

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO:
12-09-05-06

IN THE MATTER OF ELECTING WHETHER OR NOT TO
HEAR APPEALS OF A HEARINGS OFFICIAL'S DECISION
APPROVING A SITE REVIEW PERMIT FOR CERTAIN
QUARRY MINING RELATED ACTIVITIES IN THE
QUARRY AND MINE OPERATIONS ZONE (QM); MAP
T19-R01-S20, TAX LOTS 3400; 200; 300; 1500; 1501; AND
MAP T19-R01-S21, TAX LOT 803 (FILE NO. PA11-
05853/ATR LAND LLC, LEELYN INC., AND WILEY MT.
INC.).

WHEREAS, the Lane County Hearings Official has made a decision approving a Site Review application in File No. PA11-05853 for certain quarry mining related activities in the Quarry and Mine Operations Zone; and

WHEREAS, the Lane County Planning Director has accepted two appeals of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on the applications and appeals in File No. PA11-05853; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board.


NOW, THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

1. That the appeals do not comply with the criteria of Lane Code 14.600(3) and arguments on the appeals should therefore not be considered. Findings in support of this decision are attached as Exhibit "A."
2. That the Lane County Hearings Official decision dated August 20, 2012, attached as Exhibit "B," is affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners is silent regarding the interpretations of the Lane County Rural Comprehensive Plan policies and implementing ordinances made by the Hearings Official in the decision.

ADOPTED this 5th day of September 2012.


Sid Leiken, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 9-5-2012 Lane County

OFFICE OF LEGAL COUNSEL

Order Exhibit "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The subject property can be identified as tax lots 3400, 200, 300, 1500, 1501, assessor's map T19-R01-S20, and tax lot 803, assessor's map T19-R01-S21. The subject property is approximately 87 acres in size and is located southeast of the unincorporated community of Dexter. Lost Creek crosses the eastern-most portion of the property. Parvin Butte is located on the western portion of the property, and rises approximately 500 feet from Lost Creek, to an elevation of 1,193 feet above sea level. The eastern face of the butte is the site of a rock quarry that was initially mined during construction of the adjacent railroad. Access is currently taken from Rattlesnake Road via an existing road (the Schafner Tract road) located along the eastern boundaries of tax lots 2100 and 1501, and continuing through the subject property to its northern boundary.
2. On December 21, 2011, the Land Management Division received an application for Site Review of a quarry operation in the QM zone. The application was submitted in response to the County's December 13, 2011, Notice of Failure to Comply (Compliance Action CA 10-0200). The Site Review application was deemed incomplete on December 30, 2011.
3. On May 25, 2012, the applicant submitted supplemental information revising the Site Review application and requested that the application be deemed complete for processing. The revisions were in response to the Hearings Official's reconsidered decision for Civil Violation CA 10-0200, in which he determined that Site Review is necessary only for mining operation activities occurring within 200 feet of the boundaries of the subject property. The revised application expanded the subject property to include taxlots 200, 300, 1500, 1501, and 803, in addition to tax lot 3400, the western portion of which is zoned QM and contains the butte itself.
4. On June 1, 2012, the Land Management Division mailed a notification of referral and opportunity to comment for the Site Review application. On June 7, 2012, the applicant's agent requested that the Planning Director hold an evidentiary hearing for the application. The Planning Director immediately elected to have an evidentiary hearing with the Hearings Official, pursuant to Lane Code 14.110(3)(h), which allows the Director to have such a hearing when requested by an applicant. Notice of the hearing was promptly mailed to nearby property owners and interested parties.
5. On July 12, 2012, the Hearings Official held an evidentiary hearing. The record was held open until July 26, 2012, for new information, until August 2, 2012, for responses to new information, and until August 9, 2012, and for applicant's final rebuttal.
6. On August 20, 2012, the Hearings Official issued his decision. The appeal period ended on September 4, 2012.
7. On August 31, 2012, a timely appeal was filed by Bill Kloos on behalf of the applicant, Lost Creek Rock Products, LLC.
8. On September 4, 2012, a timely appeal was filed by Daniel Stotter on behalf of the Dexter-Lost Valley Community Association.
9. On August 31, 2012, and September 4, 2012, the Hearings Official issued decisions affirming his August 20, 2012, approval.
10. In order for the Board to hear arguments on either appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeals:
 - *The issue is of Countywide significance.*

- *The issue will reoccur with frequency and there is a need for policy guidance.*
- *The issue involves a unique environmental resource.*
- *The Planning Director or Hearings Official recommends review.*

11. The fact pattern and circumstances related to ingress and egress along the Schafler Tract road are site-specific, highly localized, and not of county-wide significance.
12. The issues related to ingress and egress along the Schafler Tract road do not occur with frequency and there is not a need for policy guidance.
13. The use of the Schafler Tract road for ingress and egress to and from the subject property does not involve a unique environmental resource.
14. The Planning Director does not recommend review of the appeals for the reasons cited above and the Hearings Official did not recommend review.
15. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeals or declining to further review the appeals.
16. The Board has reviewed this matter at its meeting of September 5, 2012, finds that the appeals do not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeals.
17. The Board affirms and adopts the Hearings Official's decision of August 20, 2012, as the County's final decision in this matter, and remains silent regarding the interpretations of the Lane County Rural Comprehensive Plan policies and implementing ordinances made by the Hearings Official in the decision.



August 20, 2012


Mr. Kent Howe, Director
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Re: Lost Creek Rock Products, LLC request (PA 11-5853) for site review permit approval for a quarry mining operation.

Dear Mr. Howe:

Please find the Lane County Hearings Official's decision approving a request (PA 11-5853) from Lost Creek Rock Products for a site review permit for a quarry mining operation.

Sincerely,


Gary L. Darnielle
Lane County Hearings Official

CC: Rafael Sebba (file)

**LANE COUNTY HEARINGS OFFICIAL
REQUEST FOR MODIFICATION OF HEARINGS OFFICIAL DECISION
REGARDING TAX LOT 5201, ASSESSOR'S MAP 18-03-23-10**

Application Summary

Lost Creek Products, LLC, PO Box 518, Creswell, Oregon 97426 requests site review approval for quarry mining that occurs on tax lot 3400, assessor's map 19-01-20. For purposes of this application, the property subject to this application includes tax lot 3400, as well as tax lots 200, 300, 1500, and 1501, assessor's map 19-01-20 and tax lot 803, assessor's map 19-01-21. The subject property is owned by ATR Land, LLC, LeeLynn, Inc., and Wiley Mt., Inc. and the applicant leases the subject property for purposes of quarry mining.

