of the residential use on the adjacent and nearby uses must be examined through an ESEE analysis (Step 3).

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

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

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

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

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

Finding: The definition of "conflicting uses" in Ordinance 43 is consistent with how the County applied OAR 660-016-0005(5)(1) above. Moreover, Applicant has suggested a 1,500-foot impact area (see Figure 2), to be consistent with the original Bartels Site. This request is consistent with Ordinance 43, as the 1,500-foot impact area was determined by the former County Court, as discussed above under the proposed findings for OAR 660-016-0000(2).

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

OAR 660-016-0005(2):

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

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

Policy 6:

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

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

Finding: As noted, when previously discussing Policy 6, there are conflicting uses. Thus, the Mining Area cannot be added to the County's Aggregate Inventory as a 3A site. Instead, because of the conflicting uses, the County must complete an ESEE analysis (Step 3).

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

STEP 3

(ESEE ANALYSIS)

OAR 660-016-0005(3):

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

Finding: The Applicant acknowledges in the Burden of Proof, on page 7, that conflicting uses have been identified and the ESEE consequences of the conflicting uses must be determined. Based on staff analysis in Step 2 (above), it concurs that there are conflicting uses.

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

The intent of an ESEE analysis is to weigh the economic, social, environmental and energy consequences (both positive and negative) of protecting the aggregate site as a significant Goal 5 resource. The ESEE analysis provides the basis for the County to weigh the values of competing uses and the consequences of permitting or prohibiting resource and conflicting uses. The ESEE analysis considers not only the consequences associated with protecting the resource but also considers the consequences of mining and processing the aggregate resource. The ESEE analysis applies to all conflicting uses within the 1,500-foot impact area surrounding the proposed mine site. As discussed, there are thirty-nine (39) properties affected by the impact area. The uses on these properties are identified on Table 1.

⁵ Policy 6(c) as written in Ordinance 55 is as follows:

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

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

The Planning Commission has reviewed the Applicant's Burden of Proof along with the generic and specific ESEE analyses provided in the Comprehensive Plan for other inventoried aggregate sites. Based on that review, the Planning Commission recommends the following ESEE analysis.

A. Economic Consequences

Property values on adjacent lands are always a concern with a mining operation. The properties surrounding the Mining Area are all zoned RR(M)-5. Fifteen (15) have residential dwellings in the impact area, though it is possible that all lots could have dwellings within the impact area as they are zoned to have residential uses outright. It is also possible that there are existing farm uses in the impact area, as three (3) lots (east of Juniper Canyon Rd.) are taxed as farmland, per the Assessor's database, shown in Table 1.

The Applicant addresses the potential economic impacts to surrounding properties in the Burden of Proof on pages 7 and 8:

"Typical impacts of mining are noise, dust, truck traffic to and from the site, consumption of water, either from wells on-site or off-site or from irrigation ditches, employee traffic to and from the site, and other consequences that might inhibit the operation of conflicting uses within the impact area. The negative economic consequences of such impacts are typically expressed as the potential or loss in property values of nearby land uses and the wear and tear on roads over which the aggregate is transported. These are generally the objections raised in opposition to such sites.

However, the mining of the aggregate provides for well-paying employment at the resource site itself and for the transportation of the aggregate as well as contributes to the continuation of jobs as local development and construction sites. The Court also found that the particular resource is located such as to provide nearby resources in an underserved part of the County in terms of commercial aggregate material and that such material is essential to the existing demand for growth and development of the area. The Court agreed that the existence of the resources at the site will contribute to a competitive rate for material cost to those who need the resource."

The economic benefit of allowing the mining operation includes having an aggregate resource available to support economic development in the surrounding area. The Planning Commission further notes that the rock on the site appears to be a high-quality basalt that may have an economic benefit to the County as the rock is better than most in Central Oregon. Not allowing mining on the site will potentially reduce the economic return on the land for the owner of the Mining Area.

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

The Crook County Board of Commissioners agree with the Planning Commission's findings, with the addition of, but not limited to, potential structural and well damage.

B. Social Consequences

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

It is common for resource uses to create negative impacts including a reduction in the rural quality of life, heavy truck traffic, noise and dust. Fugitive dust may impact existing residential uses and potential uses. Blasting can negatively impact the rural quality of life. The Planning Commission notes that lights from the mining operation may have a negative social consequence due to the impact on nearby residential uses.

The Applicant lays out several arguments of social consequences to neighbors in the impact area starting on page 8 of the Burden of Proof. The Applicant indicates there will not be a significant impact on scenic vistas as the site cannot be seen from surrounding residences and blasting only takes place a few days a year at the existing Bartels Site. The Applicant also states that:

“The Court found that there is no evidence to support a conclusion that there will be a negative effect upon the residential properties within the Impact Area in terms of property values, in part because the waiver of remonstrance that all of the properties within the Bartels prior ownership have agreed to be bound by.”

As noted, it does not appear that waivers of remonstrance have been recorded on all properties in the impact area. A waiver of remonstrance was located (MF2005-203625) for phase 1 of Cimmaron hills, however no subsequent recorded documentation has been provided by Applicant or identified by staff.

