

W. B. B.

AGENDA COVER MEMO

DATE: April 11, 2011 (Date of Memo)
April 27, 2011 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department/Land Management

PRESENTED BY: Jerry Kendall, Associate Planner *JK*

AGENDA ITEM TITLE: Order No. _____ / In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of a Hearings Official's Decision affirming the Planning Director's approval of a Site Review for a Quarry Mining Operation (file PA 07-5298/Overholser)

I. MOTION

Motions for the Board of Commissioners:

Option 1. Move to approve the attached order, electing to not hear arguments on the appeal, affirm and adopt the Lane County Hearings Official decision dated March 8, 2011, as the County's final decision, and expressly agree with and adopt the interpretations of the Lane County Rural Comprehensive Plan policies, implementing ordinances, and State Law made by the Hearings Official in the decision.

Option 2. Move to modify and approve the attached order, electing to not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations.

Option 3. Move to not approve the attached order, electing to hear the appeal on the record and direct staff to return with an order electing to hear the appeal pursuant to Lane Code 14.400.

II. AGENDA ITEM SUMMARY

An appeal to the Board, contesting a Hearings Official approval of a Site Review for a quarry mining operation, has been received by the Director. The Appellant has filed the appeal per the option in LC 14.515(3)(f)(ii), wherein the Board does not conduct a hearing on the appeal and deems the Hearings Official decision the final decision of the County. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the Code.

III. BACKGROUND

A. History

1. Property involved in this action is identified as tax lots 600 and 606, map 21-03-02, a vacant piece of property located off Quaglia Road, approximately two miles southeast of the city of Cottage Grove. The property is zoned QM/Quarry and Mine Operations Zone, and is within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. In February 2007, in the form of application PA 07-5298, the property owner and applicant, Donald Overholser and Rodney Mathews, requested the Planning Director's approval of a Site Review for the quarry operation per LC 16.216(5) and LC 16.257.
3. Because of the number of letters received in opposition to the request, the Planning Director elected to conduct a Planning Director evidentiary hearing as per LC 14.300 (pre-December 2009 version). On March 18, 2010, the Planning Director approved the Site Review, subject to conditions.
4. A timely appeal of the Planning Director's decision was filed by the Applicant/Owner on March 30, 2010. Upon review of the appeal, the Director affirmed his decision, and an on the record appeal hearing was scheduled before the Hearings Official.
5. The Hearings Official's on the record appeal hearing was held on May 6, 2010, and continued on September 2, 2010. The record closed at the end of the second hearing.
6. On September 23, 2010, the Oregon Supreme Court issued their *West Linn Corporate Park vs. City of West Linn* decision (SC S056322). Since this case had a direct bearing on the current application, the Hearings Official allowed briefs to be filed by the Applicant and Planning staff.
7. On March 8, 2011, the Hearings Official issued his decision, affirming the Planning Director's Site Review approval, but with modified conditions.
8. A timely appeal of the Hearings Official's decision was filed by the opponents, the *Families for a Quarry-Free Neighborhood, et al.* on March 21, 2011.
9. On March 25, 2011, and after reviewing the appeal, the Hearings Official affirmed his decision of March 8.

B. Appeal Analysis

The appeal filed by the *Families for a Quarry Free Neighborhood et al.* to the Hearings Official decision raises a procedural issue over the Appellant's lack of standing before the Hearings Official, as well as several substantive objections to the decision.

Procedural Issue/Party Status of Appellant:

Lane Code Chapter 14, entitled "Application Review and Appeal Procedures", was modified and adopted in its current form on December 4, 2009. A copy of LC 14, in legislative format and as present to the Board for consideration at that time, is found as Attachment 7.

Because of the number of letters received in opposition to the quarry proposal, the Planning Director chose to conduct an evidentiary hearing in September of 2007, as then allowed under LC 14.110. When the Director's decision was issued on March 18, 2010, the LC 14 modifications had already been adopted the previous December.

The Applicant appealed the Director's decision, taking issue with the conditions of approval. No appeal was filed by the opponents. Since an evidentiary hearing had already been conducted, an on the record appeal hearing was scheduled for May 6, 2010.