Parties of Record

See Attachment "A"

Application History

Hearing Date: July 12, 2012
 (Record Held Open Until August 9, 2012)

Decision Date: August 20, 2012

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane County Rural Comprehensive Plan
Lane Code 16.257
Lane Code 16.216(5)

Findings of Fact

1. The property subject to this application, hereinafter referred to as "the subject property," is located southeast of the Community of Dexter and can be identified as an 87 acre tract that consists of tax lots 3400, 200, 300, 1500, and 1501, assessor's map 19-01-20, and tax lot 803, assessor's map 19-01-21. Tax lot 3400 is split-zoned, with about 47.29 acres zoned QM Quarry Mining and the

remainder zoned F-2 Impact Forest Lands. The other parcels in the tract, which comprise about 12.94 acres, are zoned RR-5 (tax lots 803, 1500 and 1501) and F-2 (tax lots 200 and 300).

The quarry that is subject to this application, hereinafter referred to as the "Parvin Butte Quarry," was first used in the early 1950's for the relocation of the Southern Pacific Railroad. At this time, there were around 20 dwellings within a 2,000 yard area surrounding the butte. The quarry has been dormant until recently.

By 1976, when the quarry was first zoned, an additional 45 homes had been built in the area around the butte. Today there are 16 dwellings within 500 yards of the center of the butte, 54 dwellings within 1,000 yards and 13 dwellings within 1,500 yards. In all, there are 181 dwellings within 2,000 yards of the butte and an additional 172 dwellings in the nearby Community of Dexter, which is about 1.1 miles from the butte. Within this area there are a number of home occupations, a adult foster care facility, and many small agricultural operations associated with a residential use.

2. The applicant has submitted two maps of a site plan that show the boundaries of the parcels that comprise the subject property, the location of the 200-foot wide buffer or setback area, and the location of Shafler Road. One of the maps is superimposed upon an aerial photograph and the other is not.

The application for site review was notoriously vague in regard to operational details, no doubt because of the earlier hearings official decision that interpreted the scope of site review. Late in this decision-making process, however, the applicant has suggested a series of conditions that might be applied if site review was found to be applicable by the hearings official. Where appropriate, I will consider these proposed conditions as defining the scope of the quarry mining operation, as it applies to the use of Shafler Road.

The applicant has described the mining operation as consisting of blasting, which it suggested could be limited to the hours of 10 a.m. to 6 p.m., Monday through Saturday, three times per month with 7 days mailed notice to residents within ½ mile; and the operation of crushers, which will operate between 7:00 a.m. to 5:30 p.m, Monday through Saturday. The crushing and truck loading activities will be shielded from the dwellings to the west by the butte itself or, when the butte is reduced in height, by stockpiled rock material at least 20 feet high. The applicant has warranted that it will maintain valid operating permits from DOGAMI and LRAPA and that all mining and processing will be in accordance with those permits. In this regard, discharge of water from the site will be limited by the DOGAMI permit. Tax lots 1500 and 1501, to the south, are currently forested and will remain in that condition so as to provide a noise and visual buffer between dwellings to the south and the mining operation.

In regard to the use of Shafler Road, the hauling of rock shall be limited to the hours of 7 a.m. to 6 p.m., Monday through Saturday. The only exception to these hours and days will be for emergency situations regarding public or private works projects. There will be no activity on New Years Day, Memorial Day, July 4, Labor Day, Thanksgiving and Christmas day. Truck traffic will be limited to Rattlesnake Road travelling to and from the west except for local rock deliveries.

Truck traffic will be limited to 15 mph on Shafler Road and speed limit signs will be maintained at the exit from the quarry site and at the intersection of Shafler Road and Rattlesnake Road. At the request of any residential owner on Shafler Road, the applicant shall construct a solid wooden fence, six feet in height, as close as practicable to the improved roadway. The fence will be constructed of treated tongue and groove material of a 1.5 psf minimum density.

3. The applicant has a permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) to conduct a quarry mining operation on tax lot 3400. This permit, No. 20-164, that was issued on March 3, 2010, requires that the processing/ excavation areas be setback 200 feet from the zoning line. The permit application was accompanied by a site plan that shows the site and plan of operation.

The applicant intends to conduct rock processing activities, crushing and truck loading, on the east side of Pavin Butte, about 100 feet from the base of the butte and 1,000 and 1,233 feet, respectively, from the nearest two dwellings not owned by the applicant. When a significant part of the butte is removed, the crushing and loading operations will be conducted to the east of a rock pile of 20 feet in height.

Lost Creek is located 500 to 700 feet east of the portion of tax lot 3400 zoned QM. The area between the creek and the QM zone is partially grassed and will be reseeded. Water from the mining site will be collected in rock-lined ditches and then channeled into settling ponds for infiltration. A DEQ 1200-A permit, administered by DOGAMI, is necessary prior to any stormwater discharge event that extends beyond the DOGAMI permit boundary.

4. The existing access road to the quarry operation is an Oregon Properties road (also referred to as the Shafler Tract road) at the southeast corner of the site connecting to Rattlesnake Road. Shafler Road is a "public road," as defined by ORS 368.001(5) but not as defined by Lane Code 15.010(35)(e)(vii).¹ It is a road that has been dedicated to the public but has not been accepted by the county. The current driving surface is asphaltic concrete that varies in width from 12 to 14

¹ Lane Code 15.010(35)(e)(vii) defines a "public road" as "...a road that has been dedicated for use by the public for road purposes either by good and sufficient deed presented to and accepted by the Board, or by a partition map and plat or subdivision plat presented to and accepted by the Board." Shafler Road is also not a "local access road," because Lane Code 15.010(35)(e)(v) requires that a local access road must be a public road.

feet. It has gravel shoulders that vary in width but are generally two feet wide. The width of the road is 60 feet per dedications in 1943 and 1947.²

Aggregate will be removed from the mining site by haul trucks. These trucks are 8.5 feet in width and will have a maximum length of 74 feet with trailer. (28' long truck, 18' yoke, 28' long trailer) The maximum loaded weight of a truck and trailer is about 96,000 lbs with a 16,000 lb per axle weight for a six-axle rig.

5. The record contains well logs from 14 wells surrounding Parvin Butte. The logs describe the materials as being various colors of claystone, sandstone, clay and conglomerate that are characterized by the opponent's experts, Malia and Gregory Kupillas, geologists with Pacific-Hydro-Geology, Inc., as marine sediments. They state that claystones are prone to caving in and that the risk of caving increases if the ground is shaken from blasting.

The applicant's expert, Steven Recca, a geologist with EGR & Associates, Inc., has submitted maps from published reports that indicate that the area surrounding Parvin Butte is mapped as Tertiary Little Butte Volcanics, Tlt, and that the Butte itself is mapped Tertiary andesite, Ta. This characterization is more consistent with the use of Parvin Butte for quarry mining than if its geology were of marine sediments. The Tlt member of the Little Butte Volcanic Series has been described, in part, as "Tuff, lapilli tuff, ..." I would agree with Mr. Recca that well drillers are generally not trained to provide detailed lithologic descriptions of the materials they encounter while drilling and that based upon the well logs in the record basaltic andesite is often reported as colored sand or colored sandstone.