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission’s findings as their own.

C. Environmental Consequences

Potential negative environmental impacts from allowing the use often include increased dust and disruption to wildlife by noise and mining activities. The site is within general deer winter range and blasting and crushing during winter could adversely impact wildlife. Any existing residential uses and potential uses in the impact area could be negatively impacted by dust. Additionally, where there is increased human activity, there is a risk of increased fire risk.

The Applicant states dust can be controlled by a dust management program, which will continue from the Bartels Site, with seeding, mulching, and/or water.

There is no indication that groundwater will be encountered during mining operations. However, if it is, this could negatively affect the groundwater in the area. The Applicant has stated in the Burden of Proof, page 13, that the requirements of Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Department of Water Resources, and DOGAMI will be met.

Certain comments state a concern about the impact to groundwater. Applicant states that this will be a dry mine site (meaning they will not be mining in the groundwater). Water will be used for dust abatement and crushing operations.

The Applicant states that the site reclamation will be a positive environmental consequence.

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission’s findings as their own.

D. Energy Consequences

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

Positive energy consequences include decreased energy consumption for delivery of the resource to the many developing lots within the Juniper Canyon area, compared to other sites out of the area.

The Crook County Board of Commissioners agreed with the Planning Commission and adopts the Planning Commission's findings as their own.

Conflicts with Statewide Planning Goals.

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

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

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

Goal 3 – Agricultural Lands: The subject property and properties in the Impact Area are zoned residential recreational not zoned agricultural. Goal 3 is not applicable. However, farm use is an outright use in the zone RR(M)-5 and three (3) parcels in the Impact Area (notably across Juniper Canyon Rd.) are found to be assessed for farm use. According to the Applicant on page 12 of the Burden of Proof:

"There is adjacent land within the Impact Area that is used for agricultural purposes, but the owner of that property has no objection to the use of the resource."

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

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: Applicant proposes to add this site to the Goal 5 inventory of significant aggregate resource sites. The County has not identified any significant groundwater resources in the area surrounding the proposed mine site. The subject property is in the General Deer Winter Range, though the Applicant stated the property is not used by wildlife and is already disturbed by surrounding uses.

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

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

Goal 8 – Recreational Need: While the zoning of the property is Residential Recreational, the proposed mining operation will not impact recreational needs or areas planned for recreation. There are no public recreation uses within the Impact Area. There is no conflict with Goal 8.

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

Goal 10 – Housing: Development. The Applicant provided information for this Goal on 14 of the Burden of Proof:

“The subject parcel is landlocked, and the active mine and 30’ cut wall in the Bartels mining pit prevent the applicant from taking residential access across that parcel to Juniper Canyon Road. Therefore, there is no feasible access to the parcel. Without access is not suitable for housing and is not “buildable land”. Use of the site for mining will, therefore, not reduce the areas available for housing. After combining the parcel with the Bartel Site located on Tax Lot 400, and reclamation of the sites is complete, the parcel may be buildable.”

Staff’s research found recorded access and public utility easements to the subject property, lot 15 of Cimmaron Hills phase 2. As recorded on the phase 2 subdivision plat (MF2007-219604), a 50-foot access and public utility easement to lot 15 is shown and further recorded on a written easement (MF2007-219777). Staff notes that lot 15 could be a residential, potentially buildable lot. The Planning Commission weighed the evidence to determine conflicts with Goal 10. Ultimately, the Planning Commission decided that there is not a conflict Goal 10 because the goal is focused ensuring adequate buildable lands in urban and urbanizable land. It further finds that the lot can be made buildable after proper reclamation.

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

Goal 12 – Transportation: Development of the proposed aggregate resource site does not conflict with the Crook County Transportation Plan or Goal 12. The site is located adjacent to the existing pit and will continue to use the existing access point from Juniper Canyon Rd. No new access points are needed or requested. No new access to County roads is required. No additional traffic will be added to the site, as the operation remains the same, only additional resource to mine.

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

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

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

STEP 4

(PROGRAM TO ACHIEVE GOAL 5)

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

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

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

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

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

Finding: The Planning Commission finds that the resource use be allowed and that conflicting uses be limited by designating the site as a “3C” site, consistent with subsection (3) above. Evidence in the record and the findings above, indicate that existing residential uses and potential uses in the impact area should not be prohibited. Reasons for this determination relate to the potential impact to existing uses and potential uses within the proposed mining operation’s impact area. Impacts associated with dust, noise, and potential impacts to groundwater resources are primary concerns. These impacts can be mitigated to some extent.

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

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

The Planning Commission recommends a Program to Achieve Goal 5, based on the ESEE analysis and other Statewide Goals, that the resource use and conflicting uses should be balanced relative to each other with a “3C Plan.” The Crook County Board of Commissioners agree with the Planning Commission’s findings, with the additions to the program to achieve below in *italicized font*.

