

Crook County Counsel's Office

Mailing: 300 NE Third St., Prineville, OR 97754
Physical: 267 NE 2nd St., Ste 200, Prineville, OR 97754

• Phone: 541-416-3919
• Fax: 541-447-6705



MEMO

TO: Crook County Court

FROM: John Eisler, Asst. County Counsel

DATE: May 25, 2022

RE: 217-22-000540-PLNG - Appeal of Aggregate Mining CUP
Our File No.: Comm. Dev. 72

Crook County Community Development received an appeal from the applicant on April 6, 2022, regarding the Planning Commission's March 31, 2022 denial of a Conditional Use Permit application (Record No. 217-21-000573, the "Application") for a Mining Operation submitted by Matt Ropp of Knife River Corporation – Northwest (hereinafter, "Appellant" or "Knife River"). Appellant's ground for appeal is that the Planning Commission's determination that the Application did not demonstrate consistency with CCC 18.160.020(2) was "conclusory and neglects to acknowledge substantial evidence in the record which clearly demonstrates consistency with Ordinance No. 328 and all applicable provisions of the CCC." Appellant asks the County Court to reverse the Planning Commission's decision and approve the Application.

I. BACKGROUND

Knife River submitted applications to add the Subject Property—77.98 acres at 6487 NW Lamonta Road; T14 S, R15 E WM, Section 14; Tax lot 103—to the County's inventory of significant aggregate resource sites (Application 217-21-00436-PLNG or the "Comp Plan Amendment") and to authorize the extraction of sand and gravel from the site (the "Application"). The Comp Plan Amendment was approved by the County Court via Ordinance No. 328 on February 2, 2022, which designated the Subject Property as a "3b site" on the inventory of significant aggregate resources in our County's comprehensive plan.

Following the Comp Plan Amendment, the Planning Commission re-opened the record for the CUP Application to include the record developed for the Comp Plan Amendment and welcomed additional written testimony in response to the proceedings before the County Court. A summary of the new evidence and testimony is provided in the March 31, 2022 Amended Staff Report to the Planning Commission. The Planning Commission deliberated on March 16, 2022, and issued its decision to deny the Application on March 31, 2022.

The decision to deny was based on CCC 18.160.020(2), which is part of the general criteria for conditional uses and asks whether or not the proposed activity "will have minimal adverse

impact on the (a) livability, (b) value and (c) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright.”

The Planning Commission found “that even with the conditions [from Ordinance 328], the proposed mining operation would have more than a minimal adverse impact on the adjacent properties.” The Planning Commission stated that it “relied on information from the ESEE analysis regarding the impacts to conflicting uses and the determination of the site as a ‘3B’ site with a finding that the conflicting uses are of sufficient importance relative to the resource site in making their decision.”

II. PROCESS ON APPEAL

The County’s appeal procedures are found in CCC 18.172.110. The Appeal was timely received and complete. Notice was timely published on May 17, 2022. The Appellant is to provide a copy of the transcript no later than seven calendar days before June 1, 2022.

The County Court’s hearing of this appeal is an “on the record review,” to be based on the record made before the Planning Commission, unless the County Court elects, by motion, to supplement the record. The burden remains with the applicant to demonstrate that relevant criteria were met and why the initial decision is in error.

At the conclusion of this hearing, the County Court may affirm, overrule, or modify the Planning Commission’s decision and shall set forth findings showing compliance with applicable standards and criteria. The County Court may also remand the Application back to the Planning Commission with instructions to consider additional facts, issues, or criteria not previously addressed.

III. REVIEWING THE COUNTY CODE

Appellant’s basis for the Appeal as written is: “The Planning Commission’s decision to deny [the Application], citing Applicant’s failure to demonstrate consistency with Crook County Code (CCC) 18.160.020(2), is conclusory *and* neglects to acknowledge substantial evidence in the record which clearly demonstrates consistency with Ordinance No. 328 and all *applicable* provisions of the CCC.” (Emphasis added). That statement can be interpreted to mean that (1) Appellant demonstrated consistency with CCC 18.160.020(2) and all other applicable provisions of the CCC; or (2) the statement could be interpreted to mean the decision regarding CCC 18.160.020(2) was conclusory, but, also, the Application still demonstrated consistency with all *applicable* provisions of the County Code.

The County Court should assume the broader interpretation of the basis for the Appeal to allow the parties with standing more latitude in their arguments before the County Court, which should help lessen the chance of further litigation.

A. Interpretive Standards

Reviewing courts are required to defer to the County Court’s interpretation of its own Comprehensive Plan and County Code “if that interpretation is ‘plausible,’ *i.e.*, it is not ‘inconsistent with the express language of the comprehensive plan or land use regulation’ or

inconsistent with the underlying purpose and policies of the plan and regulation.” *Restore Or. v. City of Portland*, 301 Or. App. 769, 778 (2020) (citing ORS 197.829(1) and *Siporen v. City of Medford*, 349 Ore. 247, 259 (2010)). That standard of review is described as “highly deferential” and the “existence of a stronger or more logical interpretation does not render a weaker or less logical interpretation ‘implausible.’” *Id.* at 785-86 (citing *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Ore. App. 543, 555 (2012)).