Measurements of blasting conducted on April 10, 2012 found a maximum ground vibration at 0.365 inches per second and at 0.13 inches per second at the house to the south near the gate on Shaflee Road. The U.S. Bureau of Mines standard for ground velocity is 0.5 inches per second at wood-framed structures. Blasts producing ground vibrations almost 15 times as that measured on the subject property resulted in no observable change in water quality or well performance in a similarly fractured aquifer. This is consistent with DOGAMI's energy resource geologist who reviewed the applicant's application for an Operating Permit for Lost Creek Quarry and found that excavation is not expected to cause any off-site impacts to ground water resources.

6. The Lost Creek Quarry must operate under an air quality discharge permit issued by the Lane Regional Air Pollution Authority (LRAPA). The permit requires that

² The effectiveness of the 1947 dedication was questioned by James Belknap, who argued that dedication was invalid because the original grantors had already sold the property. However, the deed that dedicated the additional 30-feet, which was recorded on December 31, 1947 and can be found in Lane County Records Book 363, Page 454, explained that after the 30-foot wide road easement was dedicated to the public, the grantors reserved a 15-foot easement for roadway purposes in each of the deeds to the tracts abutting the road. It was this reservation that was dedicated by the grantors and the owners of the abutting tracts were not required parties to this dedication.

the operation will meet federal standards for dust emissions. Existing dust sources in the area around the subject property include agricultural field plowing and harvesting, forestry operations, and trips on roads such as Harolds Road, north of Rattlesnake Road, which are composed of gravel.

Based upon a review of the September 2010 permit issued to Delta Sand and Gravel Company, LRAPA air contaminant discharge permits typically address dust emissions from vehicles, haul yards, storage piles, crushing, and conveyor belts. It is unclear whether the applicant's permit will cover dust emissions from blasting although that is likely. The permit also requires monitoring and recording requirements to ensure compliance with applicable standards.

7. Aggregate extracted from the subject property will be transported over Shafler Road to Rattlesnake Road and then west over Rattlesnake Road to Highway 58. A 2011 traffic count found 1,950 vehicles per day south of its intersection with Highway 58 and 1,000 vehicles per day just east of the Shafler Road intersection. As conditioned by this decision, the traffic count on the portion of Rattlesnake Road west of its intersection with Shafler Road would increase by less than 4 percent.

Rattlesnake Road is 24 feet in width and is classified as a Rural Major Collector. Based upon current Lane County road design standards, Rattlesnake Road is substandard. Current standards embodied in Lane Code 15.705 would require a minimum 34-foot wide roadway from Shafler Road to Highway 58 with turning lanes at intersections. During the five-year period from 2006 through 2010, Rattlesnake Road has had a crash rate average of 1.07 crashes per million vehicle miles, just under the statewide average for major collector roads in rural areas. It has experienced 13 reported crashes during this period, although it is likely that many less serious crashes during this period were not reported. Lane County Transportation Planning staff has suggested that when a crash rate exceeds a threshold of 1.0 per million vehicle miles a detailed safety analysis is warranted.

Lane County Transportation Planning staff have estimated that the proposed use, at maximum operation (as used in the TIA), will result in adding 775,200 equivalent single axle loads (ESALs) over a 20-year operating period to Rattlesnake Road. The current estimated demand over the road is about 400,000 ESALs. It is estimated that bringing the road up to minimum roadway safety standards would require increasing the width of the existing roadway to 30 feet and adding one inch of pavement. This improvement would cost about \$1.5 million.

The distance between the intersection of Shafler Road and Rattlesnake Road and the intersection of Rattlesnake Road and Highway 58 is about 3.8 miles. Within this distance there are 59 private driveways and five side collector roads that interface with Rattlesnake Road. The Dexter Refuse Collection Site is located at the crest of a hill and averages 302 customer visits per day during its four-day-a-

week operation, almost half of which occur on Saturday. There are 12 scheduled daily school bus stops (three on blind curves) and three daily special education buses running daily on this section of Rattlesnake Road. In addition, in this section of Rattlesnake Road there are 60 private driveways where the U.S. Postal Service makes deliveries. This section of the road does not have any passing lanes, bus turnouts or paved shoulders.

The American Association of State Highway And Transportation Officials (AASHTO) is a body that sets standards and publishes specifications and guidelines that are used in highway design and construction in the United States. Included in its design specifications are tables that indicate stopping distances based upon speed, sight distance, inclement pavement conditions and slope. Applying these specifications to Rattlesnake Road results in the identification of at least five intersections of roads or driveways with Rattlesnake Road where sight distances do not meet AASHTO's standards.

Concern has been raised regarding the safety of bicyclists, horse riders, joggers, pedestrians and vehicles on Rattlesnake Road when aggregate truck and trailer combinations negotiate the curves on the road, especially on hills. There is one main hill west of Shafler Road on Rattlesnake Road. This hill starts before the intersection with Hanna Road and ends south of Kimball Road. There are seven curves in this area, varying in radii from 700 to 1550 feet.

A 75-foot long truck and trailer combination is about 8.5 feet wide and would have a wheel off-tracking width of about 3.5 feet when moving through a curve with a 100-foot radius. Such a truck would have an effective tracking width of 12 feet, essentially leaving no room for pedestrians or bicycles on a 24-foot wide road surface (12-foot wide lanes) with little or no shoulder. However, the tracking width on a curve with a 700-foot radius would be about 10.60 feet, leaving 2.8 feet remaining road width. The tracking width on a 1,550-foot radius curve would be 9.44 feet, leaving a remaining road width of 5.12 feet. It should be noted that the curve with the 700-foot radius is posted with a warning sign and an advisory speed posted at 40 m.p.h. in both directions.

8. A Traffic Impact Analysis (TIA) was conducted for traffic generated by the quarry mining operation on the subject property. This TIA, published on May 24, 2012, made certain assumptions about traffic that were based upon estimates of the rock tonnage that could be mined per year and the number of trucks and employee vehicles that would be associated with an operation of 250 days per calendar year. The TIA assumed 136 daily truck trips per day plus an additional 24 vehicle trips for employees. The TIA assumed that the trucks, both empty and full, would use Rattlesnake Road to access Highway 58.

The site review application, with narrative, did not identify the proposed intensity of operation as it related to truck traffic and the TIA was based upon the "worst-case" situation, vis-a-vis traffic generation. The applicant has proposed that the

number of haul trucks be limited to an average of 37 per workday, consistent with what was approved by the Board of Commissioners in their comprehensive plan amendment (Ordinance No. PA 1277) adding a quarry site to the Rural Comprehensive Plan's inventory of significant aggregate sites.³

Decision

THE LOST CREEK ROCK PRODUCTS REQUEST (PA 11-5853) FOR A SITE REVIEW PERMIT REGARDING A QUARRY MINING OPERATION IS APPROVED subject to the following conditions:

1. All mining operations shall be limited to the area zoned QM, located west of the middle of the Shafler Road, which bisects the subject property.
2. Consistent with the application, applicant shall maintain a 200-foot buffer from the exterior boundary of the subject property. In this buffer area there shall no mining uses and no accessory mining uses, including use of existing private roads.
3. Shafler Road is the only approved access for the mining operation. All vehicles entering or leaving the site via Shafler Road shall enter or leave Shafler Road from a point on the site that is more than 200 feet setback from the exterior boundary of the subject property.
4. Access to the site for any lawful purposes unrelated to mining operations on those parts of the subject property zoned Forest or Rural Residential is unrestricted.
5. Hauling of rock shall be limited to 7 a.m. to 6 p.m. Monday through Saturday. Traffic for other purposes, including employees, security, and maintenance personnel to the QM area is unrestricted in terms of hours.

