



**Crook County
Community Development**
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**STAFF REPORT
CONDITIONAL USE – AGGREGATE MINING OPERATION
February 23, 2022**

APPLICATION: 217-21-000573-PLNG

PROPERTY OWNER: Robert and Lani Vanier
P.O. Box 326
Dayville, Oregon 97825

APPLICANT/AGENT: Matt Ropp, Manager of Land Planning
Knife River Corporation – Northwest
32260 Old Highway 34
Tangent, Oregon 97389

SUBJECT PROPERTY: T14 S, R15 EWM, Section 14, Tax lot 103
6487 NW Lamonta Road, Prineville, Oregon

PROPOSAL: The Applicant is requesting a conditional use permit for aggregate mining. The Applicant proposes phasing in mining to allow continued use of the property for agricultural production. The site will be reclaimed for agricultural use. On February 2, 2022, the Crook County Court approved the Applicant’s Comprehensive Plan Amendment request to add the 77.98-acre site to the County’s inventory of significant aggregate and mineral sites.

120 Timeline: The Applicant filed the conditional use application on July 9, 2021. The Applicant has extended the 120-day clock to March 16, 2022.

I. APPLICABLE CRITERIA:

Crook County Code; Title 18 Zoning

Chapter 18.08	Definitions
Chapter 18.16	Exclusive Farm Use Zones (EFU)
Chapter 18.144	Aggregate Resource Sites
Chapter 18.160	Conditional Uses
Chapter 18.172	Administration Provisions

Crook County-Prineville Area Comprehensive Plan

Chapter III, Land Use, Agriculture, Policies for Agricultural Areas of Crook County.
Goal 5, Aggregate sites.

Oregon Revised Statutes 215.283(2)(c) and ORS 215.298

Oregon Administrative Rules (OAR) 660-033-130

II. PROCEDURAL BACKGROUND:

Knife River Corporation – Northwest (the “Applicant”) seeks a conditional use permit (CUP) authorizing aggregate mining on the subject parcel. The Applicant applied for a plan amendment to add the subject parcel to the Crook County Comprehensive Plan (the “Comp Plan”) Inventory of Significant Mineral and Aggregate Resources (the “Inventory”) (217-21-000436-PLNG). The Crook County Court approved the requested plan amendment adding the subject property as a “3B” site to the County’s Inventory.

The Planning Commission jointly heard both the CUP and Comp Plan applications on July 28, 2021, August 25, 2021, and held deliberations on the Comp Plan application on September 22, 2021. Prior to the September hearing, the Planning Commission closed the record for the CUP application.

The Comp Plan recommendation was considered by the County Court at public hearings on October 20, 2021, November 3, 2021, December 3, 2022, and January 5, 2022 (deliberations only). During those public hearings, the County Court received additional evidence and argument, including both oral and written testimony. This additional evidence was included in the Court’s record for the Comp Plan Application. A list of the exhibits received by the County Court is attached as Attachment A to this Staff Report.

The purpose of the public hearing scheduled for February 23, 2022, is to consider whether to reopen the record to include the additional argument and evidence received by the County Court during the Comp Plan application proceedings in the record for the CUP application.

The Planning Commission is scheduled to deliberate the CUP decision on March 16, 2022. If the Planning Commission elects to reopen the record to include the additional evidence and argument, the Planning Commission will have time to review and consider the evidence prior to deliberations. If the Planning Commission elects to not reopen the record, the additional evidence and argument cannot be considered during deliberations.

A copy of the County Court’s decision adding the site to the County’s inventory is attached as Attachment B. Aside from the decision to reopen the record for additional evidence and argument, the Planning Commission will need to review this decision prior deliberations.

III. CCC 18.172 – Administration Provisions

Chapter 18.172.081 – Public Hearings and Order of Proceedings

(18) Reopening the Record. When the hearing authority reopens the record to admit new evidence, arguments, or testimony, the hearing authority must allow people who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts. Upon announcement by the hearing authority of their intention to take notice of such facts in its deliberations, any person may raise new issues which relate to the new evidence, arguments, testimony, or standards and criteria which apply to the matter at issue.

Staff Comment: The above quoted procedural rule is the only provision that addresses reopening the record in Chapter 18.172 of the Crook County Code. The provision appears to provide the Planning Commission broad discretion in deciding whether to reopen the record to admit new evidence, arguments, or testimony. If it elects to do, though, the Planning Commission must allow people who previously participated to request the record be reopened. The Planning Commission can consider whether such request is “necessary” and to direct that any evidence the participant intends to submit “concern” the newly presented facts.

Consistent with this code provision, ORS 197.797(7) states:

“When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

Accordingly, if the record is reopened, any person may raise new issues which relate to the new evidence, arguments, testimony, or criteria which apply the matter at issue. The new evidence, arguments, testimony, or criteria is that additional information entered into the record during the County Court Comp Plan application proceedings

IV. PROPOSED MOTION

- 1. I move to reopen the record for Planning File No. 217-21-000573-PLNG to receive the additional arguments and evidence, to include written exhibits oral testimony, received by the Crook County Court in, and made a part of the record for, Planning File No. 217-21-000436-PLNG.*

Respectfully submitted:



Will Van Vactor, Director
Crook County Planning Department

Attachment A – List of Exhibits
Attachment B – Ordinance 328

ATTACHMENT A

- Exhibit 35 - Billie Johnson
- Exhibit 36 - Pence Kelly
- Exhibit 37 - Knife River Ord 281
- Exhibit 38 - Brinkman
- Exhibit 39 - Knife River
- Exhibit 40 - Butler
- Exhibit 41 - DOGAMI
- Exhibit 42 - Hydro Assessment
- Exhibit 43 - Existing DOGAMI sites
- Exhibit 44 - Richard Zimmerlee
- Exhibit 45 - Applicant - Butler and Woodward Reclamation
- Exhibit 46 - Radabaugh
- Exhibit 47 - John Eisler, Asst. County Counsel
- Exhibit 48 - Will Van Vactor CCCD Director, Memo to Court
- Exhibit 49 - Applicant Submittal of Draft Minutes of PC Deliberations
- Exhibit 50 - Applicant - Vanier-Woodward Aerial Photos
- Exhibit 51 - Teri White
- Exhibit 52 - Bran Zednik
- Exhibit 53 - Zimmerlee
- Exhibit 54 - Pomraning
- Exhibit 55 - Mikulski
- Exhibit 56 - Johnson
- Exhibit 57 - Mikulski
- Exhibit 58 - Pomraning
- Exhibit 59 - Applicant - Woodward-Vanier Final Contours
- Exhibit 60 - Stantec
- Exhibit 61 - Hudspeth
- Exhibit 62 - Newton, Cascade Geoengineering LLC
- Exhibit 63 - Applicant - ESEE Analysis and Program to Achieve Goal 5
- Exhibit 64 - Mikulski
- Exhibit 65 – Memo from County Counsel regarding new exhibits
- Exhibit 66 – Applicant’s Final Argument
- Staff Report 1.3.2022



I, Cheryl Seely, County Clerk for Crook County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Cheryl Seely - County Clerk



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

**AN ORDINANCE OF THE CROOK
COUNTY COURT AMENDING THE
CROOK COUNTY COMPREHENSIVE
PLAN GOAL 5 INVENTORY BY
INCLUDING A NEW 3B AGGREGATE
SITE AND ADOPTING A SITE
SPECIFIC ENVIRONMENTAL SOCIAL
ECONOMIC (ESEE) ANALYSIS AND
PROGRAM TO ACHIEVE GOAL 5 FOR
THE AGGREGATE SITE AND
DECLARING AN EMERGENCY.**

ORDINANCE No. 328

WHEREAS, the Crook County Planning Commission has recommended that the Crook County Comprehensive Plan be amended to include the subject property as a new aggregate site and adopt a site specific ESEE analysis and Program to Achieve Goal 5 for the aggregate site; and

WHEREAS, the Crook County Court considered the matter, *de novo*, and confirms the Planning Commission's recommendation that the Crook County Comprehensive Plan be amended to include the subject property as a new aggregate site and adopt a site specific ESEE analysis and Program to Achieve Goal 5 for the aggregate site; and

WHEREAS, the comprehensive plan amendment is authorized by Crook County Code Title 18, Chapter 18.168, and the Comprehensive Plan of Crook County; and

NOW, THEREFORE, the Crook County Court ordains as follows::

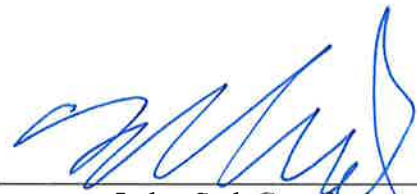
SECTION 1: Amendment. Ordinance 17 (the Crook County Comprehensive Plan) is amended to add the approximately 77.98 acre site, described as T 14 S, R 15 EWM, Section 14, Tax Lot 103, to the Goal 5 Inventory as a significant aggregate resource site and to adopt the ESEE analysis and Program to Achieve Goal 5 as a text amendment to place the subject site on the inventory of significant sites as a 3B site.

SECTION 2: Findings. The Crook County Court adopts the recommendation of the Crook County Planning Commission and issues its Findings of Fact and Conclusions of Law (Attachment A), which includes an ESEE Analysis and Program to Achieve Goal 5, as its findings in support of its Decision.

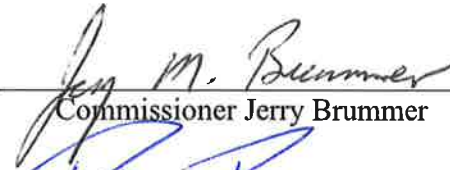
SECTION 3: Emergency. The Ordinance being necessary for the health, welfare, and safety of the people of Crook County, an emergency is hereby declared to exist and this Ordinance shall become effective upon signing.