While the County Court is the policy-making body and quasi-judicial decision-maker for Crook County, there is no independent obligation to interpret our County Code, like there is for the State’s appellate courts. *See, e.g., Stull v. Hoke*, 326 Or. 72, 77 (1997) (“In construing a statute, this court is responsible for identifying the correct interpretation, whether or not asserted by the parties.”). However, should the County Court fail to supply a reviewable interpretation of a critical provision of our County Code, LUBA may supply its own interpretation—obviously, without any deference to the County. *All. for Responsible Land Use v. Deschutes Cty.*, 149 Or. App. 259, 264-65 (1997); ORS 197.829(2).

In interpreting our County Code, we are to employ the framework provided in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, (1993), beginning with the text and context. *Church v. Grant County*, 187 Or App 518, 524 (2003). It is thus an opportune time to step back and take a close look at all applicable provisions of our County Code to resolve this Appeal. Three chapters: 18.16 (EFU Zones), 18.160 (Conditional Uses), and 18.144 (Aggregate Resource Sites) require inspection.

B. Chapter 18.16 Exclusive Farm Use Zones

The Subject Property is zoned Exclusive Farm Use Zone, EFU-2 (Prineville Valley-Lone Pine Areas). The process begins, then, with the Use Table of 18.16.010. The Application would fall under Use 4.4: Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources. Use 4.4 is a Use Type “C”—meaning conditional use. “Conditional uses are permitted subject to county review, any specific standards for the use set forth in [the Use Table], the conditional use review criteria in CCC 18.16.020, the general standards for the zone, and specific requirements applicable to the use in Chapter 18.160 CCC.” The specific standards for the Subject Property in the Use Table are CCC 18.16.015(11) and chapter 18.144. The section at CCC 18.16.015(11) states that such applications are (1) subject to a land use permit if greater than 1,000 cubic yards; (2) only to be approved if the site is mapped on the County’s inventory; and (3) subject to chapter 18.144.

Taken altogether, under CC 18.16.010 the Application is a conditional use, subject to the conditional use review criteria in CCC 18.16.020, the general EFU-2 standards, the specific requirements in chapters 18.160, and all of chapter 18.144.

C. Chapter 18.160 Conditional Uses

Conditional use applications typically all funnel here, as “a conditional use listed in this title shall be permitted, altered or denied in accordance with the standards and procedures of this title and this chapter.” CCC 18.160.010. The section the Planning Commission found the Appellant did not meet is found here, in section 18.160.020 General criteria, and concerns the adverse impact to, *inter alia*, the value and livability of the surrounding properties. The chapter also

grants the County the authority to apply general conditions of approval (CCC 18.160.030) and describes the procedure to apply to conditional use applications (CCC 18.160.060).

The specific standards for mining in this chapter are listed in CCC 18.160.050(9). The subsection has four parts. Subpart (9)(a) requires that the application has enough information to allow the Planning Commission to set standards regarding things like setbacks, environmental protections, and post-mining reclamation. The remainder of the section addresses roads, state and federal agencies, and rock crushing.

D. Chapter 18.144 Aggregate Resource Sites

This chapter is intended specifically and solely for aggregate sites. The chapter has seven sections: .010 Purpose; .020 Application; .030 Conditional uses subject to planning commission review; .040 Approval and review criteria; .050 Approval procedures; .060 Development standards; and .070 Enforcement procedures. This chapter was first introduced in Crook County in 1991 as part of the DLCDC enforcement order that also amended our Comprehensive Plan as described in my memo during the Comp Plan Amendment. See Ex. 1. The chapter was brought into our code during the full codification in 2003. Four of the sections are unchanged from 2003. The only two sections with significant substantive changes since 2003 are .050 Approval procedures and .060 Development standards. The chapter is broken down as follows.

i. .010 Purpose

The stated purpose of the chapter is to review such applications “consistent with the ESEE analysis contained in the comprehensive plan in accordance with LCDC Goal 5 and ORS 215.298.” The County Court should be familiar with the ESEE analysis adopted as part of Ordinance 328. The statute referenced, ORS 215.298 Mining in exclusive farm use zone, mirrored our CCC 18.16.015(11) mentioned above, when our chapter 18.144 was written.¹

ii. .020 Application

This section makes it clear that chapter 18.144 applies only to aggregate and mineral resource uses in EFU and F1 zones that are subject to conditional use review.

iii. .030 Conditional uses subject to planning commission review

Subsection (1) here states that the following conditional mining uses are permitted subject to review on sites approved under a comprehensive ESEE analysis and that the hearing authority’s review “shall conform to the ESEE analysis and *this* chapter.” (Emphasis added). The Application qualifies as a chapter 18.144 use under subsection (3)(b) – mining of aggregate and other mineral and other subsurface resources.