There shall be no activity at the site on January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day and December 25. All hours and days of operation are subject to change for performance of a public or private works projects in emergency situations.

6. As proposed by the applicant, all rock hauling traffic is limited to Rattlesnake Road travelling to and from the west. Such truck traffic will not use Parvin Road or Rattlesnake Road to the east of Shafler Road, except for local rock deliveries. Aggregate carried by haul trucks will be required to be watered when dust drift is visible during hauling.

The applicant shall direct all drivers to observe a 15 mph speed limit on Shafler Road where adjacent to residential uses. A speed limit sign shall be maintained at

³ It should be noted that the 37 trips per day limitation by the Commissioners to the Precision Aggregate Products plan amendment included both employee vehicle trips and haul truck vehicle trips.

the exit from the quarry site and at the entrance to Shafler Road from Rattlesnake Road. Finally, a sign, about 150 feet back from Rattlesnake Road, that directs trucks to turn right on Rattlesnake Road. This latter sign should be no larger than that necessary to be readable by a driver of a haul truck and of a material and color representative of adjacent residential structures.

The applicant shall also improve Shafler Road's approach apron to Rattlesnake Road, consistent with that shown in Figure 8 of the May 2, 2012 Traffic Impact Analysis.

The applicant shall provide all drivers, prior to hauling aggregate from the quarry site, with training and maps identifying blind curves and other potentially hazardous locations on Rattlesnake Road.

7. As recommended by the applicant's acoustic engineer, at the request of any residential owner on Shafler Road, the applicant will construct a solid wooden fence, from ground to six feet in height, as close as practicable to the improved roadway, and constructed of treated, tongue and groove material of 1.5 psf minimum density.
8. Shafler Road shall be improved to the standards of Lane Code 15.706 except that it either should be widened to a width of 20 feet, to accommodate the passage of 8.5 wide haul trucks, or developed with two turnouts for trucks substantially as shown in Exhibit EE prepared by Access Engineering; the final design of which shall be approved by Lane County Public Works.
9. No tree in the Shafler Road right of way shall be removed, except as necessary to implement any roadway improvements required by this Site Review Permit approval.
10. The applicant shall be responsible for continued maintenance of Shafler Road to the standards required by Lane County Public Works.
11. Vehicle traffic shall be limited to an average of 74 vehicle trips per workday. This is estimated to be 60 one-way truck trips and 14 one-way employee vehicle trips but may represent more truck trips if there are fewer actual employee vehicle trips than estimated.

Justification for the Decision (Conclusion)

Background

On March 6, 2012, I issued a decision in a contested case proceeding concerning the appeal of notice of civil violation issued by Lane County (County) to ATR Land, LLC, LeeLynn, Inc., and Wiley Mt., Inc., the owners of the subject property, alleging violation of Lane Code 16.216(5) and Lane Code 16.257(2)(f), regarding failure to secure a

required site review permit for quarry mining occurring on tax lot 3400, assessor's map 19-01-20. Blasting and rock excavation activities were shown to have adversely affected the peace and quiet of surrounding residential uses. Central to the decision in that case, however, was an interpretation of to what extent the above-listed code provisions applied to the applicant's quarry mining operation.

The attorney for Dexter Lost Valley Community Association (DLVCA) admonished the Hearings Official to not be blindly bound by this previous interpretation but rather judge the scope of the relevant code provisions anew. I agreed with this request, primarily under the philosophy that a wrong interpretation does not carry any precedent; the correctness of a decision must be determined at the time it is made. Nevertheless, a lot of thought went into the contested case decision and neither a re-examination of the logic in that decision nor the arguments of the opposition have convinced me that my earlier interpretation of the code was wrong.

Whether a Site Review Permit is Required for the Primary Quarry Mining Operation

The portion of the subject property upon which the primary aspects of mining are to take place is on that part of tax lot 3400 that is zoned QM Quarry Management, the regulations for which are found in Lane Code 16.216. This zoning designation does not have a SR/ Site Review suffix. Central to a determination of whether the blasting, extraction, crushing, and stockpiling of rock is nevertheless subject to site review is Lane Code 16.216(5), which reads:

"Site Review Required. Uses permitted by LC 16.216(4)(a), (b), (c), (d) and (e) above shall be subject to the provisions of LC 16.257 (Site Review)."

The uses listed in Lane Code 16.216(4)(a), (b), (c), (d) and (e), respectively, include the extraction and storing of minerals, plants for the processing of those minerals, the sale of products generated from quarrying and mining, reclamation activities, and structures and buildings used in conjunction with extraction and storing. Thus, the bulk of the applicant's operation on the QM-zoned portion of tax lot 3400 are covered by Lane Code 16.216(5).

Based upon the language of Lane Code 16.216(5), the County and opponents of this application argue that all of the quarry mining operations of the applicant require a site review permit. My reading of this provision was and still is that it is merely a pointer to the site review provisions found in Lane Code 16.257. Support for this position is apparent after a reading of Lane County's site review code provisions.

Lane Code 16.216(5) states that the listed uses are subject to the provisions of LC 16.257, not to the more specific provisions of LC 16.257(4). An examination of Lane Code 16.257 shows that it has a section that specifically lists the uses that require a site review permit (LC 16.257(2)), a section that specifically lists uses that do not require a site review permit (LC 16.257(3)), and a section that lists the criteria that are to be applied in

a site review evaluation (LC 16.257(4)). Lane Code 16.257(2)(a) requires a site review permit for nonresidential uses that are within 200 feet of the boundaries of a residential zone. This provision does not distinguish between adjacent residential zones owned by the applicant and those that are not so it cannot be said that the proposal meets the exception imbedded in this provision. None of the other provisions listed under Lane Code 16.257(2) are applicable to the proposed use. If the inquiry into the applicability of site review to the proposed use stopped at this point, all of the quarrying operations on the subject property would be subject to a site review permit.

Lane Code 16.257(3) provides various exceptions to the requirement to obtain a site review permit. The intent of this provision is clear from its title, which quite specifically states: "Site Review Permits Not Required." The language following the title is also unambiguous in stating "it is not necessary to require a Site Review Permit when" and then lists a series of situations that are exempt from a site review permit. Opponents of this application have suggested that this language suggests that the provision is discretionary. I believe that the clear language suggests otherwise.