Reading: February 2, 2022

DATED this 02nd day of February, 2022



Judge Seth Crawford



Commissioner Jerry Brummer



Commissioner Brian Barney

Attachment A to Ordinance 328

FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN THE MATTER OF
FILE NO. 217-21-000436-PLNG

I. INTRODUCTION

Applicant: Knife River Corporation – Northwest
32260 Old Highway 34
Tangent, Oregon 97389

Owner: Robert J. and Lani Vanier
P.O. Box 326
Dayville, Oregon 97825

Subject Property: 6487 NW Lamonta Road
Prineville, Oregon 97754
Tax Lot: 14151400-00103

II. PROPOSAL

The Applicant proposes to amend the Crook County Comprehensive Plan (“Comprehensive Plan”) to add a 77.98-acre quarry site to Crook County’s inventory of Significant Mineral and Aggregate Sites (“Aggregate Inventory”).

III. PROCEDURAL STATUS

Knife River Corporation - Northwest (the “Applicant”), submitted an application on or about May, 25, 2021, to add the subject property to the Crook County Aggregate Inventory. Additionally, the Applicant filed an application for a conditional use permit (“CUP”) on or about July 9, 2021, to allow Knife River to operate an aggregate mine on the subject property. That CUP application, record no. 217-21-000573-PLNG, is currently before the Crook County Planning Commission pending the County Court’s decision on this comprehensive plan amendment request.

Regarding the Applicant’s comprehensive plan amendment request, the Planning Commission conducted public hearings on July 28, 2021, and August 25, 2021, and then held a hearing to deliberate on September 22, 2021. At the conclusion of the deliberations on September 22, 2021, the Planning Commission recommended that the County Court add the subject site to the County’s Inventory of Significant Aggregate and Mineral Resources sites as a 3B site.

In addition to the Planning Commission hearings, the County Court has held three public hearings on this matter, the first on October 20, 2021, the second on November 3, 2021, and third on December 3, 2021 (with testimony limited to rebuttal argument). A hearing for deliberations only was held on January 5, 2022.

The County Court closed the record to written evidence on Monday, November 15, 2021. The Applicant submitted its final written argument on December 10, 2021 (Exhibit 66).

The record consists of oral testimony received at both the Planning Commission and County Court hearings, as well as written testimony. The exhibits are available on the County Court’s website and for review at the Community Development Department. A list of the exhibits is attached to these Findings of Fact as Appendix 1.

In this proceeding, the County Court is considering the Planning Commission’s recommendation to add the subject site to the County’s Aggregate Inventory as a 3B site. The County Court may elect to adopt the Planning Commission’s recommendation, modify the recommendation, or deny the request.

IV. BASIC FINDINGS

A. Location

The subject property is located on the north side of Stahancyk Lane and the west side of Lamonta Road, approximately three (3) miles northwest of the City of Prineville. The address is 6487 NW Lamonta Road, Prineville, Oregon. The property is identified on the County Assessor’s maps as Township 14S, Range 15E WM, Section 14, tax lot 103 (the “Subject Property”). Figure 1 is a vicinity map depicting the Subject Property.

Figure 1



Property Lines as Approximate

B. Zoning

The Subject Property is zoned Exclusive Farm Use (EFU-2) and is designated as agricultural land in the County's Comprehensive Plan. The Subject Property is not located within any wildlife overlay (e.g., deer winter range) and is not located within the City of Prineville's city limits or urban growth boundary.

C. Site Characteristics

The Subject Property is approximately 77.98 acres and currently employed for farm use. The property includes a single-family dwelling that has been on the property since the 1920s, two general purpose buildings and a machine shed.

The site slopes gently towards the northwest. There is an unnamed drainage just north of the property flowing towards the west and southwest. This is part of the irrigation system maintained by the Ochoco Irrigation District. Water flows from the northeast toward the southwest and into the Rye Grass Canal system.

D. Surrounding Area

The area surrounding the Subject Property is depicted on Figure 2 and Figure 3¹. Both figures depict a 500-foot impact area. All properties within the impact area are zoned EFU-2. Further to the west is a portion of the Woodward site that is zoned Heavy Industrial. Beyond the Woodward site to the west is an area zoned rural residential (R5) (Green Acres subdivision). There are larger agricultural operations to the southeast, east and north. There are several smaller farms south of the Subject Property, across Stanhancyk Lane. Many of the properties have existing dwellings, as show on Figures 2 and 3, below.

¹ The Applicant included Figure 2 and Figure 3 in its Burden of Proof statement.

Figure 2

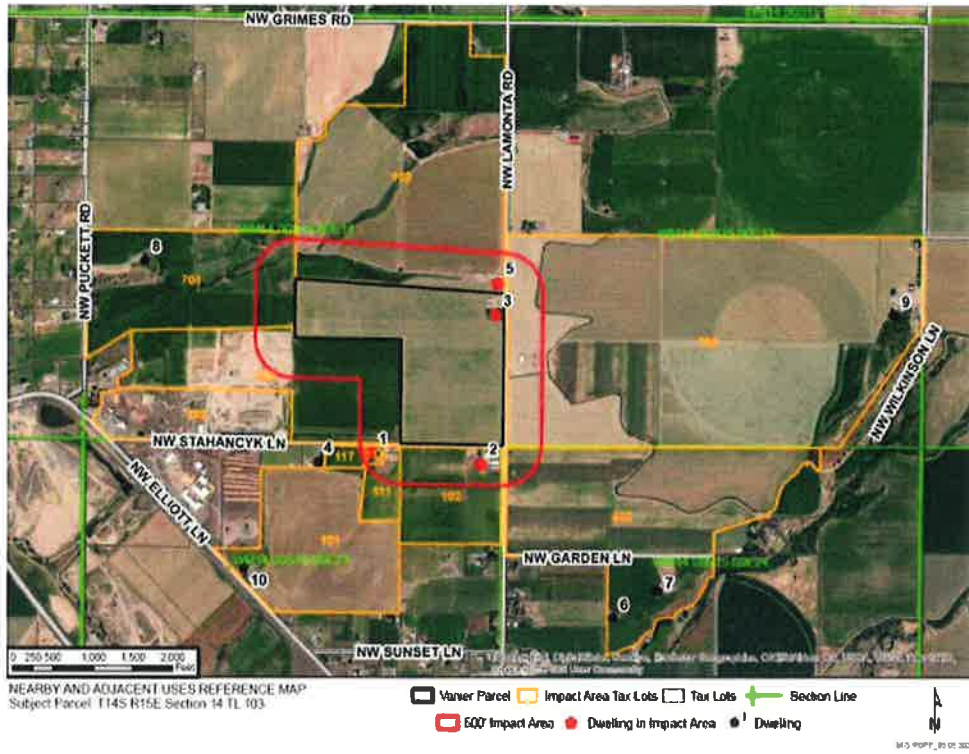


Figure 3

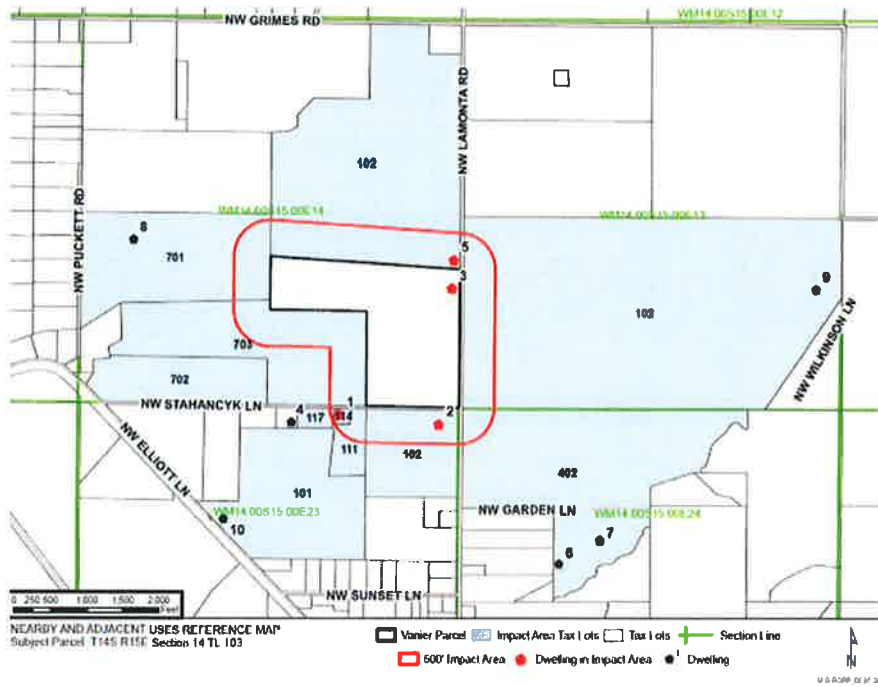


Table 1², below, lists all 11 properties that are at least partially located within the 500-impact area. It includes information indicating the distance from the proposed mining site, primary use, and ownership.

Table 1

T-R-S Tax Lot	Direction from Subject	Distance from Mining to Tax Lot	Site Address	Existing Dwelling	ID # on Map	Distance from Mining to Dwelling	Acres	Zoning	Primary Use	Land Owner
14-15-13 TL 102	East	160'	5777 NW Wilkinson Rd	Yes	9	5,010'	286.5	EFU-2	Farm Use - Hay	Mark & Casey McKinnon
14-15-14 TL 102	North	50'	6525 NW Lamonta Rd	Yes	5	245'	156.0	EFU-2	Farm Use - Hay	Dean & Teresa Davis
14-15-14 TL 701	West	0'	5950 NW Puckett Rd	Yes	8	1,845'	76.1	EFU-2	Farm Use - Hay	Scott & Crista Porfily
14-15-14 TL 702	West	1,350'	4755 NW Stahancyk Ln	No	-	-	35.4	HM	Industrial - Aggregate	Woodward Land & Timber LLC
14-15-14 TL 703	West	0'	Stahancyk Ln	No	-	-	76.1	EFU-2	Farm Use & Aggregate	Woodward Land & Timber LLC
14-15-23 TL 101	Southwest	425'	4243 NW Elliot Ln	Yes	10	2,560'	66.6	EFU-2	Farm Use - Hay	Samual Stafford
14-15-23 TL 102	South	140'	3320 NW Stahancyk Ln	Yes	2	320'	33.2	EFU-2	Farm Use - Pasture	Billie Johnson
14-15-23 TL 111	Southwest	140'	Stahancyk Ln	No	-	-	8.8	EFU-2	Farm Use - Pasture	Adam & Karen Mikulski
14-15-23 TL 114	Southwest	245'	3992 NW Stahancyk Ln	Yes	1	390'	0.9	EFU-2	Residential	Adam & Karen Mikulski
14-15-23 TL 117	Southwest	455'	Stahancyk Ln	*No	*4	-	3.0	EFU-2	Residential & Farm Use	Rick Krieger
14-15-24 TL 402	Southeast	205'	2720 NW Garden Ln	Yes (K2)	6 7	2,685' 2,780'	123.3	EFU-2	Farm Use - Hay & Pasture	Simmons Farm, LLC; Elsie & Henry Simmons

* Krieger owns 14-15-23 TL 116, west of TL 117. TL 116 is outside of the 500' impact area and includes a dwelling that is 1,000 feet from the mining area.

