

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**  
**FOR MULTNOMAH COUNTY, OREGON**

In the Matter of Adopting an Economic,       )  
Social, Environmental, and Energy (ESEE)    )  
Analysis for Mineral and Aggregate        )  
Inventory Site #8, Howard Canyon.        )

**FINAL ORDER       #90-44**

Oregon Revised Statute 197.640 requires counties to review their comprehensive plans and land use regulations periodically and make changes necessary to keep plans and regulations up to date and in compliance with the statewide planning goals. A Proposed Local Review Order intended to bring the County into compliance was presented to the Department of Land Conservation and Development (DLCD) on February 28, 1989. DLCD recommended changes to selected items in the Proposed Local Order which included revising the Statewide Planning Goal 5 Economic, Social, Environmental, and Energy Analysis of the mineral and aggregate sites. The Oregon Administrative Rule guiding this analysis is found in Chapter 660, Division 16.

During the process of revising this mineral and aggregate ESEE Analysis public hearings were held before the Board of County Commissioners on December 19, 1989, January 9, 1990, February 20, 1990, and March 6, 1990. On each of those dates written and oral testimony was taken and heard regarding this site.

Based upon that testimony the Board adopts the following:

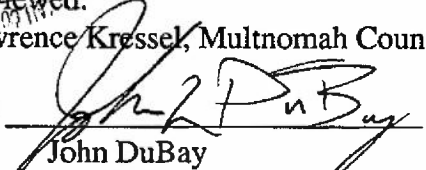
1. An ESEE Analysis for Site #8, Howard Canyon, which concludes that the appropriate classification of the site is "3B, Allow Conflicting Uses".
2. A packet of Findings in support of the ESEE Analysis conclusion.

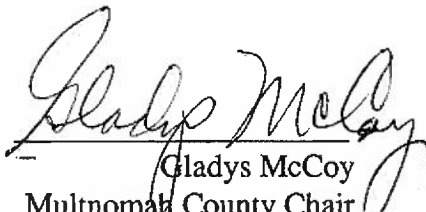
This order and the foregoing are to become attachments to the Local Review Order to be submitted to the Department of Land Conservation and Development.

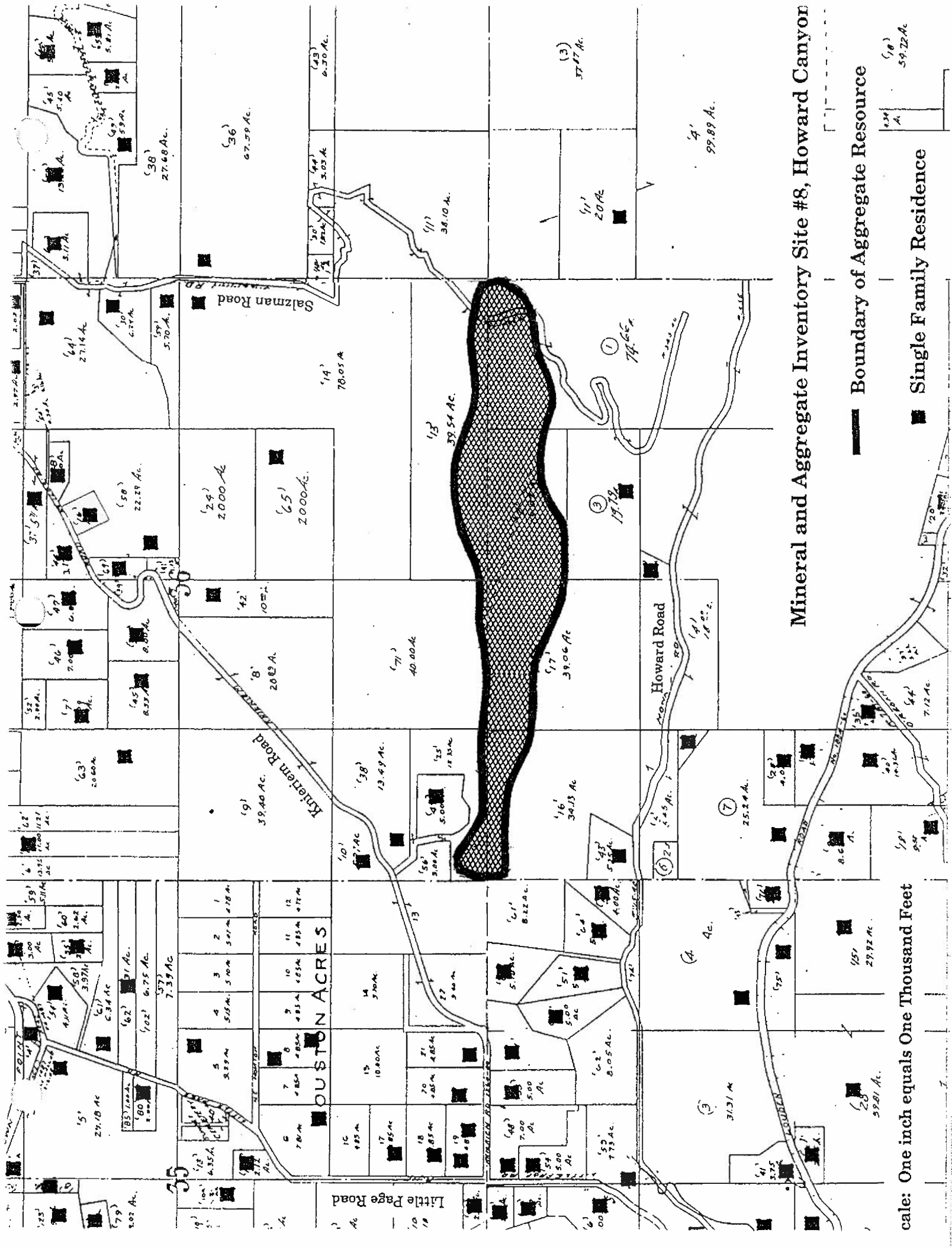
Approved the 27th day of March, 1990.



Reviewed:  
Lawrence Kressel, Multnomah County Counsel

By:   
John DuBay  
Chief Deputy County Counsel

  
Gladys McCoy  
Multnomah County Chair



Mineral and Aggregate Inventory Site #8, Howard Canyon

ATTORNEYS AT LAW

101 S. W. MAIN STREET

TELEPHONE (503) 221-1011

FAX (503) 248-0732

ELIZABETH A. SAMSON  
CANDACE H. WEATHERBY  
KATHLEEN L. BICKERS\*  
TERRY M. WEINER\*  
MARK J. GREENFIELD  
CHARLES D. HARMS  
LESLIE ANN BUDEWITZ†  
NEIL W. JONES  
JODY ANN NOON  
PEGGY HENNESSY\*  
MARY KYLE MCCURDY\$  
WILLIAM H. CAFFEY  
DANIEL H. KEARNS

\* MEMBER OREGON AND WASHINGTON BARS  
 ‡ MEMBER OREGON AND WASHINGTON, D.C. BARS  
 † MEMBER WASHINGTON BAR ONLY  
 § MEMBER OREGON AND CALIFORNIA BARS

**SEATTLE OFFICE**  
MANAGING PARTNER: E. PENNOCK GHEEN  
SUITE 4330  
1001 FOURTH AVENUE  
SEATTLE, WASHINGTON 98154-1106  
(206) 292-1212  
FAX (206) 682-4687

Board of County Commissioners  
Multnomah County Courthouse  
1021 SW Fourth  
Portland, OR 97204

Re: Howard Canyon Site: Response to Objections, Comments  
and Criticisms of the Landowner

Dear Commissioners:

In this folder you will find the response of the residents and property owners in the vicinity of the proposed Smith Quarry on Howard Canyon Road. We had only a week to respond to the sheaf of documents submitted by Mr. Smith and apologize for any imperfections in these materials caused by our haste to respond. Prior to this submission, we have provided an earlier draft to your planning staff to assure technical accuracy.