Lane Code 16.257(3)(c) lists those proposed uses that are located at least 200 feet from all exterior boundaries of the subject property as being exempt from site review. By defining the "subject property" to include tax lots 200 and 300, to the north, tax lots 1500 and 1501, to the south, and tax lot 803, to the east, the applicant has been able to establish a 200-foot setback from all adjacent properties not under its legal control.

Staff argues that the "subject property" should be restricted to the portion of the applicant's property that is zoned QM and that the 200-foot setback should be measured from the boundaries of the QM zone. The rationale for this position is that the most intensive activities from the proposed use occur within the QM boundary and because that boundary is coterminous with the applicant's DOGAMI permit. This position begs the question, however, as to how Lane Code 16.257(2)(a) and Lane Code 16.257(3)(c) should be reconciled.

The two provisions are similar in that they recognize the principal that a 200-foot wide buffer may preclude the need for a site review permit. They are different in that Lane Code 16.257(3)(c) is more restrictive in that it requires that the 200-foot buffer be applied to all exterior boundaries, not just those boundaries that are adjacent to residentially zoned property. Thus, the buffer in Lane Code 16.257(3)(c) is defined in terms of the boundaries of the "subject property" not adjacent zoning. It seems clear that the Board of Commissioners believed that a 200-foot buffer would be sufficient to protect surrounding properties from an proposed use to the point that a site review permit was not necessary. It is unclear why that principal is not operative if the buffer occurs on residential and impacted forest-land instead of land zoned for quarry mining.

No quarry mining activities will occur within the 200-foot setback. All operations are proposed to occur on the QM-zoning portion of the subject property save for hauling that will begin where Shafler Road intersects with that portion of the subject property.

Whether a Site Review Permit is Required for other aspects of the Quarry Mining Operation

The March 6, 2012, contested case decision found that the more restrictive provisions of Lane Code 16.257(2)(a) prevailed over the provisions of Lane Code 16.216(5) and required a site review permit for the haul trucks as they ingress and egress Shafler Road. At that time, little was known about Shafler Road except that it appeared to be a 30-foot wide easement dedicated to the public. The current record indicates that Shafler Road is a "public road" that has not been accepted by the Lane County Board of Commissioners. It is best labeled as a "local access road" that has a width of 60 feet per dedications in 1943 and 1947 with a paved width that varies between 12 and 14 feet. The applicant has argued that no site review permit is required for Shafler Road.

The applicant's position is that because Shafler Road is a public road used for travel, it is therefore not a "use" of land that can trigger site review. This theory is based upon several cases where LUBA distinguishes between a private access that is considered part of a use itself and a public road that, by definition, may cut through many disparate zoning districts. *Wilson v. Washington County*, 63 Or LUBA 314 (LUBA No. 2011-007, May 17, 2011) I believe that this line of cases can be distinguished from the present situation. In *Wilson*, and in its progeny, the issue was a practical one. LUBA opined that a host of zoning incompatibility issues would be created if dedicated right-of-ways that provided access to a principal use were considered as being part of the principal use. That is not the situation here where the issue is whether site review provisions must be applied to the use of Shafler Road. The site review permit process does not concern the approval or denial of a land use, only the application of conditions to make it compatible with affected properties.

Lane County Transportation Planning Staff and those opposed to this application have argued that the site review permit process should also be applied to Rattlesnake Road and that the applicant should be required to improve that Major Rural Collector to standards of Lane Code 15.703. While I agree that the proposed use will have the potential to significantly impact the use and safety of Rattlesnake Road, I believe that the site review permit inquiry must be restricted to impacts from the use of Shafler Road. The reasoning for this conclusion is discussed below in the analysis of Lane Code 16.257(4)(f).

In conclusion, I believe that the application of the site review permit criteria of Lane Code 16.257(4) should be limited to the use of Shafler Road to access the applicant's quarry mining operation.

Lane Code 16.257(4): The following minimum criteria should be considered in evaluating Site Review Applications:

- (a) **That the location, design, size, shape and arrangement of the uses and structures are sufficient for the proposal intent and are compatible with the surrounding vicinity.**

Shafler Road runs north from Rattlesnake Road past tax lots 2100 and 1501, assessor's map 19-01-20, on the west, and tax lots 1601, 1500 and 1400, assessor's map 19-01-21, on the east, then into tax lot 3400. The site review criteria are applied to that portion of Shafler Road that runs between tax lot 3400 and Rattlesnake Road.

The activity that is subject to a site review permit is the use of Shafler Road by gravel haul trucks, both full and empty, and the personal vehicles of employees of the mining operation. The applicant has suggested that the truck limitation imposed by the Board of Commissioners in Ordinance No. PA 1277 is an intensity that might be considered safe. Absent any other proposal by the applicant I must generally agree. However, the amount of vehicle trips permitted in the Precision Aggregate Products plan amendment included the private vehicle trips of employees. The applicant has not volunteered the number of employees that might be associated with the proposed mining operation although the TIA suggests that 12 employees would be associated with 136 daily truck trips or about one employee per 11 truck trips. Using this ratio, 74 daily vehicle trips (37 one-way trips proposed by the applicant) would require about 7 employees so that actual daily vehicle trips would consist of 60 truck trips and 14 employee trips.

I read the approval criterion of LC 16.257(4)(a) to mean that the "location, design, size, shape and arrangement" of Shafler Road is such that the truck traffic will be compatible with the surrounding vicinity. The vicinity surrounding Shafler Road is primarily composed of tax lots 2100 and 1501, assessor's map 19-01-20, that border the road on the west, and tax lots 1601, 1500 and 1400, assessor's map 19-01-21, that border the road on the east. Four of these properties have direct access onto the road and all but tax lot 1500 are occupied by dwellings. Potential impacts from the truck traffic are safety, dust, and noise.

Safety

One measurement of safety is determined by whether the access road complies with applicable Lane County Road standards. In this regard, the Lane Code 15.706(2)(g) provides that roads dedicated to the public but not accepted by the Board comply with the standards of Lane Code 15.706. Lane County Transportation Planning staff has suggested that the applicant must comply with the standards of Lane Code 15.705, which are more stringent than Lane Code 15.706. This suggestion was based upon an interpretation of Lane Code 15.706(2) and an application of the TIA estimated daily traffic generation of 160 vehicle trips that was predicated on full-scale operation of the quarry site. Based upon this estimate Transportation Planning staff applied Lane Code 15.706(2)(d). I do not agree with this interpretation for two reasons. First, this application has been

limited by conditions of approval to an average of 74 vehicle trips per day. Second, Lane Code 15.706(2)(g) states that public roads that have not been accepted by the Board, such as Shafler Road, must meet the standards of Lane Code 15.706.

The following standards of LC 15.706 are applicable:

- LC 15.706(3)(a) requires a minimum right-of-way width of 40 feet and Shafler Road has a current right-of-way width of 60 feet.
- LC 15.706(4) requires a minimum travel surface width of 18 feet. The current width of Shafler Road's travel surface is between 12 and 14 feet. However, gravel haul trucks are 8.5 feet wide so the TIA suggests that a 20-foot minimum of pavement surface is required to allow them to safely pass in opposite directions.
- LC 15.706(6) requires that the access road either be graveled or paved. Shafler Road is currently paved and the applicant has warranted that it will continue this arrangement.
- LC 15.706(7)(a) requires a paved surface to have two inches of AC over 10" of base as Shafler Road serves four or more parcels.
- LC 15.706(9) proscribes standards for roadway and ditch side-slopes.