At the May hearing, Daniel Stotter, attorney for the opponents, argued that his clients should be considered parties to the appeal hearing and be allowed to participate. The Hearings Official did not agree. In his March 8, 2011 decision, the Hearings Official ruled:

"The hearing before the Lane County Hearings Official was held on May 6, 2010. This hearing was scheduled to be "on the record" and restricted to "parties" to the appeal. Lane Code 14.500(1), as it existed at the time of the submission of the application, the subsequent determination of completeness and the Planning Director's evidentiary hearing, restricted the testimony to parties to an appeal of Planning Director decisions that were based upon an evidentiary hearing. However, changes to Chapter 14 of the Lane Code, which became effective on December 4, 2009, eliminated the option for evidentiary hearings before the Planning Director and required that all hearings before the Hearings Official be "de novo." Opponents of the site review permit Appellants have argued that they therefore had a right to testify at the Hearings Official's May 6 hearing."

"At the May 6 hearing, I ruled that the opponents would not be allowed to testify because an evidentiary hearing had already been held, essentially locking in the Code provisions that restricted appellate rights at the County level. Not allowing the opponents to testify at an "on the record" hearing would not prejudice the opponents, as their testimony from the prior proceeding is already in the record and would be considered by the Hearings Official. The corollary, however, in allowing the opponents to testify at a "de novo" hearing would prejudice the Appellants as the decision-making process has already taken more than three years from the time the application was deemed complete, a timeframe that is contrary to the provisions of ORS 215.427(5) that limit the County's ability to extend the local decision-making process to a maximum of 215 days beyond the initial 150-day deadline."

When the current appeal was filed on March 21, 2011, it was forwarded to the Hearings Official for his review per LC 14.535. In his letter of March 25, 2011 (Attachment 1.B.), the Hearings Official subsequently affirmed his decision, and "strongly recommend[ed]" that the Board review the decision regarding his interpretation of LC 14.500 as to whether or not the opponents qualified as parties before the Hearings Official. This option for Board review is presently folded into the staff suggested option 1.

The party status of the opponents was the subject of numerous submittals by both the Applicant and the Appellants and received after the present appeal was filed. They are attached to this memo (Attachment 5) for the Board's information.

This appeal to the Board is filed under Lane Code 14.515(3)(f), which provides for two appeal options. The Appellant can:

- (i) Request that the Board conduct a hearing on the appeal, or*
- (ii) Request that the Board not conduct a hearing on the appeal and deem the Hearings Official decision the final decision of the County. An appellant's election under this section shall constitute exhaustion of administrative remedies for purposes of further appeal of the County's final decision. The fee under this option shall not exceed the amount specified in ORS 215.416(11)(b).*

The quarry opponents chose the 2nd option (LC 14.515(3)(f)(ii)), and paid the associated fee of \$250. By choosing the second option above, they in effect request that the Board not hear the appeal and affirm the Hearings Official's decision, enabling a subsequent appeal to the Land Use Board of Appeals. In accord with that option, staff has constructed option 1 and the draft Order to include language that the Board expressly agrees with the Hearings Officials interpretation of LC 14 and adopts it as the Board's interpretation of its code. In the event that this decision is appealed to and reviewed by LUBA, LUBA should give deference to the Board's interpretation of its code language .

Substantive Issue/Conditions of Approval:

In addition to the procedural issue of whether the opponents were provided a fair opportunity to participate before the Hearings Official, the appeal also takes issue with the modified conditions of approval issued by the Hearings Official on March 8, 2011. Mr. Stotter maintains that by modifying the conditions from those previously imposed in the Planning Director evidentiary decision, the Hearings Official has, in effect, ruined the nexus between the Site Review compatibility standards (of LC 16.257(4)) and the conditions which were constructed to ensure such compatibility. In this regard, the Hearings Official, in his letter of March 25, 2011, found that "the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted".

C. Policy Issues

Lane Code 14.600(3) dictates the procedure for this elect to hear meeting:

- (3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude that a final decision by the Board can be made within the time constraints established by ORS 215.427(1) and that the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing. The Board's decision to hear the appeal must comply with one or more of the following criteria:*
 - (a) The issue is of Countywide significance.*
 - (b) The issue will reoccur with frequency and there is a need for policy guidance.*
 - (c) The issue involves a unique environmental resource.*
 - (d) The Planning Director or Hearings Official recommends review.*

Election to Hear Criteria

Regarding the “time constraints” mentioned in subsection (3) above, ORS 215.427(1) requires the county to make a decision within 150 days of the application being deemed complete, minus any timeline waivers granted by the Applicant.