E. Access

The Subject Property has frontage on NW Stahancyk Lane and NW Lamonta Road. Both roads are County owned and maintained roads. However, the proposed mining operation on the Subject Property will only be accessed from the existing access for the mining operation on the Woodward property, directly to the west of the Subject Property. There will be no direct access to NW Stahancyk Lane or NW Lamonta Road for mining operations on the Subject Property.

F. Soils

According to United States Department of Agricultural – Natural Resource Conservation Service (“NRCS”) Web Soil Survey the Subject Property is comprised of three soil mapping units.

Soil Type	Acres	Soil Classification	
		If irrigated	Non-irrigated
#020 Boyce Silt Loam 0-2% slopes	0.2	3	-
#123 Ochoco Prineville Complex 0-3% slopes	75.9	3	-
Ochoco Prineville Complex 3-8% slopes	2.0	3	-

G. Other Information

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

² The Applicant included Table 1 in its Burden of Proof statement.

V. CRITERIA AND ANALYSIS

1. Character of the Request

The application request is characterized as a Post-Acknowledgment Plan Amendment (“PAPA”) to the Crook County Comprehensive Plan. The Applicant requests that the County Court add the Subject Property to the Crook County Significant Mineral and 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). As noted above, the Applicant also requests a conditional use permit to operate a mine on the Subject Property; however, that application is currently in front of the Crook County Planning Commission pending the County Court’s final decision on this PAPA request.

2. Applicable Approval Criteria

- **Oregon Administrative Rules (OAR) Chapter 660, Division 16³**
- **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).**

Assistant County Counsel John Eisler summarized the County’s comprehensive plan policies for mineral and aggregate inventories (Exhibit 47). Ordinance 43 (December 14, 1990), adopted in response to a Department of Land Conservation and Development (DLCD) enforcement order (Order 89-EO-656) established plan policies for the County’s Goal 5 mineral and aggregate sites. DLCD staff requested

³ 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-acknowledgement plan amendments) concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:

(a) Such regulations were acknowledged subsequent to 1989; and,

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

Crook County Ordinance 51, a comprehensive plan amendment including provisions governing the County’s compliance with Goal 5, was adopted and acknowledged by the Oregon Land Conservation and Development Commission in 1991. It was amended by Ordinance 55 in 1992. Crook County has not since entered periodic review. Therefore, the County’s consideration of a PAPA to add the subject property to the County’s Inventory is not subject to the OAR 660, Division 23. The provisions of OAR 660, Division 16 continue to apply. No party disputes that Division 16 applies to this application.

changes to the County's plan and the County passed Ordinance 51 on September 16, 1991. The County then adopted Ordinance 55 on February 26, 1992, which deleted and renumbered many of the policies from Ordinance 51. These plan policies provide a framework for County decisions regarding mineral and aggregate sites. County Counsel recommends the following order for reference while reviewing the current application: (1) OAR 660-016 ("the old rule"), (2) ordinance 51/55 and (3) ordinance 43. OAR 660-023 ("the new rule") should be considered only if the other policies provide no guidance and the guidance in OAR 660-023 is consistent with OAR 660-016 and County plan policies.

3. Summary of Decision Making Process

As stated in Exhibit 47 (Memorandum from John Eisler), the decision-making process is as follows:

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 findings of fact that follow are presented step-by-step as outlined above.

4. Findings of Fact

The findings are organized into the four steps identified above and outlined below.

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 also includes 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 Court 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 with its application, a legal description of the site, a map depicting the resource site and a 500' impact area (See Figures 2 and 3 above). There are no highway or milepost designations available.

Ordinance 43 defines "impact area" as 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. The Ordinance goes on to state, "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)." There is no evidence in the record suggesting that an impact area of greater than or less than 500 feet is appropriate.

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

Quality -

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

OAR 660-016-0000(3):

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

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

- (1) All available information concerning test results;
- (2) The resource site's relative value as compared to other examples of the same resource existing in at least Crook County.⁴

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

⁴ Ordinance 43 states that "All sand has potential value and has not been given a ranking value."

- (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 provided information on the sand and gravel resource on the Subject Property. Materials were tested for quality relative to Oregon Department of Transportation (ODOT) specifications for Portland Cement Concrete (PCC) as part of the Aggregate Resource Investigation conducted by Tim Marshall, an Oregon Registered Professional Geologist. See Knife River Comp Plan Amendment Application. Mr. Marshall provided the Applicant with a report of the investigation entitled “Aggregate Resource Investigation, Vanier Site” (the “Geologist’s Report”). The Geologist’s Report describes sample collection and testing protocol and concludes that the aggregate resource on the subject property meets ODOT specifications for resistance to abrasion, sodium sulfate soundness and air degradation. The report was based on seven (7) test holes located on the Vanier property. Detailed results are included in the tables provided in the Geologist’s Report.

Sodium Sulfate Soundness – Coarse and fine aggregates used for PCC Concrete are tested for “soundness” using sodium sulfate salt. According to the Geologist’s Report, the samples from the proposed site for coarse aggregates (5% by weight) and fine aggregates (7%) are less than the specified thresholds of 12% (coarse aggregates) and 10% (fine aggregates).

Abrasion (durability) – Coarse aggregates to be used for PCC aggregates shall have a maximum result of 30%. According to the Geologist’s Report, the sample tested for abrasion had a result of 17.5% and meets the ODOT specification for resistance to abrasion.

Oregon Air Aggregate Degradation – Coarse aggregates used for PCC aggregates are tested for Oregon Air Aggregate Degradation. The test sets a maximum allowable amount passing the No. 20 sieve of 30% and a maximum sediment height of 3.0 inches. According to the Geologist’s Report, the representative sample had results of 19.9% passing the No. 20 sieve and a maximum sediment height of 1.1 inches. The material passed the “degradation” test.

In addition to the above, the Applicant also conducted “gradation” tests to determine the relative percentages of different sizes of aggregate. ODOT specifications require that there not be greater than 4% by weight of the fine aggregates passing through the “number 200 sieve”. According to the Geologist’s Report, during the testing an average of 7.7% of material passed through the sieve. The Geologist’s Report suggested that because materials are washed during processing, the finer materials would be sorted out and the final, processed material would meet the specification.

The gravel from the site was also tested. The average percent of gravel greater than ¾" from the tested samples was 14%. While that fraction is generally too coarse for use in PCC concrete, it could be crushed and incorporated into concrete aggregates as is done currently at the Woodward site.

OAR 660-016-0000(3) notes that determination of quality 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.

Exhibit 37 in the record is the County's Ordinance adding the adjacent Woodward site to the County's Aggregate Inventory. On page 2 of Attachment A to Exhibit 37, the quality of the material on the Woodward site is discussed. The information was provided by a registered professional geologist and noted that Woodward site meets ODOT specifications for resistance to abrasion, sodium sulfate soundness and air degradation. Moreover, approximately 2/3 of the aggregate resource on the Woodward site appeared suitable for Portland Cement Concrete. Based on the information provided by the Applicant regarding the quality of the aggregate resource on the Subject Property (as discussed in detail above), it appears the relative value of the aggregate resource on the Subject Property is comparable to one recent example of a nearby resource site and to the relative value of several sites on the County's original inventory. It is also ranked higher than many sand and gravel sites from the original inventory.

Based on information provided in the Geologist's Report (and summarized above), the resource meets ODOT specifications for Portland Cement Concrete and the aggregate resource on the Subject Property has similar value to other sites in the County. Thus, the quality of the aggregate resource meets the requirements of OAR 660-016-0000(2)-(3).

Quantity –

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

FINDING: The subject property is 77.98 acres in size. The Geologist's Report estimates the property contains a total of 1,509,381 cubic yards of aggregate resource. For comparison to the minimum quantity threshold at OAR 660-023-0180(3), cubic yards must be converted to tons: 1 cubic yard = 1.6 tons. The recoverable aggregate resource will be reduced by required 100' setbacks. The Applicant stated that the intent is to maintain a 100-foot setback from the north, south and east property line and a 50-foot setback from the northwest property line (the Porfily property). No setback (zero) is proposed along the west property line, bordering the Woodward mining site. Even accounting for the setbacks, there will still be more than 1.5 million tons of recoverable aggregate resource. Based on the information provided by the Applicant, this is more than three (3) times the minimum quantity (500,000 tons east of the Willamette Valley) required to be considered significant under OAR 660-023-0180(3). The evidence in the record establishes that the Subject Property contains a quantity of aggregate resource that is "significant."

OAR 660-016-0000(5):

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

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

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

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

FINDING: There is sufficient, undisputed evidence in the record for the County to determine the location, quality, and quantity of the aggregate resource at the Subject Property. Based on the information in the record, and in accordance with OAR 660-016-0005(5), the County Court determines the location, quality, and quantity of the resource, and places the Subject Property on the Crook County Aggregate Inventory as a significant 1C site.

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

Policy 3:

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

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

Policy 4:

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

FINDING: Evidence of other mineral or aggregate resources has not been used as justification or a basis to deny placement of the Subject Property on the County inventory list. The Subject Property should be placed on the inventory list.