Immediately following this letter is a Table of Contents for this response. For the convenience of the Board, we have reprinted the previously prepared 3B ESEE analysis and summarized the "Objections, Comments, and Criticisms" submitted by Mr. Hribernick last week and inserted them, along with our response and references to the other materials in this folder, in bold print immediately following each numbered objection. Thus, the Board may evaluate the ESEE analysis supporting a "3B" designation (which would not allow surface mining of this site at this time), along with the objections and response to each contested point.

Much of this ground was covered in the last application, made in 1987 by Mr. Raymond Smith and Mr. Reuben Lenske, for a conditional use permit to mine this same site, which was denied that year for the fifth time. The staff has agreed to supply relevant requested parts of the record of that quasi-judicial proceeding to the Board and we specifically incorporate the same by this reference.

The Board should pay particular attention to the landowner's representations regarding the availability of other

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Board of County Commissioners  
March 13, 1990  
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quarries to supply rock to the market. The question posed to other quarry owners was whether they would supply one load of "3 inch rock." Given the question, the answer was predictable. 3 inch rock, as indicated by Mr. Scott in his affidavit, is not the kind of rock normally sold by quarries. It is large rock used for logging or construction roads, rather than for asphalt or home construction. Moreover, most quarries do not wish to produce only one load of such specialized rock. More interesting and relevant, however, is the response of Gresham Sand and Gravel which, in answer to our question regarding delivery of rock to the Corbett area, referred the caller to Mr. Smith to supply that rock. That, plus other indications by neighbors in the file, indicates that Mr. Smith has been selling such rock commercially in violation of the Multnomah County Zoning Ordinance.

Mr. Scott, our engineering geologist whose credentials regarding surface mining and road construction are already in the record, assisted us in the preparation of the response and we are grateful for his assistance. He also requested that I emphasize once again that the cost of road improvements to facilitate this use is between \$500,000 and \$1 million, rather than the \$60,000 figure suggested by the landowner. He adds that he has double-checked this figure with Dick Howard, of the Multnomah County Engineer's Office.

Finally, we wish to point out that Mr. Smith and his counsel are just plain wrong in asserting that the Board must allow this site to be mined. We enclose a copy of Mobile Crushing Co. v. Lane County, 13 Or LUBA 97 (1985), which is directly on point. Your present County Counsel wrote that opinion.

We appreciate the Board's indulgence in allowing this response and hope that it assist you in deciding this case.

Very truly yours,

MITCHELL, LANG & SMITH

  
Edward J. Sullivan

EJS:cc

Enclosures

cc: Paul Hbernich, Esq.  
Larry Kressel, Esq.  
Lorna Stickel  
Clients

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Multnomah County

Goal 5 Inventory

2/06/90

Type of Resource: Mineral and Aggregate  
Multnomah County Inventory Site #8  
Howard Canyon

Location: Along the section line between Section 36, T. 1 N, R. 4 E. and Section 1, T. 1 S., R. 4 E. See map with resource boundaries overlayed on Assessment and Taxation property line base map in inventory file.

Description: DOGAMI I.D. #26-0065

This aggregate resource site is a cleared ridge top which runs in an east-west orientation just north of Howard Canyon. As confirmed in a study by H.G. Schlicker & Associates in which 31 testpits were dug, the basalt lava resource occupies the upper 50 feet or more of the ridgecrest and is more than 4200 feet long and more than 350 feet wide for most of its length. The amount of aggregate material ranges from 150,000 to 2.7 million cubic yards. The ground surface of the resource area ranges in elevation from 780 feet to 860 feet.

1. Mr. Smith notes that the relatively flat bench on which the basalt lava resource is located is approximately 700 feet in width, with substantial area to serve as a buffer.<sup>1</sup>

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1. Mr. Smith, the owner of the Howard Canyon site, has submitted "Objections, Comments, and Criticisms" of the County's alternative ESEE consequence analysis. That document is duplicated and contained as the last document in this folder. This document is submitted by neighbors of the Howard Canyon site in response to those objections, comments, and criticisms.

We have no objection to inclusion of this supplemental information; however, related activities and impacts from the operation do extend beyond the ridgetop location of the resource.

Moreover, it will take time to excavate into the basalt flow far enough so that the mining operation is enclosed by pit walls 40 to 50 feet in height. It will take much longer to enlarge this pit floor sufficiently so that crushing as well as mining can be protected by the pit walls. Until then, mining and crushing will not be shielded and will require buffering. Additionally, the landowner has not shown how the soils will be stabilized.

The side slopes on the site vary from 50 to 90% (Schnitzer, DOGAMI, 1986). The ridge is bordered by forested ravines to the north with a small creek and to the south by Howard Canyon and Big Creek. Big Creek and its local tributaries have been mapped as Class I Streams by ODF.

2. Mr. Smith also notes that the top of the ridge where the mineral resource is located has average slopes of 5%.

Although the mineral resource is located on top of the ridge, the extraction process impacts surrounding side slopes. The crusher site (at least in the early stages), stock pile site, haul road, and at least part of the plant site will be on the side slope.

A. Available information indicates that the site is important (site has the ability to yield more than 25,000 cubic yards of mineral and aggregate material in less than 5 years):

No - Designate 1A: Do not include in plan inventory

XXX Yes - Go to B.

B. Is available information sufficient to determine the location, quantity, and quality of resource at the site?

No - Designate 1B: Address the site in future when  
information becomes available

XXX Yes - Include in plan inventory and go to C.



C. Zoning: Multiple Use Forest-38; Multiple Use Forest-19; and  
Exclusive Farm Use

Based on zoning, are there conflicting uses?

No - Designated 2A: Preserve the resource

XXX Yes - Go to D.

D. Describe existing and potential conflicting uses:

Single family residences: In the MUF-19 zone, single family residences are permitted as a primary use on a lot of 38 acres, as a use under prescribed conditions on a new lot between 19 and 38 acres with a forest or farm management plan, as a use under prescribed conditions on a lot of record of between 10 and 38 acres with a forest or farm management plan, or as a conditional use on a lot of record of less than 10 acres. The MUF-38 zone requirements are identical to the MUF-19 zone except that new lots must be at least 38 acres in area. Comparable standards are in the EFU zone for new dwellings. Single family residences constitute a significant conflicting use.

2. Mr. Smith asserts that the County failed to consider 1000 Friends of Oregon vs. LCDRC (Lane County, 305 Or 384, 752 P2d 271 (1988) because that case discourages single-family residences on resource land. He also notes that 1000 Friends of Oregon vs. LCDRC (Curry County), 301 Or 447, 724 P2d 268 (1986) requires exceptions to Goals 3, 4, and 14 for the conversion of rural land to urban use. Mr. Smith states that "[i]f single-family uses are not allowed in MUF resource zones, there is no conflict. The county has not adequately justified when a single-family residence could be constructed on the site and, therefore, has failed to justify that the identified conflict (single-family residences) is, in fact an actual conflict."

First, 1000 Friends vs. LCDC (Lane County), dealt with establishment of new non-forest dwellings on forest lands. Here, we are dealing with existing dwellings and the establishment of a new commercial quarry operation. In addition, single-family residences are a permitted, and existing, use in this zone. One of the purposes of the Multiple Use Forest District is "to provide standards for residential and other uses, including local and tourist commercial services which are compatible with forest and agricultural uses;" MCC 11.15.2162. The existing dwellings are compatible with forest and agricultural uses and do, indeed, constitute a conflicting use with extraction of the aggregate material.

Second, there has been no conversion of rural land to urban use and no reason to go through the exceptions process to continue an existing use. Residential use is an outright permitted use on parcels of 19 or 38 acres in the Multiple Use Forest District and a conditional use on smaller parcels. This is not an application for new construction of an urban residential use, the Goal 5 process requires an analysis of the impacts on existing conflicting uses. The only urban use is the commercial quarry proposal, and its associated uses which has public service facility impacts and is far beyond the needs of the rural community in which it is located, thus violating statewide Planning Goals 11 and 14. Therefore, 1000 Friends vs. LCDC (Curry County) is not applicable.