In this regard, PA 07-5298 was received on February 23, 2007. While the Applicant granted timeline waivers on several occasions, the 150 day timeline limit was exceeded even before the Planning Director’s decision was issued in March of 2010. This was due in large part by the re-prioritizing of staff workloads when LMD was subjected to a near 50% staff reduction in January 2009.

The Board is advised that it cannot reach a final decision on PA 07-5298 within the time constraints of ORS 215.427(1) as required by LC 14.600(3). The Board will need to take this into consideration if it elects to hear the appeal.

Additionally, the Lane Code 14.600(3)(a)-(d) election-to-hear criteria are presented below with the Director’s analysis.

a. *The issue is of Countywide significance.*

While the procedural right of citizen participation in land use matters is of paramount importance and reflected in Goal One of the Lane County Rural Comprehensive Plan Policies and State Goals, the *Families for a Quarry-Free Neighborhood* and various individuals had the opportunity to participate beyond the Planning Director’s evidentiary hearing by filing an appeal of the Planning Director’s evidentiary decision, but they chose not to exercise that option. The subsequent Hearings Official ruling that the Appellants had no party status to the on the record appeal appears appropriate in light of the evidentiary hearing conducted before the modification to Lane Code Chapter 14 adopted in December of 2009.

The substantive issue of the nexus between the modified conditions of approval imposed by the Hearings Official and the compatibility standards of LC 16.257(2) was adequately addressed in the decision of March 8, 2011. Further, this issue is specific to this matter and is not an issue of countywide significance.

b. *The issue will reoccur with frequency and there is a need for policy guidance.*

The procedural issue over party status of the opponents is due to the recent changes to Lane Code Chapter 14 implemented in December of 2009, which occurred after the Planning Director held an evidentiary hearing on this quarry operation, but prior to the appeal hearing before the Hearings Official. This fact pattern will not occur with frequency. There is no need for further policy guidance, provided the Board expressly agrees with the Hearings Official’s interpretation of Lane Code Chapter 14.

c. *The issue involves a unique environmental resource.*

No unique or rare environmental resources are pertinent to this appeal. Rock quarries, although a resource, is not a unique resource in Lane County.

d. *The Planning Director or Hearings Official recommends review.*

Neither the Planning Director nor the Hearings Official recommends Board review of this appeal. The Hearings Official position was clarified in an email exchange with staff on April 8, 2011 (Attachment 6), and has no affirmative recommendation that the Board elect to hear this appeal.

D. Board Goals

The Board adopted the Strategic Plan in 2001.

An applicable goal from the plan includes:

- *Contribute to appropriate community development in the areas of transportation and telecommunications infrastructure, housing, growth management and land development.*

The Hearings Officials decision, in conditionally approving the quarry mining operation, aids appropriate community development and land development in that such use is allowed in the Quarry and Mine Operations zone, provided the Site Review standards are met. Such was found to be the case in the current decision.

E. Financial and/or Resource Considerations

The Appellant has chosen the 2nd appeal option as found in LC 14.515(3)(f)(ii), which amounts to a request that the Board not hear this appeal and to deem the Hearings Official decision of March 8, 2011 the final decision of the County. Per Lane Manual, the appeal fee was \$250. If the Board elects to not hear the appeal, the Appellant can proceed directly to the Land Use Board of Appeals (LUBA).

If on the other hand, the Board deems that the appeal has merit per the decision criteria of LC 14.600(3), an on the record Board hearing will be scheduled per LC 14.400. Such action will require further planning staff time in preparing a more detailed analysis of the appeal, required coordination with Legal Counsel, Board administrative staff, and the Board itself. With no further appeal fees forthcoming, the Land Management Division will bear the cost of these additional county resources.

IV. TIMING/IMPLEMENTATION

If the Board adopts the order as presented, the decision by the Hearings Official becomes the final decision of the County upon signing of the order.

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

In either event, the involved parties will be notified of the Board outcome.