Policy 6:

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

- (a) A report is provided by a certified geologist, engineer or other qualified person or firm verifying the location, type quantity and quality of the resource.***
- (b) The site is determined to be a significant 1C site after reviewing all the evidence regarding location, quality, and quantity of the mineral and aggregate resource and site is added by amendment to the comprehensive plan;***
- (c) There are no conflicting uses [or] the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and [other] applicable statewide planning goals.⁵***

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

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

The conditions of subsection (c) (conflicting uses and ESEE analysis results) are addressed below. As noted below, the ESEE analysis results in a determination that there *are* conflicting uses relative to the resource. Thus, the site cannot be added to the Aggregate Inventory as a 3A site (as discussed in more detail below in Step 2), as all three conditions for this policy are not met.

Policy 9:

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

⁵ Policy 6(c) is addressed in Step 2.

operator must provide the best information available regarding quantity, quality, and location of the resource in the proposed expansion area to update plan data. An ESEE analysis shall be required if the expansion area is found to be a significant Goal 5 resource based on location, quality, and quantity information.

FINDING: The Subject Property will be added to the County's Aggregate Inventory as a separate site; not an expansion of the adjacent Woodward site. Nonetheless, as explained above, the Applicant has provided substantial evidence regarding location, quality, and quantity to identify the Subject Property as a significant aggregate site. An ESEE analysis is required and discussed below.

STEP TWO

(IDENTIFY CONFLICTS)

OAR 660-016-0005(1):

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

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

The Applicant notes in Exhibit 63 that there are several neighbors in the impact area that are opposed to the mining site. The Applicant goes on to note three abutting properties contain single-family dwellings (four if you count the dwelling on the Subject Property) and one of the neighbors has a dairy. As noted by the Applicant in Exhibit 63, to minimize impacts on surrounding uses, mining of the aggregate resource will be less efficient and increase the cost of mining. The Applicant specifically notes that existing uses on Tax Lots 1415140000102, 1415230000102 and 1415230000114/111 conflict with the proposed resource site. There is substantial evidence in the record that the complaints by neighbors have led the Applicant to address concerns including noise, groundwater, and dust. *See, e.g., Exhibits 5, 6, 44, 55, and 57.*

Additionally, the Applicant lists in Exhibit 63 the allowable uses in the EFU zone, which include:

1. New Farm Dwelling/Residential Use

2. Home Occupations/Business Use
3. Equine Facilities
4. Churches
5. Private Airports
6. Solar Energy Sites
7. Wind Generation Sites
8. Farm Stands
9. Other uses allowed in the EFU-2 zone.

A complete list of allowed uses in the EFU zone is attached as Appendix 2.

The Applicant states in Exhibit 63 that it is unlikely that new conflicting uses (e.g., those listed above) will be established within the impact area before the aggregate resource is depleted. The County agrees that there is limited potential for new permitted or conditional uses in this area to conflict with the proposed mine site due to the area's EFU zoning and existing development patterns.

Aggregate mining is a conditional use in an exclusive farm use zone (Crook County Code 18.16.015(11) and ORS 215.283(2)(b)). Potential conditional uses in the EFU zone could include schools, churches, parks, campgrounds and home occupations, equine facilities, private airports, renewable energy sites, farm stands and other conditional and permitted uses allowed in the County's EFU zones. Any of these uses could conceivably result in negative impacts to mining operations.

In summary, there are eleven (11) tax lots at least partially within the impact area (Table 1). There are four residences within the impact area including one dwelling on the Subject Property. The presence of these existing residential uses present conflicts to a mining operation as a result of evidence in the record of the concerns raised by area property owners regarding the existing mining operation on the Woodward property and the need for the proposed mining operation to address concerns regarding noise, dust, groundwater, and operating hours. As a result of this evidence, limits on the operation are necessary to minimize impacts to neighbors, resulting in less efficient mining operation and increased costs to the operator.⁶ There are also six farming operations within the impact area, including a dairy and hay/pasture operations. Neighboring farmers raised concerns regarding potential impacts to crop productivity due to dust and concerns regarding mining impacts on groundwater. These complaints likewise may result in limits to mining operations resulting in less efficient mining operations and increased costs. Accordingly, the agricultural operations could be viewed as conflicting uses.

Based on the evidence, including Applicant's Exhibit 63, the County finds that residential uses in the impact area will conflict with the proposed resource use of the Subject Property. The County finds further that agricultural uses may conflict with the resource use of the Subject Property. Accordingly, the impacts of the resource use on the adjacent and nearby uses must be examined through an ESEE analysis (Step 3).

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

Definition of Conflicting Uses. Conflicting uses are those existing or potential uses, allowed outright or conditionally within a zoning district, which, if allowed within the impact area surrounding a resource

⁶ Impacts to property owners from mining activities are outlined in the ESEE analysis.

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, the Applicant has suggested a 500’ impact area consistent with Ordinance 43 (see Figure 2 and Figure 3). The above analysis is incorporated in response to these provisions of Ordinance 43. This request is consistent with Ordinance 43.

OAR 660-016-0005(2):

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

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

Policy 6:

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

- (c) ***There are no conflicting uses [or] the ESEE analysis results in a determination that the resource is important relative to conflicting resources, uses and [other] applicable statewide planning goals.⁷***

FINDING: As noted above when previously discussing Policy 6, there is no dispute that there are conflicting uses. Thus, the Subject Property 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).

⁷ 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.

This concludes Step Two. Since there are identified conflicts, the next step is 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: A proper ESEE analysis is even-handed and applies the significant, relevant evidence in the record from both sides to consider fully the economic, social, environmental, and energy consequences in a two-way conflict analysis. The County’s ESEE analysis is discussed below.

The intent of an ESEE analysis is to weigh the economic, social, environmental and energy consequences (both positive and negative) of protecting the aggregate site as a significant Goal 5 resource. The ESEE analysis provides the basis for the County to weigh the values of competing uses and the consequences of allowing or restricting resource uses and conflicting uses. The ESEE analysis considers not only the consequences associated with protecting the resource but also considers the consequences of mining and processing the aggregate resource. The ESEE analysis applies to all conflicting uses within the 500-foot impact area surrounding the proposed mine site. As discussed, there are 11 properties within the impact area including the adjacent Woodward mining and processing site, three dwellings, an existing dairy and other agricultural properties to the north and east. These uses are identified on Table 1.

Specifically, conflicting uses include existing residential uses within the impact area and existing agricultural activities including the dairy and hay/pasture activities within the impact area. There is limited potential for new conditional uses within the impact area, but those would likely conflict with mining operations if approved. Appendix 2 includes a list of permitted and conditional uses in the County’s EFU-2 zone.

The Planning Commission considered the Applicant’s burden of proof statement and testimony, as well as written and oral testimony provided by neighboring property owners and the public in the recommendation to the County Court. The County’s ESEE findings include the Commission’s findings on the economic, social, environmental and energy consequences of the aggregate site and incorporate additional testimony received by the County Court on October 20, 2021; November 3, 2021; November 15, 2021, when the record was closed; final statements made at the December 3, 2021 hearing; and final written argument submitted on December 10, 2021, by the Applicant.

Before launching directly into the ESEE analysis, the County Court finds it beneficial and appropriate to briefly review the County’s role and obligation in this process. Crook County considers this an application under our quasi-judicial amendment standards. Whether the County Court must make a decision based on an “adequate factual base” or “supported by substantial evidence in the whole record,” the standards are synonymous, and a reviewing court is tasked with determining whether a reasonable person *could* make a similar finding after reviewing the whole record. *Restore Or. v. City of Portland*, 301 Or App 769,

778 (2020). A reviewing court must defer to our interpretation of our comprehensive plan and land use regulations unless the reviewing court finds our interpretation “is inconsistent with the express language, purpose, or underlying policy of the comprehensive plan or land use regulation.” *Id.* at 786. The standard is “plausible” not irrefutable or even the most logical. *Id.*

Which brings us to the issue of substantial “evidence.” In this plan amendment application under OAR Division 16, the County Court’s “inquiry requires case-by-case assessment, and local governments are free to consider any and all negative impacts on a Goal 5 resource site that *could arise* if an allowable use *were to exist* in the zoning district along with the Goal 5 site.” *Hegele v. Crook County*, 190 Or. App. 376, 384 (2003) (emphasis added). Thus the County Court is tasked with weighing the evidence from competing interests regarding hypothetical future events. Any such forward-looking “evidence,” whether produced by experts or laymen is by its very nature speculative. Though we do have the benefit of the observations from the neighboring Woodward property, the impacts from and to the Subject Property will necessarily differ. Despite this lack of certainty or facts to rely upon, the County Court here must make a difficult decision based only on the evidence in the whole record to evaluate the potential impacts and craft a plan to ameliorate what harm it can in the pursuit of achieving Goal 5.

As such, it should also be noted that the County Court does not read the ESEE rules to require the imposition of a quantitative value on the potential consequences or that each of the categories must be given equal weight. For instance, the County Court may decide that \$100 in a corporation’s pocket does not equally offset a loss of \$10 for ten different homeowners, or that a benefit in one category equally offsets a detriment in another category. Instead, the analysis is sufficient “if it enables a jurisdiction to provide reasons to explain why decisions are made.” OAR 660-016-0005(3).

With that said, the County now transitions to evaluate the various economic, social, environmental, and energy consequences that may occur from this future use. The conflicts to the resource site, as discussed in the previous section, arise as a reaction to the impacts *from* the resource site. Thus minimizing the impacts to the conflicting uses will then lessen the impacts to the resource site itself. The major impacts raised in the record fall under three broad categories, and each bleeds into multiple ESEE considerations. The County Court will address each issue broadly before segmenting the consequences into their respective categories.