Finally, because single-family dwellings are allowed in the Multiple Use Forest District and do constitute a conflict, they must, therefore, be considered in the Goal 5 ESEE process.

A range of potential conditional uses and community service uses are listed in the MUF zoning districts but to be approved the approval authority shall find that the proposed use "[w]ill not adversely affect natural resources" (MCC 11.15.7120 (B)). In the MUF zone such uses include churches, schools, cottage industries, service commercial, and tourist commercial establishments.

4. Mr. Smith alleges that the county fails to state

that conditional uses and community service uses cannot be located in resource lands if they will adversely affect natural resources.

There is no objection to the inclusion of this statement and, in fact, it had already been included above.

Describe the consequences of allowing conflicting uses:

OAR 660-16-005 (2) provides:

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.

5. Mr. Smith contends that the county has failed to take its identified conflicting use and assess what impacts that use would have on the Goal 5 mineral and aggregate resource.

The fact of the matter is that allowance of single family residential use will have very little actual impact on the resource. If fully allowed, residences would generally be on 19 or 38 acre parcels; therefore, the resource site would largely be preserved for future mineral extraction.

If both uses, single family residences and quarry operations, were required to co-exist, the impacts on the resource would be primarily economic because of the cost involved in mitigating the impact on surrounding dwellings, including mitigation of social and environmental impacts. The operating costs would increase due to restrictions for the protection of the nearby dwellings. In addition, the operation would be subject to stricter noise and dust controls for the environmental protection of the surrounding uses.

Economic:

1. Impacts on Resource: The consequence could be the delay of development of a quarry site in the county east of the Sandy River and outside the Mt. Hood National Forest and Columbia River Gorge NSA available at the present time for commercial use. However, the County finds that, although not currently being considered for development, there are eight other sites within a 25 mile range of the subject site. (See February, 1989 ESEE worksheet at 13 and report of Lewis Scott, P.E., dated January 9, 1990). The County believes these reports and data.

6. Mr. Smith challenges the conclusion that there are other sites available for development and that Howard Canyon is not needed. He alleges that "need" is not a consideration for the Goal 5 analysis and that the existence of eight other sites within a 25-mile range is not relevant.

In Mobile Crushing Company vs. Lane County, 13 Or LUBA 97 (1985), written by Mr. Kressel, in determining that the conflicting residential use deserved full protection, LUBA looked to the County's finding:

"We agree there is an aggregate resource at the site. However, with the five nearby quarries available, non-use at this time would not outweigh a high degree of conflict with existing residences. Furthermore, denial at this time nearly preserves the resource for the future." Id. at 108.

As Mobile Crushing demonstrates, "need" is a relevant inquiry for the Goal 5 process and in this case there are alternative sites to meet the demands of the area. Further, the demand in the immediate area, which is the relevant market, will be relatively small based on the limited potential development in the MUF zone, especially in terms of Goal 10 and the provision of affordable housing in this rural area.

In addition, the land may be used for other economically viable uses which are permitted outright in the zone, i.e. farming or forestry.

7. Mr. Smith asserts that availability of other economically viable uses is not relevant to the Goal 5 inquiry. He indicates that the reclamation plan will ensure that farm or forestry uses will remain available on the site in the future.

The statement was made to show that the landowner has an economically viable alternative to immediate exploitation of the aggregate resource.

If designated 3B, the Howard Canyon site will not be available for commercial use; however, East Multnomah County is currently and adequately supplied by at least five different operations. (See January 9, 1990 Geologist Report at 3):

1. Smith Bros. Quarry
2. Brightwood Quarry
3. Gresham Sand and Gravel
4. Cascade Sand and Gravel
5. Pacific Rock Products

8. Mr. Smith again asserts that alternative sources are not relevant to the Goal 5 analysis. He goes on to a site by site explanation of why these alternative sources are inadequate.

The general implication is that other sources would be unwilling or unable to deliver the material due to the high price of delivery. By the time the Howard Canyon quarry has built the required buffers, sediment ponds, and has reconstructed 4.5 miles of county road, their price, too, will be high.

Mr. Smith's representative made several telephone inquiries as to the availability and cost of 3 inch minus rock. See affidavit of Paul Hribernick. However, few quarry operations have or sell rock that size. 80% to 90% of the rock sold is 3/4 inch minus. See affidavit of Lewis Scott. In follow-up telephone inquiries made by Ms. Peebles, additional information was obtained. For example, one of the companies Paul Hribernick reported as unable to deliver the rock disclosed that this was because the company had only one truck.

The Howard Canyon resource would not be available for immediate exploitation if designated 3B, but may increase in value if preserved for future use, given the relative scarcity of the resource and possible demand in this portion of the County. Such portion is not anticipated to grow rapidly before the next periodic review of the County's plan.

9. Mr. Smith contends that a 3B designation does not protect the resource or preserve it for future use. He claims that allowance of the conflicting use will ultimately prevent the use of the Howard Canyon site.

3B does sufficiently protect the resource. The site remains on the inventory and a subsequent ESEE consequence analysis may indicate the extraction is appropriate at a future date. The zoning of surrounding lands will prevent intensive residential development (MUF-19 and MUF-38) and no conditional uses will be allowed if they are found to conflict with this inventoried resource. Mobile Crushing, supra. found that the effect of prohibiting immediate exploitation is to "preserve the resource site for future mineral extraction." Id. at 108.

The existence of other resource sites in the area is relevant to the question of economic consequences. The site is not now

necessary to meet the demand for the resource. Transportation is considered to be economically viable up to 25 miles for a one way trip. (Gray, DOGAMI, 1988). There are at least eight other aggregate sites in operation within a 25 mile range of this site which can serve the local area:

1. Damascus Quarry is located one mile south of Damascus in Clackamas County. This site is located about 14 miles from Springdale and 18 miles from Howard Canyon.
2. Construction Aggregates is located one mile south of Barton in Clackamas County. This site covers 200 acres and is located 9 miles from Orient, 17 miles from Springdale, and 19 miles from Howard Canyon.
3. Deep Creek is located 1/2 mile from Barton in Clackamas County. It is 15 miles from Springdale and 19 miles from Howard Canyon.
4. American Sand and Gravel is located 2 miles from Barton in Clackamas County and is a large operation with considerable reserves. The site is 7 miles from Orient, 14 miles from Springdale, and 16 miles from Corbett.
5. Mt. Hood Rock is located in Brightwood in Clackamas County and East of the Sandy River. The site is about 18 miles from Orient and 24 miles from Howard Canyon.
6. Gresham Sand and Gravel is located within the city limits of Gresham and is 7 miles from Springdale and 13 miles from Latourelle.
7. Rogers Construction is located within the city limits of Gresham and is about 7 miles from Springdale and 11 miles from Howard Canyon.
8. Oregon Asphaltic Paving is located in Gresham and is 8 miles from Springdale and 12 miles from Howard Canyon.

Sites 6, 7, and 8 (the Gresham sites) may become depleted over the next 15 years. However, the Clackamas County sites are expected to remain available for at least another 25 years. The existing sites within a 25-mile radius are sufficient to meet the



needs of the county for the duration of the planning period. Such economic consequences may be analyzed once again during the next periodic review.

10. Mr. Smith again challenges the relevance of whether there is a need for additional aggregate sources. He also discusses the economics of hauling small amounts of aggregate and existing conditions at several alternative sites.

Ten cubic yards of rock (one load) is expensive anywhere and some producers will not deliver one load. This is a fact of economics and has little to do with the Howard Canyon quarry. In addition, the analysis is based upon delivery to the Corbett area, but the relevant area of large scale commercial use will be east Gresham.

Moreover, Mr. Smith based his inquiries and analysis on transporting 3 inch minus rock, which is used primarily for logging and construction roads. The general market demand is for 3/4 inch rock. See affidavit of Lewis E. Scott. The attached affidavit of Pam Peebles shows the various responses to an inquiry regarding availability and cost of 3/4 inch rock.