V. ACTION

A. Options:

Option 1. Move to approve the attached order, electing to not hear arguments on the appeal, affirm and adopt the Lane County Hearings Official decision dated March 8, 2011, as the County's final decision, and expressly agree with and adopt the interpretations of the Lane County Rural Comprehensive Plan policies, implementing ordinances, and State Law made by the Hearings Official in the decision.

Option 2. Move to modify and approve the attached order, electing to not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations.

Option 3. Move to not approve the attached order, electing to hear the appeal on the record and direct staff to return with an order electing to hear the appeal pursuant to Lane Code 14.400.

B. Staff Recommendation:

Select option 1.

VI. ATTACHMENTS

1. Board Order electing to not hear the appeal and expressly agree with the Hearings Official, with Exhibits "A" (findings) and "B" (Hearings Official Decision, March 8, 2011 with Affirmation of decision, March 25, 2011)—26 pp.
2. Opponents appeal of the Hearings Official on the record decision, filed on March 21, 2011 –6 pp.
3. Planning Director's Evidentiary decision of March 18, 2010 –25 pp.
4. Applicant's appeal of the Planning Director's Evidentiary decision, filed on March 30, 2010 –7 pp.
5. Additional submittals by Applicant and Opponents agents regarding this "Elect to Hear" item – 10 pp.
6. Email dated April 8, 2011, clarification by Hearings Official on letter of March 25, 2011 --1p.
7. LC 14 Legislative format, December 2009—19pp.

The entire file record for PA 07-5298 is available for review at the Land Management Division.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. 11-4-27-15

) In the Matter of Electing Whether or Not to Hear
) Arguments on an Appeal of a Hearings Official's Decision
) affirming the Planning Director's approval of a Site Review
) for a Quarry Mining Operation (file PA 07-5298/Overholser)

WHEREAS, the Lane County Hearings Official has made an on the record decision, affirming the Planning Director, with modified conditions, and approving a Site Review for a Quarry Mining Operation, application PA 07-5298 ; and

WHEREAS, the Lane County Planning Director has accepted an appeal 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 application PA 07-5298; 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 an on the record decision by the Hearings Official; and

WHEREAS, Lane Code 14.515(3)(f)(ii) provides the option that the appellant can request the Board not conduct a hearing on the appeal; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board and is ready to take final action.


NOW, THEREFORE, IT IS HEREBY ORDERED and FOUND by the Board of County Commissioners of Lane County as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and further arguments on the appeal in an on the record hearing before the Board should therefore not be considered. Findings in support of this decision are attached as Exhibit "A" and reflect adequate consideration of the appeal.
2. That the Lane County Hearings Official decision dated March 8, 2011, and affirmed by letter of March 25, 2011, attached as Exhibit "B" and incorporated here by this reference, is affirmed and adopted by the Board of County Commissioners as the County's final decision. After reviewing the appeal and the record of proceedings below, the Board of County Commissioners expressly agrees with and adopts the interpretations of the applicable Lane County Rural Comprehensive Plan policies, implementing ordinances, including Lane Code Chapter 14, and State Law made by the Hearings Official in reaching the decision the Board now adopts as its own.

ADOPTED this 27TH day of April, 2011

Chairperson, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 4-20-2011 being attested by