The following conditions are recommended to achieve Goal 5:

PROGRAM TO ACHIEVE GOAL 5:

General Requirements:

Conditional Use Permit: Before operating in the Mining Area, a conditional use permit must be obtained. The conditional use permit will be subject to CCC 18.144, *unless specifically addressed elsewhere in this Program to Achieve*, as in effect at the time the conditional use permit is applied for, and/or any other provisions of Crook County Code Title 18 that may apply.

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

Water rights: The Applicant proposes a dry mining operation. The Applicant shall confirm this at the time it applies for a condition use permit. If Applicant's operation requires water rights, Applicant shall submit evidence of such water rights for mining and reclamation use to the Crook County Community Development Department prior to use of such water.

Wildlife: To protect the wildlife resource, Applicant shall coordinate with ODFW to develop a mitigation plan that minimizes impact to deer between November 1st and April 30th of each year. A copy of such mitigation plan shall be provided to the Crook County Community Development Department.

Fire Protection: The Applicant shall coordinate with the Crook County Fire and Rescue District for the purpose of implementing a fire protection plan to protect the site and surrounding properties. Such plan shall be submitted by the Applicant at the time of submittal for a conditional use permit to operate the site and shall be approved by the Planning Commission.

Quality of Life Concerns:

Setbacks: To minimize impacts to neighboring properties, no active mining shall occur closer than 50 feet from property lines of the subject property. Overburden and topsoil may be placed in the setback so long as it is stabilized so that fugitive dust does not enter adjacent properties. No structures shall be placed in the setback area, nor shall any equipment be stored in the setback area. *Vegetation shall remain in the 100-setback for natural screening, subject to the Fire Protection Plan of the Crook County Fire and Rescue District. The setbacks should be measured and staked so the neighbors and the operator can identify the setback. Setbacks shall be 200 feet from the dwelling on tax lot 1616120000501 and 100 feet from existing dwellings on all other tax lots. No house may be built within 50 from the property lines of the site on currently vacant lots.*

Access: Access to the subject property shall be limited to the existing access on Juniper Canyon Rd.

Dust Mitigation: Applicant shall control all fugitive dust emissions associated with all extraction and processing operations onsite. Excepting actively mined areas, Applicant shall stabilize all disturbed areas to minimize dust using hydro-seeding or other soil stabilization methods consistent with the Dust Management Plan. Internal roads should be watered during operations if necessary to prevent fugitive dust from leaving the property. The Dust Management Plan shall be submitted and approved by the Planning Commission at the time the Applicant submits its conditional use permit.

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

Noise: The County has no noise ordinance, but noise is regulated by the Oregon Department of Environmental Quality. To the extent applicable, Applicant shall comply with all noise regulations. Blasting shall be subject to reasonable restrictions consistent with the approval for the Bartels site, *unless specifically addressed elsewhere in the Program to Achieve.*

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

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

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

Lighting: All standards listed in CCC 18.126, as in effect at the time the conditional use permit is applied for, shall be met by the Applicant.

Hours of Operation:

(a) June 1st through October 31st: 6:00 a.m. to 9:00 p.m., Monday through Friday. 8:00 a.m. to 5:00 p.m., Saturday.

(b) November 1st through May 31st: 7:00 a.m. to 6:00 p.m., Monday through Friday. 8:00 a.m. to 5:00 p.m., Saturday.

(c) No operations shall be conducted on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.

Crushing:

(a) June 1st through October 31st: 7:00 a.m. to 9:00 p.m., Monday through Friday. 8:00 a.m. to 5:00 p.m., Saturday.

(b) November 1st through May 31st: 7:00 a.m. to 6:00 p.m., Monday through Friday. 8:00 a.m. to 5:00 p.m., Saturday.

(c) No operations shall be conducted on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.

Blasting:

(a) Blasting shall be restricted to the hours of 10:00 a.m. to 4:00 p.m., Monday through Friday. No blasting shall occur on Saturdays, Sundays or legal holidays.

(b) The operator shall be responsible for notifying the owners and inhabitants of conflicting uses located within 1,500 feet of the blasting site by written notice delivered by certified mail to be received by each person entitled to notice at least 7 business days prior to the time the blasting will occur. The notice shall include contact information of the blasting contractor for immediately adjacent neighbors, with a dwelling within 300 feet, who want to have pre-blast surveys and seismic readings recorded during blasting. Any seismic readings recorded shall be provided to the Crook County Planning Department.

Land Uses

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

Impact Area: All allowed and conditional uses permitted by the applicable zoning ordinance may be allowed in the impact area. Reasonable conditions may be applied to limit conflict with the resource use on the Mining Area. A waiver of remonstrance shall be required from any applicant seeking approval of an allowed or conditional use permit in the impact area confirming that they will not object or complain about the mining operation on the subject property.

VI. DECISION

The Crook County Board of Commissioners finds there is enough evidence based on the above findings of fact and the materials in the record to meet the criteria, to amend the Crook County Comprehensive Plan to include the Subject Property as a 3C site and to include the ESEE analysis and Program to Achieve described above.

Respectfully submitted:

**John Eisler, Director
Community Development**

DATED this ____ day of _____, 2025

**Seth Crawford
County Commissioner**

**Susan Hermreck
County Commissioner**

**Brian Barney
County Commissioner**