Another safety concern is the intersection of Shafler Road and Rattlesnake Road. In this regard, the site distance at this intersection is at least 1,050 feet in both directions. Under AASHTO standards, a sight distance of 850 feet is necessary for a combination truck traveling at 55 mph. In addition, the road approach to Rattlesnake Road is proposed to be widened to ensure that truck movements will not create interference with or a hazard to free traffic movement on Rattlesnake Road.

Further, the applicant has proposed that a sign notifying trucks that they must turn right be posted on Shafler Road, about 150 back from Rattlesnake Road, as well as a stop sign located about four feet back from Rattlesnake Road.

Finally, the applicant has suggested that a speed limit of 15 mph on those portions of Shafler Road adjacent to residentially-zoned property not under the applicant's control is appropriate. This speed ensures that the site distance of a haul truck driver is adequate to meet AASHTO standards and has been made a condition of approval.

Dust

While testimony has established that dust may harm agricultural crops and livestock, the Findings of Fact and Conclusions of Law supporting Ordinance No. PA 1277 make it clear that adverse dust impacts from mining operations are not automatic. The two sources of dust that might be relevant to this site review analysis are from trucks driving over a gravel or dirt surface and from the aggregate carried by haul trucks. In regard to the former, Shafler Road is paved and is not anticipated to be a source of dust. Second, to mitigate the potential for dust generation during dry months, aggregate carried by haul trucks will be required to be watered when dust drift is visible. Finally, it should be pointed out that the applicant is required to obtain and maintain an LRAPA air quality discharge permit. There is no evidence in the record that compliance with this permit will nevertheless result in harm to nearby agricultural operations or human health from dust emissions.

Noise

Noise on Shafler Road from the proposed use is primarily generated by contact with the road surface by truck tires and the use of truck brakes. It is anticipated that adherence to the 15 mph speed limit and the paved roadway will not result in excessive noise. In addition, the hours of operation of the haul trucks will be limited to normal daytime business hours.

For the above-discussed reasons, I believe that the application meets the standards of Lane Code 16.257(4)(a).

- (b) **That there is no unnecessary destruction of existing healthy trees or other major vegetation, and that due consideration is given to the preservation of distinctive historical or natural features.**

The first part of this standard focuses on existing healthy trees and other vegetation but does not otherwise quantify that resource. Absent a higher standard, such as a requirement that trees with certain diameter be preserved, an inventory seems unnecessary. The applicant's proposed condition that no trees (or other major vegetation) be removed except as necessary to implement the requirements of this decision and LC 15.706 seems adequate to meet this criterion.

There is nothing in the record to indicate that there are any distinctive historical or natural features that might be affected by required improvements to Shafler Road.

- (c) **That the quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas are such that they serve their intended purpose and have no undue adverse effect on existing or contemplated abutting land use.**

No fences, hedges or additional landscaped modifications are proposed except in regard to walls that might be requested by one of the residents who abut Shafler Road.

- (d) **That suitable planting of ground cover or other surfacing is provided to prevent erosion and reduce dust.**

The applicant will be widening Shafler Road with pavement.

- (e) **That the location, design and size of the uses are such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intended uses.**

This criterion focuses upon whether the proposed use, which in this case is the hauling of aggregate over Shafler Road, is adequately served by necessary facilities and services. The only facility that is relevant is the adequacy of Shafler Road for the transport of aggregate and the upgrade of that facility to accommodate 8.5-foot wide haul trucks. The proposed upgrade of Shafler Road to the standards of Lane Code 15.706, and increase in width to 20-feet in width or the construction of two truck turnouts, adequately addresses this standard.

- (f) **That, based on anticipated traffic generation, adequate additional right-of-way and road improvements must be provided by the development in order to promote traffic safety and reduce traffic congestion.**

Consideration shall be given to the need and feasibility of widening and improving abutting street's to specifications of Lane Code, Chapter 15, "Roads," and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.

The application has not specified an upper limit on the traffic that will be generated over Shafler Road although the TIA, which was based upon a "busiest case scenario," postulated a maximum of 136 daily truck trips and 24 employee vehicle trips. The applicant has suggested, however, that the traffic generation limitation developed by the Board of Commissioners in its decision regarding the Precision Aggregate Products plan amendment was a reasonable condition. That decision limited the average daily vehicle trips to 74, which included employee vehicle trips. Using this standard, I estimate that a comparable standard in this case would be 60 daily truck trips (30 loaded and 30 unloaded trips) plus an estimated 14 daily trips by employees.

The definition of "abutting" is critical to the application of this criterion. The term is not defined by the Lane Code but Websters Third New International Dictionary defines "abut" to "border on: reach or touch with an end." Opponents have argued that by pluralizing the word "street" the standard somehow expands the term to

include streets that abut abutting streets. A more reasonable interpretation is that the criterion acknowledges that more than one street may abut a site. In the present case, only one street abuts the subject property and that is Shafler Road.

No additional right-of-way must be provided as Shafler Road has 60-feet of right-of-way. However, as addressed in LC 16.257(4)(a) above, Shafler Road will be improved and widened to meet the requirements of Lane Code 15.706 and to ensure there is enough room for haul trucks to safely pass each other in opposite directions. Lighting is not proposed for the road nor is it required by the Lane Code. Neither are sidewalks or deceleration/acceleration lanes. The application, as conditioned by this decision, complies with this criterion.

- (g) **That there is a safe and efficient circulation pattern within the boundaries of the development. Consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exists *[sic]*, drives, walkways, buildings and other related facilities.**

I have found that the mining operation is not subject to a site review permit and therefore the circulation pattern of that operation is not subject to this criterion. The proposed buffer area may not be used for any of the mining operation, including the loading of aggregate haul trucks, although Shafler Road may be used for ingress and egress through the setback area.

As addressed in LC 16.257(4)(a) above, consideration was given to the layout of Shafler Road in terms of compliance with LC 15.706 and safety concerns regarding the passage of haul trucks.

- (h) **That there are adequate off street parking and loading/unloading facilities provided in a safe, efficient and pleasant manner. Consideration shall include the loading/unloading facilities and their surfacing, lighting and landscaping.**

No loading/unloading facilities on Shafler Road are contemplated by this application as those facilities will be provided on the interior of the site.

- (i) **That all signs and illumination are in scale and harmonious with the site and area.**

The applicant's TIA has proposed a stop sign and a 12-inch painted stop line at the intersection of Shafler Road and Rattlesnake Road and a sign, about 150 feet back from Rattlesnake Road, that directs trucks to turn right on Rattlesnake Road. Because the signs will be situated on property zoned rural residential they must conform to the standards of Lane Code 16.290(7)(g). The latter sign should be no larger than that necessary to be readable by a driver of a haul truck and of a material and color representative of adjacent residential structures. The stop sign shall conform to state standards.