OFFICE OF LEGAL COUNSEL

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lots 600 and 606, map 21-03-02, a vacant piece of property located off Quaglia Road, approximately two miles southeast of the city of Cottage Grove. The property is zoned QM/Quarry and Mine Operations Zone, and is within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. In February 2007, in the form of application PA 07-5298, the property owners and applicants, Donald Overholser and Rodney Mathews, requested the Planning Director's approval of a Site Review for the quarry operation per LC 16.216(5) and LC 16.257.
3. Because of the number of letters received in opposition to the request, the Planning Director elected to conduct a Planning Director evidentiary hearing as per LC 14.300 (pre-December 2009 version). On March 18, 2010, the Planning Director approved the Site Review, subject to conditions.
4. A timely appeal of the Planning Director's decision was filed by the Applicant/Owner on March 30, 2010. The Director affirmed his decision, and an on the record appeal hearing was scheduled before the Hearings Official.
5. The on the record appeal hearing was held on May 6, 2010, and continued on September 2, 2010. The record closed at the end of the second hearing.
6. On September 23, 2010, the Oregon Supreme Court issued their *West Linn Corporate Park vs. City of West Linn* decision (SC S056322). Since this case had a direct bearing on the current application, the Hearings Official allowed briefs to be filed by the Applicant and Planning staff.
7. On March 8, 2011, the Hearings Official issued his decision, affirming the Planning Director's Site Review approval, but with modified conditions.
8. A timely appeal of the Hearings Official's decision was filed by the opponents, the *Families for a Quarry-Free Neighborhood, et al.* on March 21, 2011.
9. On March 25, 2011, and after reviewing the appeal, the Hearings Official affirmed his decision of March 8.
10. The opponents' appeal asserts that the Hearings Official failed to follow the procedure applicable to the matter, and misinterpreted the Lane Code and other applicable criteria.
11. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires that the Board find one or more of the following issues are raised by the appeal:
 - 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.
12. The Board cannot reach a final decision within the time constraints of ORS 215.427(1).
 13. While the procedural right of citizen participation in land use matters is of paramount importance and reflected in Goal One of the Lane County Rural Comprehensive Plan Policies and State Goals, the *Families for a Quarry-Free Neighborhood* and various individuals had the opportunity to participate beyond the Planning Director's evidentiary hearing by filing an appeal of the Planning Director's evidentiary decision, but they chose not to exercise that option. The subsequent Hearings Official ruling that the Appellants had no party status to the on the record appeal appears appropriate in light of the evidentiary hearing conducted before the modification to Lane Code Chapter 14 adopted in December of 2009. In addition, the substantive issue of the nexus between the modified conditions of approval imposed by the Hearings Official and the compatibility standards of LC 16.257(2) was adequately addressed in the decision of March 8, 2011. Further, this issue is specific to this matter and is not an issue of countywide significance.
 14. The procedural issue over party status of the opponents is due to the recent changes to Lane Code Chapter 14 implemented in December of 2009, which occurred after the Planning Director held an evidentiary hearing on this quarry operation, but prior to the appeal hearing before the Hearings Official. This fact pattern will not occur with frequency. There is no need for further policy guidance, and the Board expressly agrees with the Hearings Official's interpretation of Lane Code Chapter 14.
 15. No unique or rare environmental resources are pertinent to this appeal. Rock quarries, although a resource, is not a unique resource in Lane County.
 16. Neither the Planning Director nor the Hearings Official recommend that the Board hold a hearing on this appeal.
 17. 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 appeal or declining to further review the appeal.
 18. The Board has reviewed this matter at its meeting of April 27, 2011, and finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), and elects to not hold an on-the-record hearing.
 19. The Board affirms and adopts the Hearings Officials decision of March 8, 2011, as the County's final decision in this matter, and expressly agrees with and adopts as its own the interpretations of the Lane County Rural Comprehensive Plan policies, implementing ordinances, including Lane Code Chapter 14, or State Law made by the Hearings Official in reaching the decision attached.

**LANE COUNTY HEARINGS OFFICIAL
AN APPEAL OF PLANNING DIRECTOR CONDITIONS OF APPROVAL OF A
SITE REVIEW PERMIT TO ALLOW A QUARRY EXTRACTION OPERATION
WITHIN A QUARRY MINING OPERATIONS DISTRICT**

Application Summary

Donald J. Overholser & Rodney Mathews, 30397 Cottage Grove–Lorane Highway, Cottage Grove, OR 97424. The Appellants have requested a site review permit to allow the annual extraction of 20,00 cubic yards of quarry rock.

The current quarry operation proposal was originally submitted on February 23, 2007. The application was deemed incomplete, lacking a copy of the recorded easement, and a Traffic Impact Analysis. The missing information was eventually provided and the application was deemed complete. Because of letters received in opposition to the request, a Planning Director evidentiary hearing was held on September 24, 2007. The hearing was then closed but the record left open for submittal of evidence and comments. This open record period was extended several times, with the record finally closing on October 31, 2008. The Planning Director approved the site review permit, with conditions, on March 18, 2010. A timely appeal by the Appellants to the Director's decision was filed and the Director affirmed his decision on April 2, 2010. A hearing before the Lane County Hearings Official was subsequently scheduled.