iv. .040 Approval and review criteria

Section (1) lists five groups of criteria that an application must satisfy. Section (2) states that an applicant may demonstrate the satisfaction of the criteria in section (1) through the imposition of conditions. Section (3) states: “To the extent compliance with the approval criteria of this section

¹ The statute was recently amended to now exempt “significant mineral resource sites” from much of the conditional review process in Baker, Grant, Harney, Lake, Malheur, Union, and Wallowa counties.

has been determined as part of the identification and resolution of conflicting uses and development of a program to achieve goal compliance in the comprehensive plan, *the determination shall be binding until changed by amendment to the plan.*” (Emphasis added). Section (4) is inapplicable. Most importantly, the preface to section (1) states: “*Notwithstanding any provisions in this title to the contrary, an application for a permit for a use listed in CCC 18.144.030 shall be allowed if it meets the following criteria.*” (Emphasis added). The criteria of CCC 18.144.030(1) are:

- (a) The site must be designated as a mineral or aggregate resource site or an energy source site on an inventory of significant Goal 5 resources in the comprehensive plan;
- (b) The proposed use must be consistent with the applicable ESEE analysis and conditions contained in the comprehensive plan. In the event conditions imposed on the mining use by the comprehensive plan to mitigate mining impacts on specific conflicting uses are less restrictive than conditions necessary to address these same impacts under the standards of this section, the conditions imposed by the comprehensive plan control;
- (c) The proposed use must be shown to not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
- (d) The proposed use must be shown to not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- (e) There must be adequate public facilities and services (street capacity, water supply, police protection, fire protection, energy and communications services) available to meet the additional demands created by the proposed use or that can be made available through the orderly and efficient extension or expansion of these facilities and services.

v. .050 Approval procedures

This section has a few important subsections. Subsection (1) informs that such applications shall be processed in accordance with chapters 18.172 (Administrative provisions) and 18.144. Subsection (2) directs that the hearing authority “shall review the application and shall grant or deny approval based on conformance of the application with the requirements of this chapter and with the appropriate site-specific or generic ESEE analysis in the comprehensive plan.” This instruction to limit the review is repeated in subsection (4): “The hearing authority shall deny approval *only if* the requirements of this chapter or the ESEE analysis are not or cannot be satisfied by the proposed application.” (Emphasis added). The instruction is repeated again for modifications to the application at subsection (3): “The hearing authority *may only* require modifications to the application *as are necessary to fulfill the requirements of this chapter* and the appropriate site-specific or generic ESEE analysis. Any modifications must be clear and objective.” (Emphasis added). The remainder of section .050 details various requirements and information (materials to be extracted, water management plan, surrounding vegetation, security plan, etc.) needed in the application above-and-beyond the site reclamation plan submitted to DOGAMI.

vi. .060 Development standards

This section supplies a list of boilerplate standards that apply to every mining and aggregate site seeking conditional use approval, as a sort of baseline, de facto list of conditions of approval. The section covers things such as setbacks, operating hours, groundwater management, weed control, and more. Section .070 concerns post-approval enforcement and is inapplicable to the Application.

IV. ANALYSIS

Through this review, it becomes clear that the hearing authority should limit its analysis to chapter 18.144, to the exclusion of chapter 18.160. Our County Code provides a general path for all conditional use applications to follow—and that path would include CCC 18.160.020(2)—and then there is a separate, specific path laid out for aggregate resource sites in chapter 18.144. This situation invokes a classic canon of statutory construction—*generalia specialibus non derogant*—roughly translated to “the specific controls the general.” See *State v. Pearson*, 250 Or. 54, 58 (1968) and ORS 174.020(2) (“When a general provision and a particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.”).

The express language used in chapter 18.144 commands this interpretation. The chapter directs the hearing authority to limit its review to *only* the ESEE analysis and chapter 18.144. CCC 18.144.030. The next section tells us that an application “shall be allowed” if it meets the listed, limited criteria “notwithstanding any provisions [in our Code] to the contrary.” CCC 18.144.040. In other words, even if there are contrary provisions elsewhere in the Code, an application “shall be allowed” if it meets the requirements of chapter 18.144. The same section goes on to state that anything resolved during the Comp Plan Amendment “shall be binding until changed by amendment to the plan.” *Id.* at (3). In the approval procedures, the chapter tells us to process the application in accordance with our administrative procedures and chapter 18.144. CCC 18.144.050(1). The section then repeats—three times—that the hearing authority can only review, modify, and approve/deny the application based on the Comp Plan Amendment or chapter 18.144. *Id.* at (2)-(4).