11. Mr. Smith notes that the Gresham site will be depleted before the expiration of the county's current 20-year planning period and claims that Clackamas County sites cannot deliver material in a cost effective manner. He states that alternative sites can deliver rock only at prices two to three times the price of Howard Canyon. He also claims that the county is delaying protection until the next periodic review by allowing the conflicting use and prohibiting immediate exploitation. He asserts that this may potentially eliminate the availability of the site prior to the next periodic review.

As indicated above, the site will remain on the Goal 5 inventory and be protected as a Goal 5 resource. The zoning for the area will guard against intensive development that would eliminate the availability of the site prior to the next periodic review. Moreover, there is no evidence to support the allegation that other sources would cost two to three times as much as Howard Canyon,

especially after development costs.

Additionally, there are two potential sites on forest service lands which may be made available to the local residents as a common-use area, community pits or under contract, according to Mt. Hood District Geologist. Sites located on USFS lands in the Mt. Hood National Forest can be operated in a variety of ways with prices starting as low as \$1 per cubic yard. Economically, Howard Canyon would be unable to compete with the extremely low costs associated with a community pit or common-use area. Community pits are considered by the county to be an economically viable option for the County at this location. In addition, the community pit or common-use area would lessen the demand on existing sites and prolong the productivity of those sites.

12. Mr. Smith alleges that the USFS does not have an active pit in the area and that the \$1 per cubic yard does not include crushing. He further contends that it is inconsistent to state that Howard Canyon cannot compete with community pits while elsewhere in the ESEE analysis "it rejects the idea that Howard Canyon has no economic value despite the inability of all of its 'alternative' sites to compete with Howard Canyon on the price point."

Mr. Smith does not contend that Howard Canyon can compete with the community pit even if crushing is done off site. Moreover, his supposed inconsistency is unclear. There is no evidence in the record on the price of Howard Canyon materials. In addition, the ESEE does not "reject the idea that Howard Canyon has no economic value despite the inability of all of its 'alternative' sites to compete with Howard Canyon on the price point." As stated above, once Howard Canyon quarry has built the required buffers, sediment ponds and has reconstructed 4.5 miles of county road, the price of the aggregate material will necessarily be high and it may be unable to

compete with existing operations.

The Howard Canyon site is on the inventory. The site has economic value and is significant. However, it does not necessarily follow that all significant resources must be available for immediate exploitation. Once inventoried, the county must determine whether to 1) fully protect the resource; 2) allow conflicting uses fully; or 3) limit conflicting uses. See OAR 660-16-010. Howard Canyon should be placed in the second category which allows conflicting uses fully and a 3B designation should be placed on the site.

13. Mr. Smith again contends that a 3B designation will not protect the resource. He notes that sites are becoming more scarce in East Multnomah County and that there will be greater conflicts in the future due to development.

These issues have already been addressed. See "Map of Rock Materials in Multnomah County," which is contained in this folder. The site will remain on the Goal 5 inventory and thus be protected as a valuable resource. There is an adequate supply of aggregate material in East Multnomah County and the MUF-19 and MUF-38 zoning will prevent significant development of additional conflicting uses.

2. Impacts on Conflicting Uses: Homes too near the noise and dust of extraction activities will have lessened resale value. Proportionally, there is a greater economic impact on the value of the nearby homes and other uses than there is on the resource. The value of the resource may indeed increase over time if left in place.

14. Mr. Smith asserts that there is no support for the allegation that homes too near the noise and dust will have less resale value. He contends that if

the quarry can operate within the DEQ standards, there will be no value-decreasing impact on the homes.

There is evidence in the record of increased noise, dust, truck traffic, road inadequacy, and resale value of a home near the quarry operation. Operation within a certain standard is not the equivalent of no impact. In addition, Mr. Smith notes several standards with which he allegedly does not have to comply due to various exemptions. If this is the case, the impacts on the surrounding uses will be greater and resale value may be decreased further.

Several of the surrounding property owners have written statements, copies of which are attached, regarding impacts of the existing quarry operation at the site. Mr. and Mrs. Stokes hear the noise from the rock crusher and blasting, particularly when the east wind blows. Ms. Faught hears the blasting and crushing. One day the blasting shook her house so badly that her china fell down. Ms. Hagen also hears the noise from the crusher, the blasting, and the gravel trucks. Moreover, she is concerned about traffic safety on the windy roads when the "loaded gravel trucks are vyeing [sic] for space on Howard with the school bus, horseback riders, joggers and kids on bicycles." These are the perceived impacts of the quarry operation and will cause a decrease in the resale value of nearby homes.

3. Requirements of other applicable Statewide Planning Goals:

A. Transportation, Goal 12 - To provide and encourage a safe, convenient and economic transportation system:

In testimony from the County Engineer and Opponents' traffic engineer during the Conditional Use 7-87 public hearings on the subject site, it was stated that neither SE Howard nor E Knieriem Roads, the only two options for travel to and from the property, are of sufficient construction to withstand the extra

load of gravel trucks on a constant basis without breaking up. In addition, the Scott Report of January 9, 1990 also finds these roads inadequate for commercial hauling of rock. The County believes this testimony and evidence.

15. Mr. Smith states that the ESEE fails to address both prongs of Transportation Goal 12 - economic and safety. He contends that the county is failing to protect the resource and is failing to encourage and provide an economic transportation system. He also contends that the county has ignored Goals 9, 10, and 13.

As previously stated, a 3B designation continues to protect the resource; the site remains on the inventory. In addition, there is no evidence that immediate exploitation of the resource at Howard Canyon would provide an economic source for road construction.

Goal 9 - Economics - The evidence in the record indicates that the current needs of the county are being met by existing quarry operations. Economic development is to be encouraged; however, the benefits derived from immediate development of this site do not outweigh the negative impacts on surrounding uses. See the Economic consequence section of the ESEE.

Goal 10 - Affordable Housing - There is no evidence that the operation Howard Canyon will impact the price of aggregate material generally. In addition, the zoning of the surrounding area does not allow intensive development and will not require great quantities of aggregate material for construction of affordable housing. The Howard Canyon rock, if 3 inch minus as indicated by Mr. Hribernick's comparisons, is not the type used for housing construction.

Goal 13 - Energy - This matter is discussed in the Energy section of the ESEE analysis.

The estimated number of truck trips per day for full operation is 10 round trips. In test cores done on SE Howard Road, it was found that the road consists of two inches of oil

matte over nine inches of rock, construction very similar to a residential street standard, and therefore, cannot withstand frequent heavy truck traffic. These determinations, made during the 1987 conditional use permit proceedings, were not contested during the periodic review proceedings. The County believes these facts.

Also, for the one mile of SE Howard Road that gravel trucks would use, there are several areas of narrow road widths and difficult sight distances that would need modifications in order to safely accommodate large truck traffic. The Multnomah County Engineer found that due to road width limitations, Howard Road would be very difficult to improve to sufficiently safe conditions. The sight distance is marginal on both Howard and E Knieriem Roads due to steep grades and sharp curves and the quarry use will create hazardous traffic conditions on local roads and intersections. These determinations, also made during the 1987 conditional use permit proceedings, were not contested during the periodic review proceedings. The County believes these facts.

On the northward travel route option using E Knieriem, the road width and sight distances are better than SE Howard, but there is still the need for road bed and surface improvements similar to those for SE Howard for a length of one-half mile. The County Construction Engineer estimated a cost between \$500,000 and \$1,000,000 to upgrade these roads to safely carry

the proposed commercial traffic.<sup>2</sup> (See January 9, 1990  
eologist Report at 4).

The economic consequences of quarry development at this  
site support a designation of 3B.

16. Mr. Smith asserts that the county is attempting to  
establish a conflict between roads and the Goal 5  
resource and that the county is concentrating on  
the operational aspects of the quarry rather than  
analyzing the Goal 5 resource.

Mr. Smith contends that the road impacts will  
affect a finite number of people. (The "Let them  
eat dust" school of conflict resolution.) He also  
alleges that the opponent's traffic expert  
confirmed that the sight distance is adequate on  
Howard Canyon Road.