The hearing before the Lane County Hearings Official was held on May 6, 2010. This hearing was scheduled to be "on the record" and restricted to "parties" to the appeal. Lane Code 14.500(1), as it existed at the time of the submission of the application, the subsequent determination of completeness and the Planning Director's evidentiary hearing, restricted the testimony to parties to an appeal of Planning Director decisions that were based upon an evidentiary hearing. However, changes to Chapter 14 of the Lane Code, which became effective on December 4, 2009, eliminated the option for evidentiary hearings before the Planning Director and required that all hearings before the Hearings Official be "de novo." Opponents of the site review permit Appellants have argued that they therefore had a right to testify at the Hearings Official's May 6 hearing.

At the May 6 hearing, I ruled that the opponents would not be allowed to testify because an evidentiary hearing had already been held, essentially locking in the Code provisions that restricted appellate rights at the County level. Not allowing the opponents to testify at an "on the record" hearing would not prejudice the opponents, as their testimony from the prior proceeding is already in the record and would be considered by the Hearings Official. The corollary, however, in allowing the opponents to testify at a "de novo" hearing would prejudice the Appellants as the decision-making process has already taken more than three years from the time the application was deemed complete, a timeframe that is contrary to the provisions of ORS 215.427(5) that limit the County's ability to extend the local decision-making process to a maximum of 215 days beyond the initial 150-day deadline.

Parties of Record

See "Attachment A"

Application History

Hearing Dates: May 6, 2010
September 2, 2010
(Record Held Open Until January 25, 2011)

Decision Date: March 8, 2011

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 Code 16.216(4)(a)& (5)
Lane Code 16.257(4)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located approximately 2600' southwest of the intersection of Mosby and Quaglia roads, two miles southeast of the city of Cottage Grove, and can be identified as tax lots 600 and 606, Assessor's Map 21-03-02. The subject property is zoned Quarry and Mine Operations Zone (QM) and is located within the Rural Comprehensive Plan boundary.

The Appellants request a site review permit to quarry 20,000 cubic yards of quarry rock annually. The subject property has a two-acre quarry pit (registered with the Oregon Dept. of Geology and Mineral Industries as site No. 20-0125). The area containing marketable rock is approximately five acres in size, with the remainder of the property to be retained as a buffer. The operation plan calls for enlarging the existing two-acre pit to approximately five acres, and leaving the remaining 15 acres in its present state of brush and fir trees. Vegetation that is on top of the sections mined, as that activity progresses from east to west, will be destroyed. The maintenance of a 50' excavation setback from property lines (of the subject property: tax lots 600 and 606) is listed on the operations plan submitted to DOGAMI. Vegetation on top of the presently undisturbed areas of the quarry includes Doug fir, with lesser quantities of White fir, Cedar, and Hazel bushes. The quarry pit will be buffered by retention of existing forested areas on the north, east, and south side of the excavation area. On the west side (the basic direction from which the excavation

will progress) the adjoining F-2 zoned, 40-acre parcel is also owned by the Appellants, and is heavily forested.

The site is estimated to contain 600,000 to 700,000 cubic yards of rock. With an annual maximum output of 20,000 cubic yards, the site could remain active for 35 years. Blasting is expected to occur 2 or 3 times per year. The detached rock will be further reduced in size through the use of drills and a rock crusher. Once reduced to marketable size, the rock will be stockpiled on site, then loaded in dump trucks and hauled away. The recipients for the rock will primarily be the BLM, US Forest Service, and private forest lands owners in the southeast portion of Lane County.

Equipment to be employed includes a 3-unit crusher (jaw, cone and rolls), a rock drill, a crawler tractor, two loaders, and a diesel powered generator. Rock hauling will be done by contract or by the purchasers of the material. Rock hauling will occur throughout the year, but the majority of the activity (75%) is expected to occur during construction season, June through October. The operation is proposed for six days a week, closed on Sundays. Specifically, hours of operation are proposed to be from 6:30 AM – 4:30 PM May through October, and 6:30 AM – 4 PM November through April. No aspect of the operation will occur on Sundays or legal holidays. Peak truck traffic during the summer is projected at 16 truck trips daily. Each truck will have a 10 cubic yard capacity. In addition, there will be 4 commute trips per day for employees.