Groundwater

The record is replete with concerns from area property owners and farmers regarding the impacts to groundwater resulting from mining the Subject Property. Both the Applicant and property owners employed professionals to provide testimony. The quality and quantity of groundwater in the area carries economic, social, and environmental consequences. Local farmers and dairies depend upon such groundwater for their livelihood; dwellings need it for health, safety, and sanitation; and the environmental consequences are obvious. Among the issues before the County Court in this application, groundwater was the most contentious.

Perhaps anticipating this, the Applicant employed a consultant (Stantec) to prepare a hydrogeologic report (the “Report”) that was included in the application. The Report notes that the Applicant has encountered increasing amounts of groundwater as it mines eastward on the Woodward Site, hindering reclamation efforts. This was unexpected. The Report was prepared to answer five questions, ultimately trying to determine whether there is a means to mine the sand and gravel at the two sites without

affecting the water resource for others using the same aquifer and whether reclamation can be successful despite the presence of shallow groundwater.

The Report is comprised of ten sections and tables and charts. The Report discusses a 2014 test pit investigation, which encountered water as shallow as nine feet below the surface on the northeastern edge of the Woodward property. The Report also discusses three test holes made during a 2020 investigation, near the southern and eastern boundaries of the Woodward property, as shown on Figure 2 of the Report. Each of the test holes encountered groundwater at between seven and fifteen feet below the ground surface.

In January of 2021, three more test wells were completed—WW-1A through WW-3A, along the boundary line between the Woodward and Vanier properties, as shown on Figure 2 of the Report. The wells were drilled using sonic drilling methods and fully penetrated the shallow aquifer into the silt/clay unit below, at approximately 30 feet below the ground surface. Static water levels for these wells on January 21, 2021, were between 17 and 21 feet below the surface.

The Report conducted a groundwater inflow analysis for the two properties. On the Woodward property, the Report considered three mining approaches and recommended mining the cells from east to west and backfilling with low permeability to the east, effectively re-routing the groundwater, which has a general flow from northeast to southwest. Only one mining approach was considered for the Subject Property, which considered each mining area as a whole and assumed contemporaneous backfilling of each previously mined cell.

The Report also conducted a water rights impact analysis. The purpose of the analysis was to assess potential impacts to nearby shallow wells from “dewatering” at the site. The analysis considered impacts to wells within a 1000’ buffer and a half-mile radius and distinguished between “shallow” wells 40’ or closer to the surface and deeper wells. The shallow wells were of particular interest as they are in the same aquifer and at a similar depth to the proposed extraction at the Subject Property. The analysis was performed using AquiferTest Pro and showed a possibility for several wells within both the 1000’ and half-mile areas could be affected in the absence of mitigative efforts.

Section 9 of the Report recommends a water management plan for the two properties. As it pertains to the Subject Property, the Report recommends approval for an increased mining depth and the ability to dewater with injections into a recharge trench, beginning with Area 1 on Figure 4 at the northeast corner of the Subject Property, with a recharge trench along Areas 4-7, redirecting the natural flow to the southwest. The Report recommends two observation wells within Areas 4-7 for continuous monitoring using a downhole pressure transducer. Following successful mining reclamation of Areas 1-3, the process would repeat for Areas 4-11. The Report supports this plan by its successful implementation at numerous floodplain mines in the State and summarizes that the plan will “minimize and/or eliminate the negative impacts of dewatering.”

Section 10 of the Report covers reclamation considerations. This section begins by noting that where alkaline and/or sodic soils are subject to a high water table, salts can leach from below to the rooting zones of plants. Though the water table will eventually recover around only five feet from the surface, the Report noted the sodium and sodium absorption ratios were low, decreasing the perceived risk of

upward movement of salts. The Report recommended that backfill be overburden first, with the upper portion ripped and perhaps disked, then placing the topsoil directly on that overburden.

The Report ends with "Conclusions and Recommendations." Some of those include:

- The Applicant will encounter groundwater throughout the Subject Property;
- The shallow aquifer has a relatively high permeability;
- Recharge trenches and observation wells between the mining area and adjacent water users, with downgradient reinjections, are required to minimize potential impacts; and
- With this plan, the final ground surface and recovery elevation of the groundwater "should be acceptable for growing hay and similar forage crops."

A memorandum (the "Memo") was prepared by Jim Newton of Cascade Geoengineering (CGE) on behalf of Richard Zimmerlee on November 15, 2021. Ex. 62. Mr. Newton is an Oregon registered professional geologist, Oregon registered professional engineer, and Oregon certified water right examiner. The Memo addresses the Report and Stantec's September 8, 2021 letter, in the record as Exhibit 33. In preparation of the Memo, Mr. Newton reviewed Stantec's documents and took a visit to the Subject Property on November 8, 2021.

Mr. Newton raised the following issues with the Report:

- The Report failed to follow State guidelines for such a report, including the registrant's stamp and seal, designating the responsible party;
- The Report's water table map used data from only June through October;
- Insufficient data regarding the design of the completed borings into test wells and completion methods and materials;
- Improper testing methods regarding a constant rate pump test and secondary response;
- Improper extrapolation of pump test data from an isolated location on the Woodward property to the entirety of the Subject Property;
- Incomplete well/water right information;
- Unsupported conclusions or those based on faulty data; and
- Failure to account for the shallow groundwater's exposure to agricultural fertilizers.

Mr. Newton also states that Stantec's September 8, 2021 letter is basically a regurgitation of the information in the Report and does not present any new data. In conclusion, Mr. Newton states "it is the opinion of CGE that the [Report] be deemed suspect and not relied upon by the County." The Memo recommends that any such future work be conducted by an Oregon registered professional geologist following Oregon guidelines, exploratory borings and wells within the Subject Property, and increased area engagement.

Christopher Lidstone of Stantec, who prepared the Report, responded to Mr. Newton's observations at the December 3, 2021 public hearing. Mr. Lidstone testified that the lack of certifications and seal is an issue that can be sorted out by the Board of Geologist Examiners. Mr. Lidstone testified that he is qualified, as he has been working in Oregon since the 1980s and with mining and reclamation since 1974. Mr. Lidstone noted that the mitigation technique of recharge trenches is proven technology and

supported by Bob Brinkman of DOGAMI. Mr. Lidstone also noted that the Report was merely a preliminary study prepared to evaluate the likelihood of success without mitigation measures, and the Report showed that mitigation measures would be needed.

Stantec also responded with a letter addressing written comment of Richard Zimmerlee in the record as Exhibit 53. Ex. 60. In the letter, Stantec states that all Stantec work was performed under the supervision of Mark Stacy, an Oregon registered geologist. The letter also addresses concerns about the water table rising upgradient, stating that groundwater flows from areas of higher hydraulic head to areas of lower hydraulic head, and thus, the water will instead flow through and around the reclaimed cells not upgradient. Stantec's theory, it says, is supported by the groundwater measurements performed on November 10, 2021.

Further support for the Report was offered by another consultant of Applicant, Amber Hudspeth of Hudspeth Land+Water. In an August 21, 2021 memorandum, Hudspeth notes that water quality issues can be monitored and addressed through "analytical analysis" and verification. Ex. 24. This will include baseline data collection of water level, pH, turbidity, VOCs, organic and synthetic compounds, and microorganisms. The memorandum also notes existing issues with the water quality in the basin—background levels of arsenic and sulfur—as well as seasonal variations to be expected year over year. Hudspeth presented another memorandum on November 13, 2021. Ex. 61. In this memo, Hudspeth states that she joined Newton on the November 10, 2021 site visit to measure the static water levels in the three on-site monitoring wells. Both parties took measurements that were generally consistent. The memorandum makes note of the static water level measurement difference between the February 2021 reading of WW-1A of 24.8' in February and 21.3' in November. Based on her experience and knowledge, Hudspeth then states that the water levels reflect normal seasonal fluctuations, drought conditions, and minor influence of irrigation water delivered through the unlined irrigation canal and ditch system. Hudspeth concludes that she has not observed any evidence that suggests water levels have been impacted by Applicant's activities on the Woodward property.

A representative from DOGAMI, Bob Brinkmann, submitted a letter in support of the plan to dewater and reinject into recharge trenches. Ex. 38. Mr. Brinkmann states that this technique is practiced at a number of sand and gravel sites in the State, and with baseline testing and continuous monitoring, problems are found early and remedied through mitigation measures.

On the issue of groundwater, the County finds each of Mr. Lidstone, Mr. Newton, Ms. Hudspeth, and Mr. Brinkmann to be credible and qualified. None of the members of the County Court are hydrogeologists and none are in a position to second-guess the technical data or conclusions presented. The County Court does find that, as the Report represented, that the Subject Property cannot be mined safely without groundwater mitigation measures. The County Court bases this on the evidence in the record that there is a shallow aquifer under the Subject Property with high permeability that will be encountered throughout any effort to extract the resource material. This aquifer is shared with the others in the Impact Area for various uses and it is critical that the extraction of the resource material does not come at the expense of the aquifer. The County Court also finds that dewatering with reinjection into recharge trenches, as proposed, along with continuous monitoring and a groundwater guarantee of "you break it, you buy it" provides a path to lessen the risk and magnitude of potential harm that may occur.

Reclamation

There was a great deal of testimony regarding the ability and likelihood of the site returning to productive agricultural use following the extraction of the Subject Property's sand and gravel. Should such efforts fail, there would be economic, social, and environmental consequences—a loss in income to the tenant or landowner, an eyesore to the rural community, and a means for invasive weeds to gain a foothold in the area.

Evidence in the record on this matter includes a letter from the owner of and a site visit to the Butler property, testimony from Clay Woodward regarding reclamation efforts at the Woodward site, a letter from Ben Mundie of Dogami, and numerous comments and exhibits from concerned neighbors. For example, Brian Zednik, a nearby farmer, noted in his testimony on November 3, 2021 and in his letter (Ex. 52) that the favorable reclamation conditions at the Butler site (no berms or neighbors) are not present at the Subject Property. Reclamation at the Subject Property, due to the berms, recharge-trench plan, lower final elevation, and high level of groundwater, will lead to the creation of a bog and may jeopardize the springs on the Davis property, which Mr. Zednik uses to contribute to his stock and irrigation water. There was also testimony regarding the shortcomings and compliance failures of reclamation at the Woodward site (pigweed and multiple open cells).