In addition to the plain, unambiguous, direct language, the context also supports this interpretation. As stated above, CCC 18.16.010’s Use Table directs that an application is subject to the conditional use review criteria of CCC 18.16.020. That section requires a demonstration that an application’s use will not (1) force a significant change in farming practices; (2) significantly increase the cost of farming practices; and (3) be compatible with vicinity uses. Criteria (1) and (2) are covered verbatim in the criteria of CCC 18.144.030, while the compatibility questions are a consideration of the ESEE analysis and CCC 18.144.030(1)(e). Thus, the review criteria in EFU chapter 18.16 are sufficiently addressed in chapter 18.144.

Likewise, the provisions in chapter 18.144 appear to replace the need for the conditional use criteria of chapter 18.160. First, the chapter 18.160 sections granting authority to impose conditions of approval and directing the procedure to follow, .030 and .060, are unnecessary in light of chapter 18.144’s .060 and .050, respectively. Also, the specific conditional use standards for mining in CCC 18.160.050(9) are all also covered more extensively in chapter 18.144 in sections .050 and .060, rendering the specific criteria in chapter 18.160 superfluous. Finally, the

general conditional use criteria of CCC 18.160.020—of which the Planning Commission found the Application did not meet (2)—are either covered in the ESEE² or chapter 18.144³ or would defeat the purpose of the ESEE analysis⁴.

This interpretation presents an important question: What protects the neighbors? The thirteen subsections in CCC 18.144.060, the enforcement procedures in CCC 18.144.070, and, most importantly, the Program to Achieve the Goal within the Comp Plan Amendment. The purpose of the Comp Plan Amendment was to recognize that, yes, utilizing the resource at the Subject Property will create conflicts with the surrounding properties, but what can reasonably be done to minimize that impact while still allowing the extraction of an important State resource? The County went through a thorough review of the impacts from and to conflicting uses and developed a Program to Achieve Goal 5. The Program aims to achieve relative harmony among the Subject Property and surrounding land by conditioning the extraction with provisions for setbacks and berms, water rights, traffic, dust mitigation, noise, reclamation, and groundwater protection.

As the Planning Commission noted, even with these provisions, the impact to neighboring properties' livability and value may be more than minimal. However, that is the balance we have been asked to strike by the State and directed to achieve in our County Code. The State Legislative Assembly's wishes are clear that the extraction of minerals and subsurface resources are essential to the economic well-being of the State, and competing resource uses should be balanced, but aggregate mining should not be restricted unless "public health and safety concerns necessitate [its] restriction." ORS 215.299. There is no evidence in the record that the operations at the Subject Property would rise to the level of risking the public's health and safety. Thus the State Legislature directs that we should not "restrict the removal of the full depth of aggregate." *Id.*

Finally, the designation of the Subject Property as a 3b site instead of a 3c site should not change the interpretation. The designation of 3b means that "conflicting uses shall be allowed fully." Approval of the Application will have no bearing on which conflicting uses will be "allowed" under our Code. The 3b designation does not mean that conflicting uses cannot be impacted in any way.

V. MOVING FORWARD

Even with the "highly deferential" standard afforded the County Court, for the reasons above, I do not see an interpretation denying this Application because of a failure to satisfy CCC 18.160.020(2) withstanding scrutiny from a reviewing authority. However, this presents some challenges.

The "goal post rule" states that "approval or denial of [an] application shall be based upon the standards and criteria that were applicable at the time the application was first submitted." ORS 215.427(3). From the historical aggregate mining applications staff has been able to review, chapter 18.160 has been applied as approval criteria throughout the existence of chapter 18.144's

² Compare CCC 18.160.020(4) and aggregate being a Goal 5 resource and CCC 18.144.040(1)(a).

³ Compare CCC 18.160.020(1) and CCC 18.144.040(1)(b).

⁴ Compare CCC 18.160.020(2) and process of identifying and "resolving" conflicting uses in Ordinance 328.

enactment, just as it was for the present Application. That does not mean the County should continue to do so. *See McInnis v. City of Portland*, 25 Or LUBA 376, 379, *aff'd without opinion*, 123 Or App 123 (1993) (ruling the local government could find that the same standards and criteria did not apply to a subsequent application with no intervening rule change) and *Holland v. City of Cannon Beach*, 154 Or. App. 450, 459 (1998) (“[T]here may be circumstances under which a city governing body may appropriately change a previous interpretation as to whether a particular provision is an approval standard during its proceedings on a particular application.”). Subsequent decisions have clarified that, when the goal post rule is an issue regarding the interpretation of applicable criteria, the “emphasis is on consistency” of treatment for applicants. *Jones v. Willamette United Football Club*, 307 Or. App. 502, 513 n.8 (2020). Should the County Court adopt my recommendations herein as its decision, that decision will ratify an interpretation by “the County” that CCC 18.160.020(2) is not an applicable approval criterion for aggregate mining applications more properly reviewed under chapter 18.144. *Id.* at 513.