Mr. Smith estimates the cost of modifying Howard  
Canyon Road to be \$60,000. Mr. Smith has also  
agreed not to remonstrate against formation of a  
local improvement district.

Mr. Smith states that E Knieriem Road offers two  
full lanes of traffic, a double-striped center  
lane and marked fog lines on the shoulders.

The operational aspects of the quarry, including  
the impact on the roads, are relevant to the ESEE  
consequence analysis required by the Goal 5  
process. Traffic and road improvement issues  
associated with the quarry operation will have  
economic, social and environmental consequences  
and must be considered in determining whether to  
allow immediate exploitation of the resource at  
this site.

Contrary to Mr. Smith's alleged finding of adequate  
site distances on Howard Canyon road, the traffic  
engineer's report stated possible sight distance  
problems with several blind driveways and

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2. This estimate pertains to the 4.5 miles of County roads  
that must be brought to certain standards to handle commercial  
hauling traffic at the Howard Canyon site.

potential problems with required stopping distance for trucks. There was no conclusion that Howard Canyon Road offers adequate site distance. See also statements of neighbors regarding traffic safety, blind driveways, loose gravel, required stopping distances.

Mr. Smith offers no support for his \$60,000 estimate regarding improvement of Howard Canyon Road. Nor does he address other areas that may require improvement as a result of this operation. Surrounding property owners are not willing to be part of a local improvement district to pay for improvements made necessary by operation of the quarry. No other response has been given to the County's estimate that road improvements will cost between \$500,000 and \$1 million. See attached statements.

Ms. Givens' statement indicates that the shoulders on E Knieriem Road are between six and twelve inches wide near her house and that the shoulders become virtually non-existent when the road narrows approximately one-third of a mile from the intersection of E Knieriem and Little Page Roads. She further states that there is a sharp curve about 100 feet from her driveway and oncoming traffic cannot be seen until it is through the curve. A copy of this statement is submitted herewith.



Social:

1. Impacts on Resource: An extraction operation would be subject to limitations on hours and days of operation (as proposed in the amended Mineral Extraction Code section). Because of the wind and funnel effect of the canyon topography, buffering will have to be extensive to protect nearby noise sensitive uses, if effective at all. The Scott Report at pp. 3-4, indicates that violations of DEQ noise rules is likely and there is no evidence that operation of the site would be able to comply with such regulations. The County finds that such violations are likely and chooses to avoid such negative environmental consequences by permitting other uses fully.

17. Mr. Smith claims that the county has ignored social impacts on the resource.

He also states that his registered acoustical engineer finds that there is no problem meeting DEQ or county noise standards at the site.

In addition, Mr. Smith contends that it is unclear whether the county considers noise a social consequence or an environmental consequence.

First, just as found in the Mobile Crushing case, no social consequences would be engendered by allowance of the conflicting use.

Mr. Smith's acoustical engineer has interpreted Multnomah County Ordinance No. 316 to allow quarry operation as an exception to the noise standards based upon an exception for "industrial or construction organizations or workers during normal operations." Mr. Smith's acoustical engineer is not qualified to make the legal determination of whether a particular quarry operation qualifies for an exception. He may be qualified to determine whether the anticipated

noise generated falls within acceptable levels, but this he has not done.

The acoustical engineer does not discuss the type of berming or buffering that would be required to protect the site. He merely makes a conclusionary statement that "[o]nce excavation has proceeded into the mountain, if a rock ridge is left at the perimeter of the resource area, all residences will be protected from sound levels in excess of that allowed at all hours of the day." No data exists on which such a view could be supported.

Noise is both a social consequence and an environmental consequence. Moreover, it may be considered an economic consequence, as its presence may decrease the value of surrounding properties and operation of the site may require additional berming and screening to protect surrounding residences.

2. Impacts on Conflicting Uses: The approximate distances from the closest existing residences to the mapped resource area are: one at 400 feet, one at 500 feet, and two at 700 feet. Between 1980 and 1988 a total of 5 new dwellings have been issued permits in Township 1 South, Range 4 East, Section 1. The total number of dwellings predating 1980 was 21 in this section. One section to the west has a much higher density and supports 55 homes, to the north are 40 homes, to the east are 11, and only 2 are located to the south. The local rural area growth rate is 1.1%. There are 96 dwellings within a 1 mile radius of the site.

18. Mr. Smith notes that he owns the closest house to the site and one of the houses 700 feet from the site. He also states that the house located 500 feet away is actually 1,600 feet from the existing quarry operation and alleges that the mining plan will prevent any noise impact.

Again, Mr. Smith challenges noise impact statements regarding the affect of the topography and wind on noise levels made by a geological

engineer as being contrary to the laws of physics and a scientific impossibility.

Mr. Smith may own two of the nearby dwellings, however, he does not live near the site. If the dwellings are occupied, DEQ noise regulations apply. In addition, there is no evidence that the operation will not impact the dwelling that is 500 feet from the site. Even if the noise level is within DEQ standards, it may still adversely affect nearby dwellings. Meeting the standard is not equivalent to "no impact." See Statements of Neighbors submitted herewith.

Perhaps "amplify" was a misfortunate choice of words, but Mr. Smith's acoustical engineer does not refute the fact that the canyon wall can "reflect and possibly focus sound toward one or more locations within a valley." As can be seen from the neighbors statements, the noise has a greater impact when the east wind blows.

Operation of the quarry will interfere with the use and enjoyment of property by nearby residents. The noise generated by blasting, machinery, and rock crushing is considerable. In the opinion of a certified engineering geologist, on-site crushing will constantly challenge DEQ and County noise and dust limits. (See January 9, 1990 Geologist Report at 4). Neighbors have complained about the blasting done in connection with the owner's personal use. The amount of necessary blasting will increase if commercial use is allowed. Proposed use of this site, based upon information provided by the owner, is expected for a period up to 35 years.

The impact of the noise is increased by the topography of the site. The noise is amplified through the wind and funnel effect of the canyon topography.

3. Requirements of other applicable Statewide Planning Goals:

A. Transportation, Goal 12 - To provide and encourage a safe, convenient and economic transportation system:

The transportation impacts discussed under the economic portion of this analysis are equally applicable to consideration of the social consequences. Local residents will be subjected to the traffic and road problems discussed in the prior section.

The social consequences of the proposed operation justify a 3B designation at this time.

19. Mr. Smith makes the same challenges to the county's analysis of Goals 9, 10, 12, and 13 under this social consequence section as he did under the economic consequence section.

Therefore, we make the same responses we made to objection #15 and incorporate them herein by reference.

## Environmental:

1. Impacts on Resource: The mineral and aggregate resource may be preserved for future use by a 3B designation. The 3B designation simply means that conflicting uses will be allowed and the resource will not be available for immediate exploitation.

A deer and elk wintering area (ODF&W, 1988) is located within one mile of the resource site to the southwest and poses a conflict in terms of proximity to weakened wintering herds. In addition, past operations at the site have resulted in violations of the Oregon Forest Practices Act due to disturbance of a Class I Stream. These constitute direct conflicts with other Goal 5 Resources.

20. Mr. Smith again contends that the county's view that a 3B designation preserves the resource for future use is invalid. He also claims that there is no support for the position that operation of the quarry will negatively impact a deer and elk wintering area.

In support of Mr. Smith's position that the quarry operation will have no impact on fish and wildlife, he offers the statement of Robert H. Ellis, a longtime family friend of Mr. Smith's, who notes that Dr. Paul Whitney agrees with his analysis.

Mr. Smith also contends that a previous forest practices act violation was not on the site and is therefore, irrelevant. He states that reclamation and revegetation will be an on-going process and will encourage grazing.

Mr. Smith states that there is no explanation of how noise and dust may conflict with nearby farm and forest use. He further notes that the only farm and forest land is on an adjacent site which he owns.

Mobile Crushing makes clear that a designation to fully allow the conflicting residential use, preserves the resource for future use.