These concerns were addressed by the Applicant and others. Mr. Woodward testified that he was to blame for the pigweed at the Woodward property, as he contracted with a farmer to plant in the spring and that did not happen, but he plans to plant in the near future. Mr. Woodward also testified that a mammoth was discovered on his property, and the cells were left open for a university to procure the mammoth, but the process took longer than expected. Mr. Woodward also testified that 13 acres of his were reclaimed a few years ago, and this year's harvest of 6.5 tons per acre was very good.⁸ Additionally, the letter from DOGAMI's Ben Mundie (Ex. 41) pointed out successful reclamation projects by the Applicant and in Crook County, including the Woodward site.

The County Court agrees that there are reclamation challenges not present at the Butler site. The County Court also acknowledges that reclamation of a portion of the Woodward site has not gone as planned and there will be issues with groundwater that the Applicant will need to address in its reclamation efforts. The County Court also recognizes that the Applicant has a demonstrated record of successful reclamation efforts. More importantly, the plan for reclamation, which includes a reclamation bond, is governed by the State through DOGAMI.

Operations

The bulk of the remainder of the evidence in the record was focused on impacts from operations at the Subject Property. Though the site is not yet operational, much of the evidence focused on impacts from the neighboring, active Woodward property. Numerous exhibits raised issues concerning noise, dust, hours, and other factors that disrupt the traditional rural quality of life in the impact area. The effects from operations carry economic, social, and environmental consequences.

For example, Adam and Karen Mikulski presented significant testimony and evidence regarding impacts from operations, including audio tapes of the noise, photographs of the dust, and photographs of the

⁸ There was competing testimony that the harvest figure included non-reclaimed agricultural ground and that the number for the reclaimed portion was roughly half of the stated 6.5 tons per acre.

berms. The theme of unavoidable noise and dust was common among those that live around the Subject Property. Don Pomraning testified that, though he lives outside the impact area, the noise from grinding is constant, random, and jarring—worse than the lumber mill before it. Bryan Zednick testified that the noise and dust is uncontrollable despite any efforts from the Applicant. Billie Johnson testified that the exposure to silt from the operations has caused her gutters to rust out in only two years.

Another common theme among the participants was that the previous conditions of approval from the County and standards from the State were not being followed. The Mikulskis mention that there is a lack of documentary evidence of violations because the Applicant has encouraged face-to-face resolutions, which have left no paper trail. The Mikulskis have contacted DOGAMI in the past, but did not find the interaction helpful or that DOGAMI took their concerns seriously. The Mikulskis testified that they did bring an operating hour issue to County Compliance Officer, Louis Seals, and the issue was quickly remedied.

The Applicant responds that much of the angst is directed at the Woodward site, which is not the focus of this application. Ex. 66. Regarding the Mikulskis, the Applicant states that they purchased and live in a property on resource land and next to heavy industrial zoned land. The activities the Mikulskis complain of are the intended uses for that area.

With that background, the County Court will now address specific ESEE consequences.

1. Economic Consequences.

The Applicant stated that the proposed aggregate site will have positive economic impacts by providing a local source of high-quality aggregate material for area construction projects. For example, the Applicant claims 90% of the ready-mix concrete used by the Facebook construction projects are produced from aggregate material from the Woodward site (Exhibit 66). This will benefit the economy of Crook County and Central Oregon to an unknown extent. However, others testified that much of the remaining material produced from the Woodward site would be exported out of the County with little benefit to the local economy.

The Applicant identified negative economic impacts to the resource site from allowing conflicting uses (Exhibit 63). The Applicant cited neighbors' testimony in opposition to the site that raised concerns about dust, noise, noxious weeds, reclamation, hours of operation, impacts to groundwater and reduction in property values. The Applicant stated that these concerns can result in increased costs to mining operation due to requirements to mitigate impacts to neighboring property owners. The Applicant went on to state that these increased costs would be passed on to consumers, resulting in negative impacts to the regional economy.

It was noted that the current property owner will receive economic benefits from the mining of aggregate resources without significant negative consequences because the subject property is required to be reclaimed for agricultural use (hay production). However, the current tenant on the Vanier property disagrees, as a loss of organic material during the mining process will reduce yields without expenditures for soil additives, resulting in increased costs for the farm operator. The tenant also testified that high groundwater levels would make site reclamation difficult, negatively impacting farm productivity.

Neighboring property owners offered testimony that there would be negative economic consequences including reduced property values due to ongoing mining operations. Testimony was offered that there

may be negative economic impacts to surrounding farmers because of dust impacting crop productivity and potential impacts to groundwater availability and quality.

The County does not have hard numbers to evaluate any of the above. The issues with groundwater, reclamation, and impacts from operations are addressed at length above. There is also little to no evidence in the record of the positive economic benefits of the conflicting uses. Regardless, the County Court finds that there will be both economic benefits and burdens from the resource use. The County Court finds further that the economic burdens faced by the Applicant in its efforts to limit noise, dust, and harm to the aquifer are justified.

2. Social Consequences.

According to the Applicant, there are likely to be negative social consequences for the mining operation associated with conflicting uses and the opposition of neighbors. The Applicant suggested that positive social impacts of the proposed mining operation will include continued opportunities for employment, tax revenue and local aggregate supply produced by the operation.

The Planning Commission noted that while the mining operation would provide employment and tax revenue for a number of years, no new, permanent jobs would be created solely from the Subject Property.

Neighboring property owners provided testimony regarding negative social impacts associated with the mine site, based in part on ongoing mining operations on the adjacent Woodward property. Negative impacts identified include a reduction in the rural quality of life, continued heavy truck traffic, noise and dust. Neighbors were concerned about the impacts to scenic vistas. They expressed concerns that approval of this site would set a precedent, resulting in loss in the future of other farms in the area. Concerns were also raised about the mining operation's potential impacts to groundwater quality and quantity.

Testimony from neighbors suggested that the Applicant was not always responsive to complaints regarding dust and operating hours on the Woodward site. They expressed frustration regarding the lack of enforcement of conditions of approval for the existing mining operation on the Woodward property and they were not confident that enforcement of conditions on the proposed site would be effective.

The County finds that the relative social consequences weigh significantly in favor of conflicting uses.

3. Environmental Consequences:

The Applicant did not include information regarding positive environmental impacts associated with mining.

Environmental concerns regarding groundwater were addressed above. The Applicant, at its expense, has proposed baseline water quality and quantity testing of three wells (shallow well on the Vanier property and wells on the Mikulski and Johnson properties) and two springs on the Davis property. (Page 2 of Exhibit 24). The Applicant has also proposed a "Groundwater Guarantee" to address potential impacts to neighboring groundwater wells (Exhibit 34).

Environmental consequences of operations were also addressed above. Neighbors provided testimony regarding possible negative impacts including increased dust and disruption of wildlife by noise and mining activities. They testified about the impact of dust from the adjacent Woodward mine site and suggested that berms did little to mitigate the effects of dust. Neighbors suggested that dust mitigation at the Woodward site did not happen when the mine operator was not actively mining (e.g., evenings and Sundays). They noted that stockpiles were not vegetated and no dust control for stockpile areas was provided.

The County finds, based on substantial evidence in the record, that the environmental consequences of the resource use on conflicting uses are significantly greater than conflicting uses' environmental impacts on the resource use, if any.

4. Energy Consequences.

The Applicant stated that positive energy impacts will result from continued operation of the established processing facilities at the Woodward property, located in an area that minimizes transportation costs related to moving aggregate materials. Reducing emissions associated from transferring aggregate from outside Crook County area is a positive impact. They suggested that negative energy impacts may occur only if aggregate is mined from the area for transport out of the area, which is unlikely because of the distances involved. Neighbors noted that material is often transported out of the County, thus negating positive energy consequences.

The County finds, based on substantial evidence in the record, that the energy consequences from utilization of resource is positive, notwithstanding the evidence that significant quantities of the material may be transported out of the County. The major construction projects in the County demand aggregate materials, and there is an undeniable energy benefit in sourcing such materials locally.

5. 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 and a public hearing before the Planning Commission and the County Court prior to adoption of any comprehensive plan amendment. In addition, public notice is provided through the local newspaper. Information relating to the hearing (e.g., the staff report and exhibits) are available on the County's website and hard copies are available to the public when requested. Notice of the proposed plan amendment was also provided to the Department of Land Conservation and Development. The Planning Commission conducted a site visit to the Subject Property prior to the first hearing. Adjacent property owners within 750-feet of the subject property were notified of the visit and invited to attend. Two public hearings were held by the Planning Commission to consider this application and the related conditional use application. Members of the public were provided an additional seven days to respond to new evidence and the Applicant was provided seven days to submit a final argument.

The proposed plan amendment was forwarded to the Crook County Court. The Court has provided two public hearings and kept the record open until November 15, 2021 to allow an opportunity for additional testimony. The County Court conducted a site visit on October 26, 2021, and adjacent property owners were invited to attend.

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

Goal 3 – Agricultural Lands: The Applicant stated that the aggregate operation will not force a significant change in accepted practices, nor will it result in a significant cost increase to accepted farm practices. The Applicant stated that it intends to minimize conflicts with neighboring agricultural activities by the operational design for mining the site.

The agricultural use on the site will be temporarily interrupted as actual mining is conducted in phases. There will be a disruption of current irrigation practices on the subject property until site reclamation is complete. The site will be reclaimed to allow agricultural use after mining is complete. The reclamation permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) requires the site to be reclaimed to the current agricultural use. Testimony was provided regarding the lack of organic matter and nutrients in the topsoil and overburden preventing the site from returning to productive agricultural use.

Adjacent property owners are also concerned about the impacts of dust on their crops causing reduced yields and reduction in quality.⁹ While there may not be a change in farm practices, there may be reductions in yields and income. The Applicant states that the proposed berms and dust control measures are intended to mitigate the impacts of dust on adjacent properties. The Applicant stated that mining operations on the Woodward property have been occurring for several years and they are not aware of any of its current operational activities that have caused adverse impacts to surrounding lands devoted to farm use to the extent that the impacts have forced a significant change in, or significant increase in the costs of, accepted farm practices.