Another issue to contemplate is whether the parties should have a right to re-argue the Application with this new interpretation. Two conditions must exist in order for the parties to be entitled to further evidence and argument:

First, the interpretation that is made after the conclusion of the initial evidentiary hearing must either significantly change an existing interpretation or, for other reasons, be beyond the range of interpretations that the parties could reasonably have anticipated at the time of their evidentiary presentations. Second, the party seeking reversal must demonstrate to LUBA that it can produce specific evidence at the new hearing that differs in substance from the evidence it previously produced and that is directly responsive to the unanticipated interpretation.

Gutoski v. Lane Cty., 155 Or. App. 369, 373-74 (1998). Here, the first condition exists: the parties likely could not have reasonably anticipated this change in interpretation. But the second condition does not exist—this change in interpretation, by simply removing some of the applicable criteria, does not produce a situation in which additional evidence or arguments would be responsive. The Planning Commission *did* apply the criteria from CCC 18.16.015(11) and the relevant sections of chapter 18.144. The parties had ample time to address the County on all of the remaining criteria, and the Planning Commission found the Application met its burden in those areas.

Removing the source of the denial, CCC 18.160.020(2), would mean that the application should be approved. With that said, the County Court’s two feasible options here as I see them are: (1) remand the Application back to the Planning Commission with instructions to interpret our County Code as described above or (2) reverse the Planning Commission’s decision and approve the Application.

Please let me know if you have any questions.

Exhibit 1

IN THE COUNTY COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF CROOK

IN THE MATTER OF AN AMENDMENT)
TO ORDINANCE 18 AND DECLARING) EMERGENCY ORDINANCE
AN EMERGENCY) NO. 52, AMENDING
) ORDINANCE NO. 18

WHEREAS, the Crook County Court adopted Ordinance No. 44 on January 23, 1991 to amend the Crook County Zoning Ordinance No. 18, to comply with the Periodic Review process pursuant to ORS 197.640 and 197.641; and

WHEREAS, the DLCD Staff has recommended amendments to the Goal 5 Mineral and Aggregate portion of the Final Periodic Review Order.

WHEREAS, the Crook County Court has agreed to submit to the Land Conservation and Development Commission amendments addressing these concerns by September 16, 1991 pursuant to modified Enforcement Order 89-EO-656; and

WHEREAS, the suggested amendments to the Ordinance are key factors in this matter; and

WHEREAS, Crook County agrees to adopt those recommendations of DLCD that were discussed between County Staff and DLCD Staff on September 9, 1991; and now

THEREFORE, THE CROOK COUNTY COURT ORDAINS AS FOLLOWS:
that Crook County Zoning Ordinance is hereby amended as follows:

(1) Crook County Zoning Ordinance is amended to read as follows:

See Exhibit "A".


This Ordinance being immediately necessary for the health, welfare and safety of the people of Crook County, this Ordinance shall become effective upon signing.

DATED this 16 th day of September, 1991.

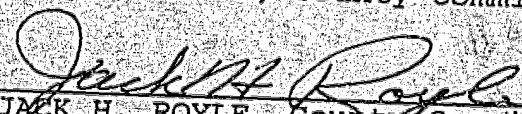
CROOK COUNTY COURT:



DICK HOPPES, County Judge



TED A. COMINI, County Commissioner



JACK H. ROYLE, County Commissioner

EXHIBIT "A"

AMENDMENTS TO ORDINANCE NO. 18

FOR ORDINANCE NO. 52

Section 1: Amend Subsection (3) of Sections 3.010, 3.020 and 3.030 to read as follows:

(3) Goal 5 Conditional Mining Uses Subject to Hearing Authority Review. See uses and procedures described in Article 11 of this ordinance.

Section 2: Amend section 1.020 to add the definition of a conflicting use and to read as follows:

27A. Conflicting Use. A conflicting use is one which could negatively impact or be negatively impacted by a Goal 5 resource.

Section 3: Amend Subsection (5) of Sections 3.010, 3.020, and 3.030 to read as follows:

(5) Use Limitation: No conflicting use shall be allowed in any Goal 5 mining impact area designated in the comprehensive plan without first obtaining approval under the standards and criteria set forth in this subsection.

(a) Review and Approval Criteria. An application for review shall be required for a conflicting use in an impact area prior to commencement of construction of the use. The approving authority shall review and approve the application provided:

(1) The proposed use is consistent with the ESEE analysis in the comprehensive plan; and

(2) The proposed use will not prevent the adjacent aggregate operator from meeting the standards and conditions set forth in Article 11 of this ordinance.

(B) Waiver of Remonstrance. The applicant for site plan approval of a conflicting use in the Goal 5 mining impact area shall sign and record in the Crook County book of records a statement declaring that the applicant and his or her successors will not now or in the future complain about the allowed surface mining activities on the adjacent surface mining site.

(C) Development Agreement and Performance Bond. As a condition of approval, the applicant may be required to execute a development agreement with the County and performance bond or other form of security approved by the County to ensure full and faithful performance of any required improvements. Any bond shall be for 100 percent of the dollar amount of the improvement cost.