As indicated in the Ellis report, there are deer present at the site and elk pass through occasionally. Residents in the area have also noted the presence of deer and elk which may be impacted by the quarry operation. Further, since Mr. Smith's gravel operation commenced, there has been a significant reduction in the number of coyotes in the area. See Statements of Mr. and Ms. Peebles and Ms. Faught.

Previous forest practices act violations have resulted in siltation of nearby streams. This is relevant because it shows the level of responsibility and lack of care demonstrated by Mr. Smith, to the same extent that commercial sales have occurred from this site.

Excessive noise can have adverse affects on farm animals; they can become frightened and less productive. Dust can adversely affect both plants and animals.

Removal of between 6 to 7 feet of overburden would be required for development. Soils for this site have been as Mershon Silt Loam series by SCS in 1983 which have a classification of III to IV, depending upon slope. The Forest Site Index for this resource site is 120-135 for Douglas Fir (SCS, 1983), this is the reason the area has been zoned MUF. Mershon soils on slopes over 15% are highly erodible and subject to severe potential slumping (SCS, 1983). Side slopes associated with this resource vary from 50 to 90% (Schnitzer, DOGAMI, 1986). Blasting vibration and increased trucking locally would create increased dust and noise conflicts with adjacent farm and forest land use.

2. Impacts on Conflicting Uses: Noise, dust particulates, and blasting are impacts on such sensitive land uses as homes, schools, and public parks if they are too close to the extraction operation. As indicated above, there are several homes located in close proximity to the site that would suffer negative environmental consequences from a quarry operation. Conditional uses such as schools, can be prohibited through the conditional use process due to conflict with an inventoried resource. A 3B designation does not remove the site from the inventory, the designation merely prohibits immediate exploitation.

21. Mr. Smith states that the county ignores that schools and public parks cannot be located in the MUF areas if they conflict with a natural resource operation. He also contends that the county's statements regarding noise impacts ignores compliance with DEQ requirements and that many of the homes are separated by canyons and streams.

Mr. Smith further contends, again, that 3B will allow conflicting uses to be located in a manner which would prevent the future use of the quarry.

The county has specifically noted that conditional uses, such as schools and parks cannot be located in MUF districts if they conflict with a natural resource. A 3B designation for this site would keep it on the inventory and protect it from such conditional uses being located nearby. Again, with respect to noise generated from the site, meeting DEQ standards is not equivalent to no impact on the nearby dwellings. The attached statements of surrounding residents provide evidence of the adverse affect of noise generated by the quarry operation.

As previously stated, the zoning for the area prohibits intensive development and the site may be used for a quarry if a subsequent ESEE consequence analysis justifies the use.

3. Requirements of other applicable Statewide Planning Goals:

A. Goal 4 provides for the following forest uses:

1. the production and processing of trees;
2. open space, buffers from noise and visual separation from conflicting uses;
3. watershed protection along with fisheries and wildlife habitat;
4. soil protection;
5. maintenance of clean air and water;
6. outdoor recreation; and
7. grazing land for livestock.

The site has been used for grazing (livestock habitat) which is a designated forest land use. Previously proposed reclamation plans have included replanting with Christmas trees. Use of the mineral aggregate resource with proper reclamation is not considered to be a permanent conflict. However, in the short term use of this site for mineral extraction has already conflicted with Goal 4 Resources (watershed protection) and may create more conflicts.

22. Mr. Smith implies that there are no conflicts with forest uses under Goal 4 because there are no trees on the site at the present time. He goes on to describe his site plan and states that the new forest practices rules allow extraction and processing of aggregate materials outright.

The fact that there are no trees on the site is irrelevant to the inquiry of whether there is a conflict with surrounding forest uses in the MUF zones. The area is planned and zoned for forest use, regardless of its present level of timber. Moreover, extraction and processing of aggregate materials is not an outright permitted use under the



new forest practices rules. The rules provide that mineral and aggregate resource use may be allowed subject to standards in the Goal and its implementing rule. OAR 660-06-025 (1) (c). The use must comply with review standards set forth in OAR 660-06-025 (5). The preliminary site plan submitted by the landowner is not binding.

B. Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources:

Fish and wildlife areas and habitat: There is a Class I stream immediately north of the resource ridge. The mapped resource area does not include the stream and it appears that actual extraction can occur without disturbance of the stream, however, road construction at the site has already resulted in disturbance of a Class I Stream.

Wetlands: The Class 1 stream noted above also is identified as a wetland on the U.S. Fish and Wildlife "National Wetland Inventory." Development of the site, including extraction and road construction may adversely affect the wetland area.

C. Goal 6 is to maintain and improve the quality of the air, water, and land resources of the state.

23. Mr. Smith states that road construction at the site has not caused a class I stream violation. He also contends that there is adequate space for sedimentation ponds to control erosion and runoff.

Although the class I stream violation may not have been at the site, Mr. Smith's nearby road construction did result in siltation of a class I stream in violation of the Forest Practices Act. This not only demonstrates the level of Mr. Smith's responsibility and lack of care, but also shows the sensitivity of the surrounding area.

Use of a rock crusher at this site requires a DEQ permit due

to potential pollution. Resource development has already conflicted with water quality (See 1987, Forest Practices Act violation above). Development of the site will create dust and off-site water quality impacts. Therefore, the site should retain its 3B designation.

D. Goal 7, Areas subject to Natural Disasters and Hazards:

Conflicting testimony was submitted in the CU 7-87 hearings regarding slope hazards at the site. The County believes testimony presented by the opponents during those proceedings and concludes that the consequences of slope hazards at this site outweighs beneficial consequences of the use of the site for mineral extraction and processing.

A letter was submitted from a soil scientist who conducted a preliminary investigation of the site in 1986. The letter stated that "due to the combination of site drainage, landscape position, and apparent stability, it does not appear that adverse geologic or natural effects to surrounding properties will occur as a result of the proposed operation." In that same year and Oregon DOGAMI reclamationist found no problem with the drainage, stability, or reclamation potential of the site.

A study submitted into the record by an engineering geologist indicated a slope hazard at the site due to the following:

1. Evidence of numerous landslides along the contact of the Boring Lava and Troutdale Formation;
2. The presence of numerous springs and seeps which occur along the contact of the Boring Lava and

Troutdale Formation; and

3. The Troutdale Formation at this site is subject to failure when overburden is removed.

Through an on-site inspection, a certified engineering geologist found steep slopes and indications of instability in the area below the rock bluff to be quarried. The area is underlain by the Troutdale Formation which can become unstable when exposed. At the very least, additional study is necessary to determine the geologic hazard potential. (See Lewis Scott January 9, 1990 Geologist Report at 4). Given the determination made above with respect to Goal 7, the County believes the engineering geologist's testimony and concludes that the consequences of slope hazards at this site outweighs beneficial consequences of the use of the site for mineral extraction and processing.

25. In reference to conflicting evidence regarding natural hazards submitted in a previous conditional use application proceeding, Mr. Smith notes that there was evidence indicating there was no problem with the stability of the site. Mr. Smith goes on to state that conditional use standards are not applicable during the Goal 5 process.

Mr. Smith claims that the County is relying on extremely general information and that Mr. Scott's report infers that mineral extraction will take place on steep side slopes. Mr. Smith's engineering geologist stated that "[t]here is no basis to assume that the Howard Canyon Quarry cannot be developed in a safe hazard-free manner.

The County does not contend that all conditional use standards are applicable. However, the information made available through the five previous conditional use denials is relevant to the ESEE consequence analysis portion of the Goal 5 process.

Mr. Scott's report did not state that extraction would occur on steep slopes. He did indicate, however, that parts of the plant site and the haul roads would likely occur on steep slopes. This area is a mapped hazard area and Mr. Scott agrees with Shannon & Wilson, the engineering geologists who previously evaluated the site, that the site should be studied in depth prior to making a determination that it is sufficiently stable to mine.

The resource site is associated with a known mapped hazard area (ODF, 1987 Geologist site review and Shannon and Wilson Study, 1978). A slump area, active in the last 20 to 30 years was identified. Erosion and subsequent sedimentation of the Class I Stream was documented during the development of an access road near the site by ODF in 1987. (See 1987 Forest Practices Act violation above). The use of this resource may create slope hazard conditions below the site and presents erosion and sedimentation problems off-site. Heavy truck use increases these risks. Conflict with Goal 7 has occurred in the past and is likely to occur again if the site is developed.