Neighboring property owners raised concerns regarding the potential dewatering or contamination of area wells due to mining operations. Concerns were raised by an adjacent dairy operator regarding impacts due to a potential loss of water supply or groundwater who stated that she needs access to a clean, reliable source of water for livestock.

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: The Applicant proposes to add this site to the Goal 5 inventory of significant aggregate resource sites. Based on information from the Oregon Department of Fish and Wildlife (ODFW) and other resource management agencies, development of this site for aggregate productions does not conflict with any Goal 5 wildlife resources. The Applicant will be required to submit an “inadvertent discovery plan” regarding notification to the State Historic Preservation Office in the event of discovery of any natural or cultural resources. This will be addressed in the review of the conditional use permit. The County has not identified any significant groundwater resources in the area surrounding the proposed mine site.

⁹ As noted above, the County Court visited the Butler property on October 26, 2021, an aggregate site successfully reclaimed by Knife River. Knife River’s reclamation activities were acknowledged by Ben Mundie, Oregon Department of Geology and Mineral Industries (Exhibit 41).

Goal 6 – Air, Water and Land Resources Quality: Goal 6 relates to protection of air and water quality. The operation of the aggregate mining site will be conducted in compliance with all other applicable state and local permits and regulations. DOGAMI has oversight responsibility for mining operations and final reclamation. Dust control is a required component of the operating plan. The Oregon Department of Environmental Quality (DEQ) permits will be required for stormwater management and the dust control plan will be reviewed to address air quality concerns. The Applicant has agreed to provide limited baseline monitoring of groundwater quality and quantity and to grant a “groundwater guarantee” to offset potential impacts to neighboring wells.

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

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

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

Goal 10 – Housing: Development. The aggregate resource site will have no direct impact on the supply of housing in Crook County. Properties zoned for Exclusive Farm Use are typically unlikely to be approved for residential development. Having a local supply of aggregate materials should help meet demand for residential construction.

Goal 11 – Public Facilities and Services: No new public services will be required to support development of the aggregate resource site. Sewer service is not required, and water and power are currently available to serve the site. An existing truck route will be used for traffic associated with the site and no new connections to County roads are required. The Applicant will receive water from the Ochoco Irrigation District.

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

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

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

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

FINDING: Based on the evidence in the record, the Planning Commission recommended that conflicting uses be allowed fully, and the site designated as a “3B” site, consistent with subsection (2) above. The Planning Commission determined that the conflicting uses for the site were of sufficient importance based on existing land uses and potential impacts, regardless of potential impacts of the conflicting uses on the resource site. Reasons for this determination relate to the potential impact to existing uses within the proposed mining operation’s impact area. Impacts associated with dust, noise, and potential impacts to groundwater resources are primary concerns. It is anticipated that these impacts can be mitigated to some extent.

In addition to the Planning Commission’s reasons, the County Court finds, based on an analysis of the ESEE consequences, that conflicting uses should be allowed fully because they are of such importance relative to the resource site. Specific reasons for this finding include:

- The ESEE analysis identified both positive and negative consequences associated with mining operations.
- Economic consequences do not tilt the scales significantly in either direction. There will be economic benefits from utilizing the resource site, as some of the aggregate material produced will be used in local construction projects that provide economic benefits to the County. The economic burdens faced by the Applicant from conflicting uses, as discussed above, are justifiable. Additionally, the reduction in the property values of the dwellings in the impact area and potential economic burdens faced by neighboring agricultural producers—i.e., potential reductions in crop productivity—can be assumed to be significant. As noted above, the record is void of hard numbers on this issue either way, but as Applicant conceded, “Who would prefer to live next to a mining operation versus a landscape where one can enjoy the clean, quiet open space of another’s private property?” Ex. 66.
- Social consequences favor allowing conflicting uses fully. 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 drastic reduction in the rural quality of life—traffic, noise, dust, groundwater issues, etc. The area surrounding the resource site is closer to the County’s urban center and in an area of smaller lots. The social consequences suffered by the conflicting uses in the Impact Area outweigh the benefits of the resource use.
- Environmental consequences strongly favor allowing conflicting uses fully. The evidence in the record establishes that with no safeguards or mitigation steps in place, groundwater could be impacted well outside the Impact Area. There is also evidence in the record, though not directly applicable to the site at issue, that plans *can* fail, and severe environmental harm *can* occur from mining activities. Ex. 58. Even if the risk of such an event were low, the severity of such an event demands our consideration. The evidence in the record also suggests that, even with stringent efforts to mitigate, there will still be significant noise pollution and particulate in the air. The balance of environmental consequences tilts towards allowing conflicting uses fully.
- 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. Even if some or a large portion of the material produced at the Subject Property is transported out of the County or region, the County will still receive the beneficial reduction in energy use from a local source of aggregate material.
- The impacts on the resource from the conflicting uses, based on the ESEE analysis, are less significant than the impacts on the conflicting uses from the resource site. The importance of these conflicting uses, relative to the resource site, warrant allowing conflicting uses fully.

The County hereby adopts a Program to Achieve the Goal (the "Program"), based on the ESEE analysis and other Statewide Goals, that conflicting uses shall be allowed fully or a “3B Plan.” The subject property is hereinafter designated a 3B site on the County’s Inventory of Aggregate Sites.

The County’s Program must be focused on minimizing impacts to the conflicting uses, as those impacts, in turn, exacerbate the impacts *to* the resource site. The Applicant has proposed numerous steps to mitigate such impacts, and compliance with those steps will be essential to allow the resource materials to be extracted in relative harmony with the conflicting uses. The Program must ensure that best practices are observed in the effort avoid harm to groundwater. The Groundwater Guarantee must be simple to invoke, fair, and remedy any harm that may occur. Efforts to offset noise and dust impacts from operations

must be reasonable, and they must be followed. With those overarching goals in mind, the following conditions are adopted to achieve Goal 5:

PROGRAM TO ACHIEVE GOAL 5:

General Requirements:

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

Water rights: The Applicant shall submit evidence of water rights for mining and reclamation use to the Crook County Community Development Department prior to such use of water.

Quality of Life Concerns:

Setbacks: To minimize impacts to neighboring properties, no active mining shall occur closer than 100 feet from property lines on the north, east and south side of the subject property. Mining shall not extend closer than fifty (50) feet from adjacent parcel 141514 Tax lot 701 (the Porfily property) on the west side of the subject property. No setback is required on the boundary with the Woodward property to the west of the subject property (141514 tax lot 703). Berms and groundwater trenches may be placed with the setback area subject to the final site plan.

Ordinary operating hours shall be Monday through Friday, June 1 through October 31, from 6:00 a.m. to 9:00 p.m., or sunrise to sunset, whichever time period is shorter. Operating hours shall be Monday through Friday, November 1 through May 31, from 7:00 a.m. to 6:00 p.m., or sunrise to sunset, whichever is shorter. No operations shall be conducted on weekends or specific holidays.

Traffic: Access to the subject property shall be limited to the existing access at the Woodward site. Materials will be transferred from the subject property via an internal haul road, or an alternative internal system approved as part of a conditional use permit, to the processing plant on the Woodward property. No new access is permitted on Stahancyk Lane or Lamonta Road.

Berms: Berms are intended to buffer neighboring properties from noise, dust and visual impacts. The Applicant has proposed a height of 8 feet with a slope no steeper than 2:1. The 2:1 slope is intended to allow for mowing of the berms.

Berms shall be placed at the time mining begins in adjacent cells to minimize the amount of disturbed ground. Berms will be hydroseeded, irrigated to maintain vegetation, and managed to prevent the spread of noxious weeds. Berms may be placed within the 100' property-line setback area. Berms shall be removed upon completion of the mining operation.

Dust Mitigation: The Applicant shall control all fugitive dust emissions associated with all extraction operations on the site. The Applicant shall implement provisions in the Dust Management Plan (Exhibit 23). Excepting actively mined areas, the Applicant shall stabilize all disturbed areas to minimize dust using hydro-seeding or other soil stabilization methods consistent with the Dust Management Plan. The Applicant shall stabilize all stockpile areas with mulch, vegetation, or chemical binders. During non-operation days, the stockpiles and active mining areas shall be sprinkled with water to limit fugitive dust.

If constructing an internal haul road, the Applicant shall construct said road between the subject property and the Woodward processing site with an all-weather surface and aggregate base sufficient to support heavy vehicles and equipment. The surface shall be treated regularly to minimize fugitive dust.

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. The contact information for the regional office of the Oregon Department of Environmental Quality – Air Quality Division, shall also be provided.

Noise: Noise is an impact that has been identified as an issue by surrounding property owners. The berms proposed by the applicant and limits on operating hours are intended to help minimize noise impacts. The County has no noise ordinance, but noise is regulated by the Oregon Department of Environmental Quality.

To the extent authorized by law, the Applicant agrees to replace existing back-up “beepers” on mining equipment and vehicles with directional “white noise” back-up alarms.

Reclamation: No more than 10 acres of ground shall be disturbed by mining at any time. The 'disturbed area' refers to the active mining area (5 acres) and reclamation cells and does not include the stockpile area or the berm areas. The site will be reclaimed concurrently with mining as cells are completed. Prior to reclamation, the mine operator shall stabilize disturbed areas using hydro-seeding or other soil stabilization product to help minimize dust from disturbed areas.

Upon completion of mining cells, the Applicant agrees to remove standing water. Overburden will be replaced and ripped and disked to reduce compaction. Topsoil will be replaced. Reseeding will occur in the next planting season, but soil will be stabilized until planting can occur. The site will be reclaimed concurrently with mining as cells are completed.

All reclamation activities shall be subject to a reclamation plan approved by DOGAMI. The Applicant shall work with the property owner to ensure that reclamation is carried out in a manner that restores the property to its current use for grazing and hay production.