3.020
aring
ed in
of a
which
Goal
.020,
ll be
n the
under
ation
in an
of the
ve the
th the
nt the
ds and
nt for
ining
y book
nd his
mplain
jacent
Bond.
red to
y and
by the
of any
ent of

Section 4. Amend the Zoning Ordinance to include the following article 11.

ARTICLE 11

HEARING AUTHORITY REVIEW OF MINING RESOURCE SITES

Section 11.010. Purpose. The purpose of this article is to provide procedures and standards for review of applications for mining and processing of significant mining resource sites consistent with the ESEE analysis contained in the Comprehensive Plan in accordance with LCDC Goal 5 and ORS 215.298.

Section 11.020. Application. The provisions of this article apply only to mining resource uses permitted subject to site plan review under the applicable zoning provisions.

Section 11.030. Conditional Uses Subject to Review by a Hearing Authority. The following conditional mining uses are permitted subject to review on sites approved for surface mining under a comprehensive plan ESEE analysis. Such review shall conform to the ESEE analysis and the clear and objective standards set forth in this article.

(1) Operations for the production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 522.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.

(2) Operations conducted for:

(a) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 522.005 not otherwise permitted under paragraph (G) of subsection (1) of this section;

(b) Mining of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(c) Processing as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(d) Processing of non-aggregate mineral resources and other subsurface resources.

(e) Sale of products on the site from which the products were extracted.

3. Buildings, structures and equipment normally required to conduct the uses listed in this Section 11.030, subject to the approval criteria and standards of and any conditions

imposed pursuant to the applicable zone in which the following are located.

Section 11.040. Approval and Review Criteria. (1) Notwithstanding any other provisions to the contrary, only standards in this article shall apply to a use permitted in Section 11.030.

(a) A permit for mining shall be issued only for a site included on the significant inventory list and designated for mining in an ESEE analysis of Crook County's Comprehensive Plan.

(b) The application shall be approved if it is consistent with the appropriate site specific or generic ESEE analysis in the comprehensive plan and the standards in this article.

(c) If the County finds that there has been a "significant change" in accepted farm practices occurring on surrounding lands devoted to farm use, the County may require that the applicant demonstrate that the following standard has been or will be satisfied through the imposition of clear and objective conditions: The mining use will not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices on surrounding land devoted to farm use.

For purposes of this paragraph, a "significant change" occurs when a farm use is established after the most recent ESEE analysis and when that farm use creates new conflicts not otherwise addressed as part of the comprehensive plan ESEE analysis. The new farm use must be established and constitute an existing commercial agricultural enterprise.

(d) Notwithstanding the provision in subsection (b) of this section to the contrary, if evidence is presented to the hearing authority that would indicate that the most recent prior ESEE analysis or any part thereof is no longer appropriate because of a significant change in circumstances, the ESEE analysis is subject to review by the hearing authority under the standards of the comprehensive plan. Any changes to the ESEE analysis must be adopted pursuant to the procedures regarding comprehensive plan amendments.

(e) No application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within two miles of a planted vineyard in any EFU zone.

Section 11.050. Approval Procedures. (1) Each application for approval shall be processed in accordance with Articles 9 and 11.

Section 4. Amend the Zoning Ordinance to include the following article 11.

ARTICLE 11

HEARING AUTHORITY REVIEW OF MINING RESOURCE SITES

Section 11.010. Purpose. The purpose of this article is to provide procedures and standards for review of applications for mining and processing of significant mining resource sites consistent with the ESEE analysis contained in the Comprehensive Plan in accordance with LCDC Goal 5 and ORS 215.298.

Section 11.020. Application. The provisions of this article apply only to mining resource uses permitted subject to site plan review under the applicable zoning provisions.

Section 11.030. Conditional Uses Subject to Review by a Hearing Authority. The following conditional mining uses are permitted subject to review on sites approved for surface mining under a comprehensive plan ESEE analysis. Such review shall conform to the ESEE analysis and the clear and objective standards set forth in this article.

(1) Operations for the production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 522.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.

(2) Operations conducted for:

(a) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under paragraph (G) of subsection (1) of this section;

(b) Mining of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(c) Processing as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(d) Processing of non-aggregate mineral resources and other subsurface resources.

(e) Sale of products on the site from which the products were extracted

3. Buildings, structures and equipment normally required to conduct the uses listed in this Section 11.030, subject to the approval criteria and standards of and any conditions

imposed pursuant to the applicable zone in which the following are located.

Section 11.040. Approval and Review Criteria. (1) Notwithstanding any other provisions to the contrary, only standards in this article shall apply to a use permitted in Section 11.030.

(a) A permit for mining shall be issued only for a site included on the significant inventory list and designated for mining in an ESEE analysis of Crook County's Comprehensive Plan.