- (j) **That adequate methods are provided to ensure continued maintenance and normal replacement of facilities, landscaping and other improvements, etc. that are required by Site Review Permit.**

The applicant has warranted that it is committed to maintaining Shafler Road in a condition that meets county standards. This shall be a condition of approval through the duration of the mining operation.

Conclusion

More than 100 people have testified in opposition to this application, a majority of whom live in the area around the proposed quarry mining operation. Many of the concerns voiced are speculative, such as erosion impacts on Lost Creek, dust and noise impacts on agricultural practices, and negative impacts on groundwater, and assume that the applicant cannot or will not mitigate their impacts. I believe that the DOGAMI and LRAPA permits, along with community vigilance regarding compliance with these permits, will go a long way towards ensuring that these impacts from the mining operation will not be significant. Other impacts such as increased heavy truck traffic on Rattlesnake Road will be quantifiable although their impact on road safety has yet to be determined. To a large extent this latter concern may depend upon the vigilance of the haul truck drivers.

Most if not all testifying in opposition to this application will be frustrated that the application of the site review process is so limited. It does not address the major activities associated with the quarry mining operation nor does it address impacts to Rattlesnake Road. This is because the site review regulations reflect an assumption that most impacts from mining operations are addressed during the comprehensive planning process when conflicts between the exploitation of significant aggregate resources and residential and other uses are resolved. Sometimes an otherwise significant aggregate site is not protected because it is obvious that its impacts on surrounding uses cannot be adequately mitigated. At other times, impacts are not foreseen or the resource is deemed so significant as to override conflicts with surrounding uses. Often, this conflict-resolution process has been applied through a legislative process where individual notice to property owners was not provided. I believe this was the case with Parvin Butte. The result was that existing and future conflicts were not identified and no Site Review (/SR) suffix was attached to the QM zoning designation of the property.

Clearly, the site review permit process, as interpreted in this decision, does not provide the protection expected by most of the community. It should be understood, however, that this decision is only an expression of what the hearings official believes to be the scope of the law as it applies to the proposed mining operation. It allows a certain level of activity but does not require it. The applicant has offered to meet with community residents and talk about ways to make the operation more compatible. I strongly urge that this offer be explored in good faith. It is good business to minimize friction with the community within which one does business and it is very possible for the community to

extract operating concessions from the applicant that the hearings official has no authority to require.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gary L. Darnielle", with a stylized flourish at the end.

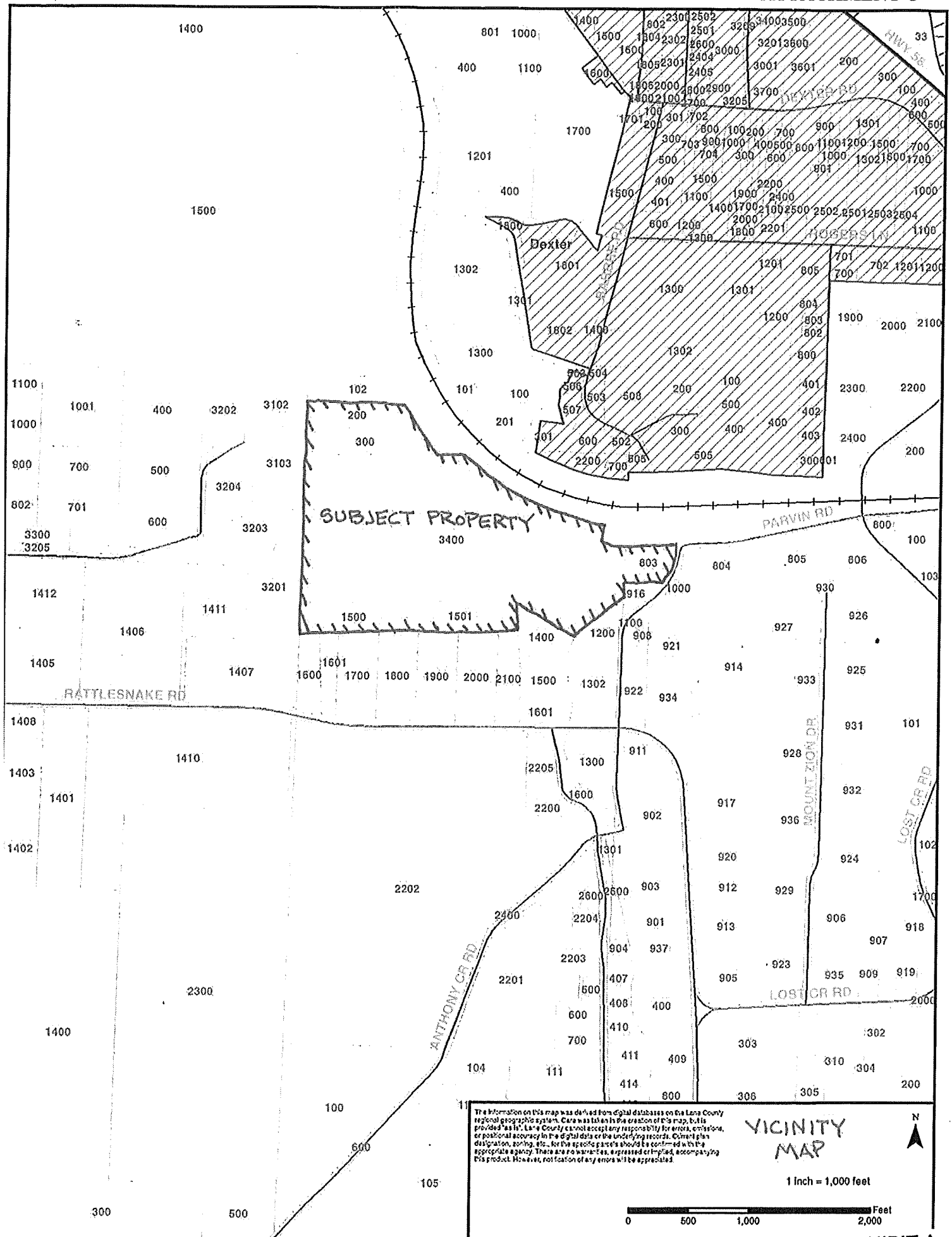
Gary L. Darnielle
Lane County Hearings Official

ATTACHMENT A
PA 11-5853

Alfred Soeldner
Andrew Whitedove
Arlen Markus
Art Noxon
Sanda Winebrenner
Barry Winebrenner
Benjamin Jackson
Bette Koetz
Bill Aspegren
Bonny Erickson
Bruce Alford
Carla Salido
Carter McKenzie
Catherine Johns
Catherine Varing
Catherine Williams
Charles Van Deusen
Christopher Roth
Clark Anderson
Claudia Rosenthal
Clif and Diane Trolin
Colleen Okeymow
Courtney Campbell
Mary Ann Creel
Dale Creel
Damon Joyner
Dan Rosenquist
Eowyn Orleck
Daniel Orleck
Daniel Stotter
Roberta Cooper
David Cooper
Jody Clark
David Schaeffer
Deb Bauer
Deborah Vukson
Diane Engdahl
Diane Levin
Donald Alexander
Ed and Diane Avila
Emily Buffon
Dan Orleck
Eowyn Orleck
Eric Selker
Wanda Niemi
Ernest Niemi