Due to the environmental consequences of development, the site should be designated 3B.

26. Mr. Smith raises his same objection with reference to the Forest Practices Act violation because it did not occur on the actual site and was not part of a mining operation.

Mr. Smith asserts that the county ignores testimony that roads can be constructed on the Troutdale formation.

With respect to the Forest Practices Act violation, see response to #23, above. The county does not claim that road construction cannot occur on the Troutdale formation. However, there must be some assurance that the potential adverse environmental impacts will be avoided.

Energy:

1. Impacts on Resource: Allowing noise and dust sensitive uses too close to the resource will alter the manner, location and extent of extraction activities, resulting in greater use of energy to the operator.

2. Impact on Conflicting Uses: N/A

3. Requirements of other applicable Statewide Planning

Goals: N/A

27. Mr. Smith contends that energy conservation has not been addressed as required by Goal 13. He states that rock will have to be hauled uphill from Gresham with a greater expenditure of energy.

If the quarry is not operated, the energy normally required for quarry operation will be conserved. In addition, Gresham Sand & Gravel is the only operation that indicated additional energy expense due to uphill hauling. This statement, however, assumes all transport will be to the Corbett area. The major market for commercial aggregate, however, is the East Gresham area.

CONCLUSION: The Resource at this site should:

Be fully protected - Designate 3A

XXX Not be protected due to overriding benefits from allowing conflicting uses - Designate 3B

Be partially protected by conditions which minimize the impact of conflicting uses - Designate 3C

Although there are few developable mineral resource sites available in Multnomah County east of the Sandy River, this site, as indicated above, is not the only site available for local use. A 3B classification would not result in the loss of a scarce resource to the immediate area, since other resources within 7 miles do exist and have been identified. Denial would not, therefore, locally create a hardship to future users of rock in the private and governmental sectors. Use of available resources in Mt. Hood National Forest, southwest of Larch Mountain (Mt. Hood National Forest, 1988) provides residents an economically viable and efficient alternative that has fewer impacts.

The overriding benefits of allowing conflicting uses fully include the prevention of the above-stated adverse consequences of fully protecting the resource for immediate exploitation. Due to the numerous existing conflicts and the potential for additional conflicts with statewide planning goals and the existence of other viable options, the County determines that Howard Canyon site should be classified 3B.

28. Mr. Smith claims that the finding of overriding benefits from allowing the conflicting uses is not supported by the record.

Mr. Smith also claims that the record shows that

adverse consequences to the single family dwellings are non-existent or can be easily remediated. He also asserts that the county failed to discuss the adverse consequences on the environment of allowing single-family dwellings to occur on the resource site.

Mr. Smith notes that Gresham Sand & Gravel, the only resource within 7 miles of the site, has an expected life of less than 20 years.

Mr. Smith claims that the county is viewing this as a land use application rather than an even handed analysis for Goal 5 classification. He further claims that there is a strong record rebutting allegations of conflict.

We submit that the record supports a finding that single-family dwellings deserve full protection in this case and that the effect of a 3B designation would be to preserve the resource site for future mineral extraction. This case is similar to Mobile Crushing, in which LUBA held that the conflicting single-family dwelling use could be found by the County deserve to be protected, while the resource site could be preserved for future mineral extraction.

There are several sites within the 25-mile range (25-mile transport was determined economical in the record) which are expected to be productive beyond the planning period. The site life expectancy of Gresham Sand & Gravel is not dispositive of the question of need. If relevant, the life span of that site may be considered in later periodic review proceedings.

The county has before it sufficient information regarding both sides of this issue to make an even-handed analysis for Goal 5 classification. The record speaks for itself regarding the existing conflicts. Moreover, it is precisely because the landowner is attempting to overcome five previous denials that these proceedings are important. It is regrettable that the landowner hid his information until the end of these proceedings, a tactic which belies his purported desire for "even-handedness."

Program: The site is designated 3B and is not appropriate for mineral and aggregate extraction at this time. The resource

will be protected for future use by the large lot forest zoning districts until a subsequent ESEE analysis might support exploitation of the resource. Only on lands owned by the same property owner as the aggregate resource could there be more homes or similar conflicting uses added that are closer to the resource than those already existing in the vicinity.



STATE OF OREGON                    )  
                                      ) ss.           AFFIDAVIT OF PAM PEEBLES  
County of Multnomah                )

I, Pam Peebles, being first duly sworn upon oath, depose and say:

1. I reside at 37915 S.E. Howard Road, Corbett, Oregon 97019. My residence is near Howard Canyon.

2. In response to Mr. Hribernick's affidavit relating his conversations with the five quarries listed in the January 9, 1990 Scott Report, I made the following telephone calls.

3. On March 7, 1990, I called Smith Brothers Quarry ([206] 892-2071) spoke with the dispatcher. He stated that Smith Brothers did not serve East Multnomah County and that private contractors hauling out might serve that area, but they did not know. When I asked whether they would bid on a road being built in east Multnomah County, for example Fairview or Troutdale, requiring 10,000 cubic yards of 3/4 inch rock, he stated that they would not bid on the job because they only have one dump truck. He stated that they get their crushed rock out of Camas, Washington, and that it would not be economical, but that Pacific Rock is on the river and would be another story.

4. On March 7, 1990, when I called Pacific Rock Products ([206] 254-7770), John Shaffer, a salesperson, told me that they do serve east Multnomah County. He said that they could deliver 10 yards of 3/4 inch rock to East Gresham (Hogan Road

and Stark Street, for example) for \$130. He stated they would bid on a road being built which required 10,000 cubic yards and be competitive. Their price would be \$4.50 per ton pit price plus truck price, depending on how close the job was to the freeway and how long it takes to reach the job. The total per ton would be \$5.50 to \$6.25, probably under \$6.00. He said they deliver "lots of rock to east Multnomah County for under \$6.00 per ton." He said it would not be any trouble to bring the gravel out to Corbett and that that would add \$0.03 to \$0.04 per mile, based on a rough mileage estimate. He stated that Estacada Rock also covers east Multnomah County.

5. Cascade Sand & Gravel, Lone Star Northwest (222-4210) did not dispute the information in Mr. Hribernick's affidavit.

6. On March 7, 1990, I spoke with Mr. Ekstrom at Gresham Sand & Gravel (666-5577). He stated that the cost of 3/4 inch minus delivered on Howard Road would be \$120.25 for 9.25 tons or \$138.75 for 15 tons. He said the resource available at the Howard Canyon site is not economically suited for a large operation. At this time, Mr. Ekstrom feels the quantity available and capability cannot cover east Gresham, but that anything is possible with enough money. He said competition is good, but he refers Corbett customers to Mr. Smith or Mr. Muck because it is economically cheaper. He assumes if a Gresham person called Mr. Smith or Mr. Muck, that they would refer the person to Gresham Sand & Gravel.

///

7. I called Brightwood Quarry (252-2156) and was told they do serve Gresham, Corbett and Troutdale. Their price for 10 yards of 3/4 inch would be \$149.00, delivered to Corbett, but due to their location Brightwood, they do not come down to Gresham, Corbett, or Troutdale often.

DATED this 13<sup>th</sup> day of March, 1990.

Pam Peebles  
Pam Peebles

SUBSCRIBED and SWORN to before me this 13<sup>th</sup> day of March, 1990.

Peggy Hanney  
Notary Public for Oregon  
My Commission Expires: 6/22/92

AFFIDAVIT OF LEWIS E. SCOTT

STATE OF OREGON           )  
                                  ) ss.  
County of Multnomah )

I, Lewis E. Scott, being first duly sworn, do depose and say:

1. I am a Consulting Geologist and Geotechnical Engineer and am working with Edward J. Sullivan who has been retained as counsel in this case.

2. Also, I worked as a highway materials engineer, with experience in highway location and design from approximately 1960 to 1975 and have extensive experience with road construction matters.