(b) The application shall be approved if it is consistent with the appropriate site specific or generic ESEE analysis in the comprehensive plan and the standards in this article.

(c) If the County finds that there has been a "significant change" in accepted farm practices occurring on surrounding lands devoted to farm use, the County may require that the applicant demonstrate that the following standard has been or will be satisfied through the imposition of clear and objective conditions: The mining use will not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices on surrounding land devoted to farm use.

For purposes of this paragraph, a "significant change" occurs when a farm use is established after the most recent ESEE analysis and when that farm use creates new conflicts not otherwise addressed as part of the comprehensive plan ESEE analysis. The new farm use must be established and constitute an existing commercial agricultural enterprise.

(d) Notwithstanding the provision in subsection (b) of this section to the contrary, if evidence is presented to the hearing authority that would indicate that the most recent prior ESEE analysis or any part thereof is no longer appropriate because of a significant change in circumstances, the ESEE analysis is subject to review by the hearing authority under the standards of the comprehensive plan. Any changes to the ESEE analysis must be adopted pursuant to the procedures regarding comprehensive plan amendments.

(e) No application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within two miles of a planted vineyard in any EFU zone.

Section 11.050. Approval Procedures. (1) Each application for approval shall be processed in accordance with Articles 9 and 11.

(2) The hearing authority shall review the application and shall grant or deny approval based on conformance of the application with the requirements of this article and with the appropriate site-specific or generic ESEE analysis in the comprehensive plan.

(3) The hearing authority may only require modifications to the application as are necessary to fulfill the requirements of this article and the appropriate site-specific or generic ESEE analysis. Any modifications must be clear and objective.

(4) The hearing authority shall deny approval only if the requirements of this article or the ESEE analysis are not or cannot be satisfied by the proposed application.

(5) Prior to establishing a use authorized by this article, the property owner or agent must receive approval from the County.

(6) In addition to all information required for a site reclamation plan by DOGAMI, the applicant shall submit the following information:

(a) An application for a site plan approval shall contain suitable maps, drawings and narrative to assure the requirements of this Article can and will be met. A complete application must contain the following information:

(1) A complete application form from the County.

(2) A list of known materials to be extracted or processed together with a general description of the excavation operations and the estimated duration of operation at the site.

(3) A map of the site which shows existing trees and natural vegetation; existing water courses, including streams, rivers, ponds and lakes; locations of conflicting uses located in the designated impact area; adjacent ownerships, including the location of structures which relate to the setback or other requirements of this zone; and, existing and proposed roads.

(4) A surface water management plan for the site and all phases of the operation.

(5) A map which shows the location of the surface mining area, the location of all processing and storage areas, the location of caretaker dwelling (if proposed), landscaping, screening and buffer areas.

(6) A landscape management and maintenance plan adequate to demonstrate compliance with provisions of this

zone.

(7) A map showing existing contours.

(8) A map or other drawing showing the contours of the site upon completion of the operation together with a description of the proposed end use of the reclaimed site.

(9) An environmental report from an engineer or other qualified professional which is adequate to demonstrate that the operation can conform to County, DEQ, and DOGAMI requirements as outlined in the development standards in Section 11.060 and requirements of the appropriate site-specific or generic ESEE analysis in the comprehensive plan.

(10) A security plan addressing the following issues:

- (a) lighting;
- (b) fencing;
- (c) gates at access points;
- (d) water impoundments;
- (e) sloping; and
- (f) security of vehicles and equipment.

Section 11.060. Development Standards. Upon approval of a conditional mining use application, all the following standards apply:

(1) Mining activities shall be located and conducted at least:

(a) 100 feet from an existing conflicting use, unless the owner of the conflicting use signs and files an agreement which authorizes the mining to be conducted closer than 100 feet. In no case shall such mining be conducted closer than 50 feet of the boundary of an adjacent ownership.

(b) 100 feet from a road not owned by the applicant and from the property line of the applicant unless that distance is not sufficient to protect the adjoining property from land movement, or the threat of land movement. In such cases, the setback shall be the minimum distance required by DOGAMI that will protect the adjoining property from movement or the threat of movement. This setback shall be reviewed and approved by DOGAMI prior to approved by the hearing authority. In no case shall the setback be less than 100 feet.

(2) Processing of resource material and the storage of equipment shall be at least 500 feet from an existing noise or dust sensitive use, unless the owner of the residence or use signs and files an agreement which authorizes the

processing of resource material or storage of equipment closer than 500 feet. In no case shall such activities be located closer than 100 feet from any adjacent dwellings.

(3) Access. All private access roads from mining sites to public highways, roads or streets shall be paved or graveled. All onsite roads and access roads from the site to a public road shall be designed, constructed, and maintained to accommodate the vehicles and equipment which use them. Whether paved or graveled, the roads shall be maintained by the applicant in accordance with county road standards. Before the applicant may exercise the privileges of the permit, the applicant shall provide a letter of agreement to the county to maintain the road to the applicable county road standards. If the applicant fails to provide the letter of agreement prior to exercising the privileges of the permit, or fails to so maintain the road, the applicant shall submit a performance bond equal to 100% of the cost to construct a road of that type. The bond amount shall be deposited with the treasurer of the county.