Groundwater: The Applicant acknowledges that groundwater may be encountered while mining the Subject Property. If water is encountered, it will be pumped out of the mining area and infiltrated on-site into recharge trenches as described in the Hydrogeologic Characterization report and in Exhibit 33. Groundwater concerns pose economic, social and environmental issues for neighboring properties within the impact area. It is understood that requirements for groundwater monitoring and remediation may have economic consequences for the mine operator. Table 3 of the Aggregate Mine Hydrogeologic Characterization report identifies wells that have potential to be influenced by mining activities on the Vanier property in the absence of mitigation.

The Applicant has identified properties within the 500' buffer area for baseline testing. These properties identified by the Applicant primarily have relatively shallow wells (drilled above 40 feet) that are in the same aquifer and similar depth to the area proposed for mining.

Baseline data shall be collected for said wells within the 500' foot buffer area prior to mining, and information collected shall be provided to the respective property owner and Crook County Community

Development Department.¹⁰ Baseline testing will consist of water level measurements for the wells and discharge measurements of spring flow, as appropriate. Baseline water quality testing will consist of GRO (Gasoline Range Organics), DRO (Diesel Range Organics), turbidity, total dissolved solids, iron, manganese, pH, *conductivity and temperature*.¹¹

The Operator shall collect on-site monitoring well water quantity data continuously and on-site monitoring well water quality data quarterly and shall share all collected data quarterly with designated well/spring owners who have granted access and sampling permission. Prior to mining through a trench or a monitoring well, all previously collected groundwater data will be reviewed by licensed professional geologist or engineer. This data analysis shall consider the relocation and placement of the next infiltration trench and monitor wells as well as any potential adverse impacts to surrounding properties. The Operator shall adjust the Mine Plan to minimize or eliminate any mine related adverse impacts. All data shall be maintained on file by the Operator for 5 years.

The Applicant has proposed a groundwater protection guarantee. The Applicant will work with the Crook County Community Development Department and Crook County Counsel to finalize the groundwater protection guarantee. Said groundwater protection guarantee will ensure, at a minimum, that any injury to the quality or quantity of water is promptly and completely compensated through interim measures by the Applicant for the period of the appropriate state agency's review, and that should causation for said injury be determined by the state agency to be attributed to Operator, said injury shall be remedied in a complete and permanent manner. Any violation of the groundwater protection guarantee by the Applicant shall be prosecuted by the County under CCC 18.144.070, in addition to any other remedies or penalties under law.

VI. CONCLUSION

Based on the above findings of fact, the County Court amends the Crook County Comprehensive Plan to include the Subject Property as a 3B site and to include the ESEE analysis and program to achieve described above.

¹⁰ The Applicant proposed baseline water quality and quantity testing of three wells (shallow well on the Vanier property and wells on the Mikulski and Johnson properties) and two springs on the Davis property. (Page 2 of Exhibit 24).

¹¹ The Hydrologic report (table 3) also identifies an additional 39 wells within ½ mile of the subject property that share the same aquifer and could have "possible adverse impacts" in the absence of mitigation measures.

APPENDIX 1

- Planning Commission Recommendation to County Court
- Comp Plan Amendment Application
- Comp Plan Amendment Burden of Proof
- Exhibit 1 - Ayres
- Exhibit 2 - Daly
- Exhibit 3 - Wheeler-Johnson
- Exhibit 4 - Pepper
- Exhibit 5 - Davis, Monique
- Exhibit 6 - Davis, Teresa
- Exhibit 7 - Mikulski
- Exhibit 8 - Sieben
- Exhibit 9 - Pomraning
- Exhibit 10 - Stafford
- Exhibit 11 - Fenderson
- Exhibit 12 - Pomraning, Alex
- Exhibit 13 - DOGAMI
- Exhibit 13A - DOGAMI Code Reference table
- Exhibit 14 - Knife River
- Exhibit 15 - Gamble
- Exhibit 16 - Knife River presentation
- Exhibit 17A & B - Pomraning
- Exhibit 18 - Pomraning
- Exhibit 19 - Mikulski
- Exhibit 20 - Pomraning
- Exhibit 21 - Richard Zimmerlee
- Exhibit 22 - Applicant Site Plans
- Exhibit 23 - Applicant Dust Management
- Exhibit 24 - Applicant Groundwater Exhibits
- Exhibit 25 - Radabaugh
- Exhibit 26 - Applicant Outline for Responses to Groundwater Questions
- Exhibit 27 - Opposition Signatures
- Exhibit 28- Stec
- Exhibit 29 - Mikulski
- Exhibit 30 - Mikulski
- Exhibit 31a & b - Zimmerlee
- Exhibit 32 - Applicant Rebuttal
- Exhibit 33 - Stantec Rebuttal Letter
- Exhibit 34 - Applicant Final Rebuttal
- Amended Staff Report - 9.15.2021 - Comp Plan Amendment
- Exhibit 35 - Billie Johnson
- Exhibit 36 - Pence Kelly

- Exhibit 37 - Knife River Ord 281
- Exhibit 38 - Brinkman
- Exhibit 39 - Knife River
- Exhibit 40 - Butler
- Exhibit 41 - DOGAMI
- Exhibit 42 - Hydro Assessment
- Exhibit 43 - Existing DOGAMI sites
- Exhibit 44 - Richard Zimmerlee
- Exhibit 45 - Applicant - Butler and Woodward Reclamation
- Exhibit 46 - Radabaugh
- Exhibit 47 - John Eisler, Asst. County Counsel
- Exhibit 48 - Will Van Vactor CCCD Director, Memo to Court
- Exhibit 49 - Applicant Submittal of Draft Minutes of PC Deliberations
- Exhibit 50 - Applicant - Vanier-Woodward Aerial Photos
- Exhibit 51 - Teri White
- Exhibit 52 - Bran Zednik
- Exhibit 53 - Zimmerlee
- Exhibit 54 - Pomraning
- Exhibit 55 - Mikulski
- Exhibit 56 - Johnson
- Exhibit 57 - Mikulski
- Exhibit 58 - Pomraning
- Exhibit 59 - Applicant - Woodward-Vanier Final Contours
- Exhibit 60 - Stantec
- Exhibit 61 - Hudspeth
- Exhibit 62 - Newton, Cascade Geoengineering LLC
- Exhibit 63 - Applicant - ESEE Analysis and Program to Achieve Goal 5
- Exhibit 64 - Mikulski
- Exhibit 65 – Memo from County Counsel regarding new exhibits
- Exhibit 66 – Applicant’s Final Argument

APPENDIX 2

Farm use.
Propagation or harvesting of a forest product.
Composting limited to accepted farming practices in conjunction with and auxiliary to farm use on the subject tract.
A facility for the processing of farm products with a processing area of less than 2,500 square feet.
Agricultural buildings customarily provided in conjunction with farm use.
Creation of, restoration of, or enhancement of wetlands.
A facility for the processing of farm products with a processing area of at least 2,500 square feet but less than 10,000 square feet.
A facility for the primary processing of forest products.
Primary farm dwelling.
Relative farm help dwelling.
Accessory farm dwelling.
Lot of record dwelling.
Nonfarm dwelling.
Replacement dwelling for historic property.
Replacement dwelling.
Temporary hardship dwelling.
Residential home as defined in ORS 197.660 , in existing dwellings (limited to the EFU-2 and EFU-3 zones only).
Room and board arrangements for a maximum of five unrelated persons in existing residences.
Dog training classes or testing trials.
Farm stand.
Winery.
Cider business.
Agri-tourism and other commercial events or activities that are related to and supportive of agriculture.
Parking of up to seven log trucks.
Home occupations.

Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under Use 3.1.
A landscape contracting business, as defined in ORS <u>671.520</u> , or a business providing landscape architecture services, as described in ORS <u>671.318</u> , if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under Use 1.6, but excluding activities in conjunction with a marijuana crop.
Equine and equine-affiliated therapeutic and counseling activities.
Guest ranch.
Exploration for and production of geothermal, gas, oil and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
Operations for the exploration for minerals as defined by ORS <u>517.750</u> .
Operations conducted for mining and processing of geothermal resources as defined by ORS <u>522.005</u> and oil and gas as defined by ORS <u>520.005</u> not otherwise permitted.
Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources.
Processing as defined by ORS <u>517.750</u> of aggregate into asphalt or Portland cement.
Processing of other mineral resources and other subsurface resources.
Climbing and passing lanes within the right-of-way existing as of July 1, 1987.
Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur or no new land parcels result.
Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.
Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels.
Transportation improvements on rural lands allowed by and subject to the requirements of OAR <u>660-012-0065</u> .
Personal use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS <u>540.505</u> .
Land application of reclaimed water, agricultural or industrial process water or biosolids, or the on-site treatment of septage prior to the land application of biosolids.
Utility facility service lines.
Utility facilities necessary for public service, including associated transmission lines as defined in ORS <u>469.300</u> and wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.
Transmission towers over 200 feet in height.
Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities.
Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.

Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
Disposal site for solid waste approved by the governing body and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245 , together with equipment, facilities or buildings necessary for its operation.
Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-093-0050 and 340-096-0060 .
Firearms training facility in existence on September 9, 1995.
Fire service facilities providing rural fire protection services.
On-site filming and activities accessory to on-site filming for 45 days or less as provided for in ORS 215.306 .
A site for the takeoff and landing of model aircraft.
On-site filming and activities accessory to on-site filming for more than 45 days as provided for in ORS 215.306 .
Living history museum as defined in CCC 18.08.120 .
Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
Public parks and playgrounds.
Public parks or park uses in an adopted park master plan.
Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210 .
A county law enforcement facility that lawfully existed on August 20, 2002 and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283 (1).
Operations for the extraction of water.
Churches and cemeteries in conjunction with churches.
Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

Private parks, playgrounds, hunting and fishing preserves, and campgrounds.

Golf courses.

An outdoor mass gathering of more than 3,000 persons that is expected to continue for more than 24 hours but less than 120 hours in any three-month period, as provided in ORS 433.735.

Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month period is subject to review by a county planning commission under ORS 433.763.