3. Richard Howard, Multnomah County Construction Engineer, quoted an estimate of between \$500,000 to \$1,000,000 to upgrade the impacted roads (approximately 4.5 miles) to safely carry the proposed commercial traffic.

4. In my opinion, the existing width and curvature are inadequate for commercial aggregate hauling.

5. In addition, the "built up" structure of the roads reduces the design load by one-third to one-half because of contamination and unequal thickness.

6. Mr. Hribernick's inquiry regarding 3 inch minus aggregate does not present an accurate view of the market because rock this size has very limited use (e.g. logging or construction roads).

7. 80 to 90% of the rock sold is 3/4 inch minus, meaning that the largest rocks are no larger than 3/4 inch after crushing.

DATED this 13<sup>th</sup> day of March, 1990.

Lewis E. Scott  
Lewis E. Scott

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of March, 1990.

Peggy Hennessey  
Notary public for Oregon  
My commission expires: 6/22/92

March 9, 1990

Corbett, Ore.

To the County Commissioners  
Multnomah County Ore.

To whom it may concern--

Regarding the rock quarry site on Howard Canyon Rd. at Corbett--  
I live a little more than 1/2 mile from the "crow flies" from the  
quarry site. On occasion if I am in the yard and the wind is  
right I hear noise from that direction. There have been blasts  
and on at least two occasions they have been very heavy ones.  
On one occasion the house shook and the dishes rattled in the  
hutch.

Mr Smith states that the rock use is for the Corbett area and  
East Gresham. It would seem to me that the cost and "wear and  
tear" on the roads would be the same hauling it to Gresham  
as it would be to bring our needs in from Gresham. I also  
understand that Gresham is not aware that they will have  
gravel delivered to them from this area.

The log hauling that goes on in this area is periodic, lasting  
only a few weeks at a time and then no more for a long time.

The gravel trucks can be every day week in and week out.

I very definitely do not want any part of improving the roads  
to accommodate quarry operations.

I understand that Mr. Smith has offered to use his "cat" to  
widen Howard road. He does not own the land along Howard  
and using the legal right of way land would still not make  
it suitable for trucks.

On the end of Howard road where it joins Littlepage there  
are cattle grazing in a meadow next to the creek. On Louder

above the site there are several places raising nursery stock. They are not compatible with rock crushing.

I have gone down Loudon behind gravel trucks and hit gravel spilled on the turns where it spilled over on some sharp turns. This causes a hazard to tires and might even throw a car out of control. I would also hate to meet this same truck if I was coming up the hill .

I also understand that he states that there are very few deer in the area. There is a "deer trail" where deer come out of Howard canyon and cross Loudon just above my house. I have deer in my yard all the time. In fact the last two years they have eat most of my garden. You could find them out there most any night. Friends report to me that they see deer all the time at the crossing trail as they go up and down Loudon. I am very opposed to a permit being given for a quarry in this area, but if it is I very strongly urge a Deq Compliance Bond be required for our protection

Very truly yours

Edith Faught

38406 S.E. Loudon Rd.

Corbett, Ore. 97019

Phone 695-5393.

Ronn Peebles  
Pam Peebles  
37915 SE Howard Rd.  
Corbett, Or. 97019

March 9, 1990

Multnomah County  
Board of County Commissioners  
1021 SW Fourth Ave  
Ptld. Ore. 97204

Re: Case C1-88  
Periodic Review

Dear Commissioners:

I have some opening rhetoric and then I will address the pertinent issues of the Howard Canyon Pit. I was present at the March 6th hearing on Howard Canyon and I appreciated the commissioners attention and patience while both parties were presenting their cases. There were some frustrating moments. While the issue is boiling down to economics, I hope you will make a footnote that the residences around Howard Canyon are not wealthy. It is a financial Burdon to keep hiring professional experts and representation to protect us.

This is the third time We have been before the county arguing for the protection of Howard Canyon. I don't relish the thought of coming back again.

State Transportation Goal 12 refers to economic transportation system- This would include Littlepage Rd, Pounder Rd and Hurlbert Rd as these are the oil matte roads that gravel trucks use once they leave Howard and Knieriem. Many of those residences prefer to sit on the fence now, but would quickly jump off at the prospect of a L.I.D. to improve the pot holes that would be created by gravel trucks on a constant basis.

1.) Howard Road is an oil matte road measuring 18 ft. to 20 ft. edge to edge on pavement. The blind corner is 18 ft. wide with no shoulders. As I testified before, approaching the curves in the right lane, you are totally blind as to what is coming around the bend. We roll the windows down and come to a stop before turning into our driveway, at the peak of the curve. People coming the opposite way are equally as blind and tend to drive more in the center, to get away from the creek on their side. Two cars passing on the curves is startling, anything bigger is scary.

There is a school bus stop at the driveway in the blind curve. The school bus turns around in a double driveway about 700 ft. from the Pit's driveway. To make a 3 point turn the driver backs across howard road. Her vision is obstructed on one side by a barn and the other side by a bank and big holly berry bushes. There is a gentle incline on the road and the trucks are gearing up at that point.

There were some log trucks using the road awhile back, for about two months. They traveled mid day, 3 or 4 days aweek, about 4 trips a day. There has been some recent logging on Knieriem and some on Pounder Rds. The log trucks on both sites have been very sporadic and have not bothered anyone. Logging on any of these roads is over a very short period of time, due to the size of the timber stands.

The upgrading of the roads will only need to be done for one person and will only benefit his industry. The financial burdon to improve the roads, before they are destroyed, should be his too.



2.) There was a Forest Practice Act violation on Mr. Smiths property adjacent to the gravel property. The incident occurred part way up the unimproved portion of Howard Rd when he put in an illegal culvert on Big Creek while building a cattle road to his Loudon Road Property.

3.) Last Fall I noticed a considerable silt build up at the end of our culvert. The children play in the creek there and the creek bed used to be gravel, and it was mud.

4.) There are cranes that live year round on Big Creek, in Howard Canyon. There are deer all over. There was a deer on Howard Rd. last Tuesday evening around 9:00. Since the gravel operation started, the amount of coyotes in Howard Canyon has dwindled. I'm sorry to note.

5.) Most of the residences on Howard Rd. raise cattle or sheep. The residences on Knieriem raise horses, cattle, hay or trees. Other surrounding residences are mainly livestock "gentlemen farmers".

6.) Winter is the only time that people really aren't bothered by the pit. The East Wind is blowing, it's raining, It's snowing and they aren't in operation. In the Spring, summer and fall when the east wind is a breeze and everything else is quiet, sounds carry like crazy. You can hear people talking two farms away. That is when the sound of the blasting and rock crushing can be heard.

7.) There is also no doubt, of the economical impact of the neighboring residences. Our homes represent a lifestyle, that people come out here to buy. The negative effects of the mining and the trucking will make it harder to sell our homes, even at a lower price.

We urge you to vote for a 3B designation.

Sincerely,

  
Ronn and Pam Peebles

March 10, 1990

## Statement in regard to Howard Canyon Quarry

The purpose of this statement is to address the use of Knieriem road as an access road to and from the Howard Canyon Quarry, the possibility of participation in an LID to upgrade Howard and/or Knieriem road to a capacity which would accomodate the quarry operation, and to describe other farm operations on property surrounding the quarry.

The Affidavit of Raymond Smith dated February 19, 1990 which was submitted to the County Commissioners on March 6, 1990 states (P 5, pg. 4) "[Knieriem Road] has approximately three feet of paved and gravel shoulders which are adequate for all size of vehicles and logging trucks which frequently travel Knieriem Road." It is approximately  $\frac{1}{3}$  of a mile from the intersection of Knieriem Road and Littlepage Road to my driveway. On that stretch of the road the shoulders are 12" wide AT THEIR WIDEST. On some places the shoulders are only 6" to 8" wide. Approximately 100 feet east of my driveway Knieriem Road curves sharply north. You cannot see traffic approaching from the east until it is through the curve. East of my,