(4) Effective vehicle barriers or gates shall be required at all access points to the site.

(5) Screening:

(a) Interests Protected: Public roads, public schools, public waysides, private recreational developments, scenic areas, noise and dust sensitive conflicting uses.

(1) Berms, fencing, landscape features, trees and other vegetation, or any combination thereof shall be preserved in their natural state or shall be established in order to block or obscure the view of the surface mine, stockpiled materials, buildings, structures and equipment from conflicting uses located inside the impact area.

(2) All existing trees and other vegetation or other landscape features which are located both on and within 100 feet of the boundary of the property on which the mining site is located shall be preserved in its natural state.

(b) Interest Protected: Riparian Habitats. All existing trees and other natural vegetation within 100 feet of the outer edge of a riparian habitat shall be preserved in its natural state.

(c) Where screening is shown to be of minimal value or effectiveness because of topography or other features of the site, the screening requirements may be waived.

(6) Mining, storage, and processing operations shall conform to all standards of the Department of Environmental

Quality and to the requirements of DOGAMI. The County may require information, data and analyses which demonstrates the ability to meet state environmental standards.

(7) Hours of Operation. All mining extraction, processing and equipment operation shall be subject to the following limitations unless waivers authorize operation at other times:

(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.

(7) Blasting. (a) A plan addressing the potential for earth movement, flying rock, and other effects on surrounding uses shall be submitted.

(b) Blasting shall be allowed unless prohibited by the comprehensive plan ESEE analysis.

(c) Blasting which is allowed and which is to be conducted within 500 feet of any noise or dust sensitive use or agricultural use involving the raising of animals shall meet the following standards:

(1) DEQ noise control standards for blasting.

(2) Blasting shall be restricted to the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. No blasting shall occur on Saturdays, Sundays or legal holidays.

(3) The operator shall be responsible for notifying the owners and inhabitants of conflicting uses located within 500 feet of the blasting site by written notice delivered by certified mail to be received by each person entitled to notice at least 48 hours prior to the time the blasting will occur.

(8) Surface and Ground Water Management. Surface water shall be managed to provide protection against ground or surface water contamination and sediment discharge into streams, rivers and lakes. There shall also be adequate water available to the site for reclamation of the property, maintenance of screening and buffer, dust control, landscape maintenance, and processing of materials.

(9) For surface mining which is not regulated by DOGAMI, the following requirements apply:

(a) A reclamation plan shall be submitted to the County at the time of site plan approval. The reclamation plan shall assure that the surface mining site will be restored or rehabilitated consistent with the requirements of the ESEE analysis.

(b) Upon abandonment of surface mining or termination of mineral extraction on each site, all buildings, vehicles, machinery, equipment and appurtenant structures accessory to the extraction, processing, stockpiling and manufacturing operations shall be removed from the site, except for buildings and structures which are permitted uses within the applicable zoning district.

(c) All excavations shall be backfilled, contoured, sloped, or terraced as outlined in the approved reclamation plan. Topsoil shall be replaced to a depth sufficient to allow a landscaping material to be installed.

(d) In the event the owner does not comply with the approved reclamation plan, the Board may undertake, or cause to be undertaken, the required restoration or rehabilitation and the chargeable cost therefore, if not paid by the owner, shall become a lien on the property due and payable taxes.

Section 11.070. Compliance. (1) Operations conducted under this Section shall remain in strict compliance with the standards of this section.

(2) Documented evidence of noncompliance with the conditions on the permit, of this article or the applicable ESEE analysis is cause for review and automatic shutdown as follows:

(a) After each violation, the Planning Director shall issue a warning letter or notice of non-compliance or violation pursuant to this section and Crook County Ordinances #26 and #28.

(b) Upon receipt of a second violation within any twelve consecutive months, a hearing before the Commission shall be scheduled to consider the nature and seriousness of the violation. The Commission shall have the power to revoke the operating land use permit for up to two (2) weeks.

(c) Upon receipt of a third violation within any twelve consecutive months, a hearing before the Commission shall be scheduled to determine the the sanctions to be imposed based on the repetitive violations. The Commission may revoke the land use permit. The applicant may reapply

for renewal after a one (1) year time period.

KEY PUNCHED

SEP 18 1991

STATE OF OREGON } SS 101116
COUNTY OF CROOK }

I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 18th DAY OF

Sept. 19 91 AT 9:25 A.M.

AND RECORDED IN MISCELLANEOUS

RECORDS OF SAID COUNTY. MF NO. 10116

DELLA M. HARRISON, CROOK COUNTY CLERK

BY: *Della M. Harrison* DEPUTY