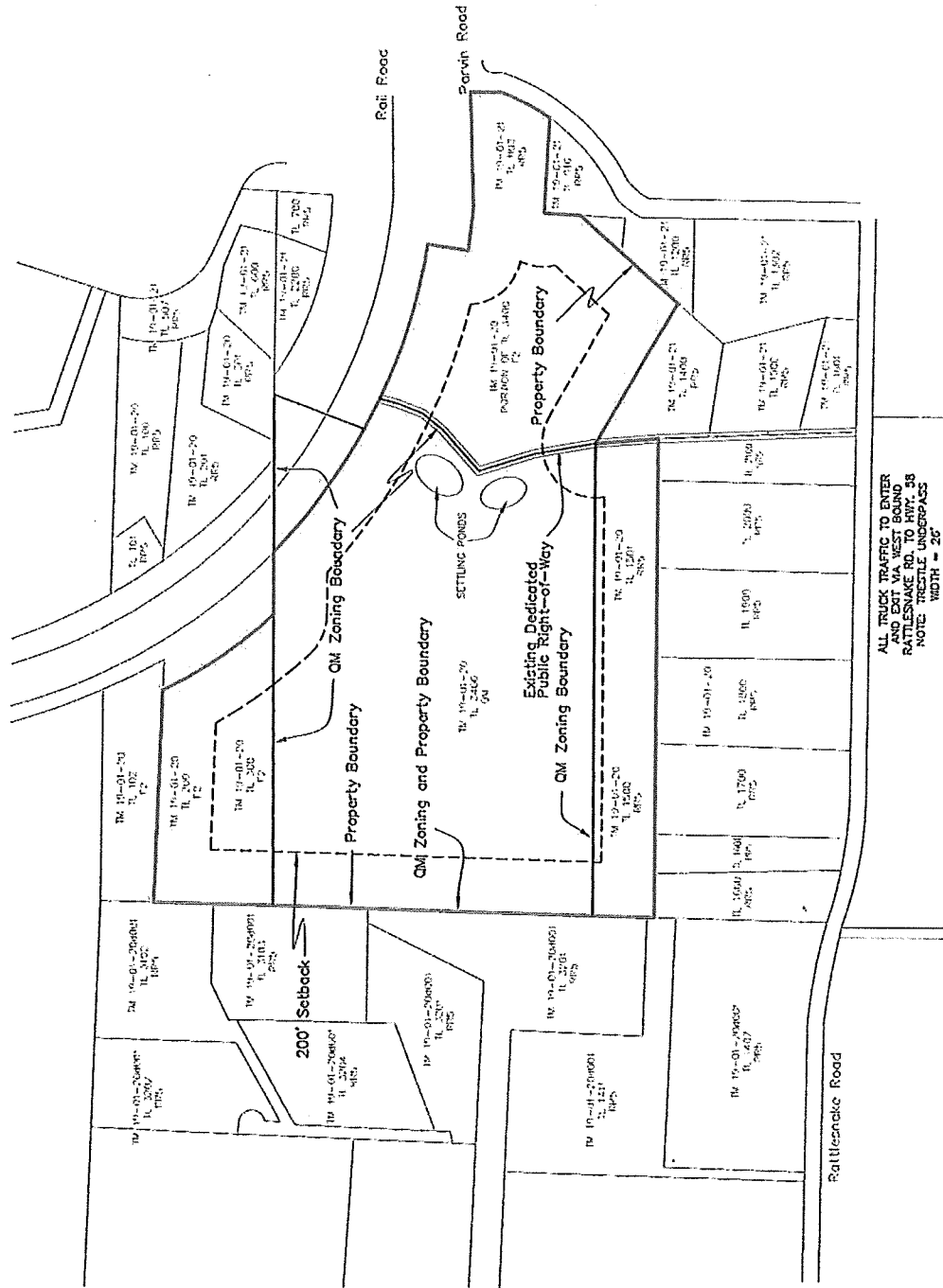
Veronika Walton
Gerald Walton
Grace Almeida
Heide Good
Jackie Murdoff
James Hawkins
Jan Aho
Jane Mossberg
Jane Van Dusen
Jeff Pelton
Jeffery Hearn
Jeffery Sprague
Jenessa Dragovich
Jennifer Buckley
Jerry Welsh
Jim Babson
Jo Dunnick
John English
John Koenig
John Tyler
John Weber
Judith Danielson
Juliet Thompson
Justin Michelson
Karalyn Walker
Kathy Grimwood
Kimberly Metzler
Kulip Pawar
Laurie English
Louise Lamb
Lyndell Wilken
Roger Stapes
Lynn Stapes
Martha Neuman
Joyce Weaver
Mel Weaver
Mia Nelson
Barbara Dumford
Michael Dumford
Mike Bebout
Millie Stewart
Monte Olsen
Monte Stewart
Pamela Driscoll
Patricia Beis
Gretchen Stolpe

Peter Stolpe
Peter Helzer
Phil Robbins
Pleasant Hill School District
Ray Hull
Richard Hughes
Terry Holmes
Rick Holmes
Robert Emmons
Carol Jung
Rolf Jung
Sherry Newcomer
Ron Newcomer
Ross Penhallegon
Sam Robbins
Sat Ganesha
Sharon Latimer
Sharon Weber
Shelby Camerer
Sherrie Sims
Sonja Gunn
Stephen John
Sue Wolling
Teresa Schaffer
Thom Lanfear
Thomas Baxter
Tim Christie
Steven Swafford
Timothy Cline
Lisa-Marie Hawkins
Dustin Hawkins
Todd Hawkins
Tree Bressen
Wendy Huhn
Monika McEachern
William McEachern
William Thompson
Bill Kloos
Kim O'Dea
Larry Gildea

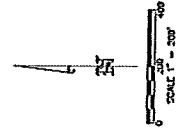


Lost Creek Rock Pit Site Plan

Located in the NE corner of Section 20
Township 19 South, Range 1 West, Willamette Meridian
January 16, 2012



NOTES
THE DRAWING HAS BEEN PREPARED FROM THE RECORDS OF THE LOST CREEK ROCK PIT, LOCATED IN THE NE CORNER OF SECTION 20, TOWNSHIP 19 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CLATSOP COUNTY, OREGON. THE DRAWING IS A PRELIMINARY PLAN. THE FINAL PLAN WILL BE SUBMITTED TO THE CLATSOP COUNTY ENGINEER FOR REVIEW AND APPROVAL.



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SHEET 1 OF 1