Access to county roads is via a private easement that runs east approximately 1800' to Quaglia Road. There are 3 dwellings within 200' of the easement (addresses of 77742, 77752, and 77778 Quaglia Rd.). The next closest dwelling is approximately 570' distant (77710 Quaglia Rd.). Trucks then proceed north to Mosby Creek Road. A traffic impact analysis was submitted on September 6, 2007, with supplements added throughout the open record period.

2. The subject property is surrounded by F-2 zoned parcels that vary in size from 20 acres to 100+ acres. Dwellings are found on three of those adjoining tax lots (#1100, 601, & 604). The nearest residence is approximately 900' north of the subject property, and 1500' from the quarry pit itself. Quarry traffic will exit the site by means of a private easement eastward to Quaglia Road, then north to Mosby Creek Road. Dwellings occur on every parcel adjoining Quaglia Road between the easement and Mosby Creek. The zoning of those lots is predominantly Rural Residential, although some F-2 zoned land occurs, mostly on the east side of Quaglia Road. On Mosby Creek Road, Rural Residential parcels are found to the immediate west of Quaglia Road, and Rural Residential and F-2 parcels found to the east of Quaglia Road.

3. The subject property lies within the boundaries of the South Lane County Fire & Rescue District and receives electricity from the Emerald People's Utility District.
4. Compatibility issues raised include noise from the crusher, blasting, and truck traffic. Other concerns include dust (primarily from loaded dump trucks), well water (effects on quantity and contamination), creek pollution, air pollution, chemical applications, traffic safety (both pedestrian and vehicular), road capacity (including construction standards and traffic flow), effects on livestock, easement use, hours/days of operation, health effects, and property values.

Dust control is under the jurisdiction of the Lane Regional Air Protection Agency (LRAPA). LRAPA would regulate fugitive dust from both the crushing activity and ingress/egress along the easement. Several options for dust suppression include the use of biodegradable compounds to restrict fugitive dust to acceptable limits. The Appellants has warranted that sodium chloride and/or calcium chloride mixed with water would not be used for dust control. A settling pond will capture and divert excess sediment, with DOGAMI and DEQ setting turbidity limits.

The Appellants have warranted that blasting will be within regulated limits. A test blast was conducted as part of the plan/zone change process. Conditions of approval require that neighbors along Quaglia Road and Pitcher Lane will receive 5 days notice prior to any blasting.

5. Historically, Lane County has treated Quaglia Road as a low volume, residential stub road serving 14 to 15 residential homes. The road was not constructed by the County and roadbed coring data, combined with other information, indicate that it has been "black-topped" over an existing gravel roadbed. It was not designed to support a substantial amount of heavily loaded truck traffic. Core samples of the road taken by Branch Engineering showed that the road structure was composed of asphalt concrete that ranged in thickness from 1.625 inches to 5.5 inches, for an average of 2.9 inches. It has varying depths of contaminated base rock. County records, which go back to 1978, indicate that maintenance has consisted of brushing, sign repair, grass moving, oil-shot surfacing, surface and shoulder maintenance, ditch maintenance, culvert repair/replacement, shoulder blading, surface patching, pothole patching, and guardrail installation. None of these activities enhance the structural capacity of the road.

Quaglia Road has not received a uniform asphalt concrete (AC) layer and has existed for more than 30 years without any major improvement. Traffic counts shows an Average Daily Traffic (ADT) that ranges from 190 to 210 in the past ten years with a negative growth trend. The ADT records are consistent with anticipated traffic from the 14-15 residential properties plus some incidental non-residential traffic. There was a spike in traffic during the period of from December 2007 through February 2008, however, where the ADT equivalent was 240. It is suspected that this anomaly was related to logging in the area and is not representative of actual annual non-passenger vehicle use of the road as that volume of heavy traffic would have caused

the road surface to have deteriorated into gravel or dirt. Residents in the area have confirmed that logging truck activity on the road was almost nonexistent from April through June of 2008 and this observation is consistent with a traffic count in June of 2007 that reported no truck activity on the road.

The Appellants' traffic consultant conducted five 4-hour traffic classification counts on Quaglia Road between December 12, 2007 and February 29, 2008. (Normally, a traffic classification count is conducted for a full day.) On February 29 a count was made of two logging trucks and three dump trucks during a one-hour period. This number was extrapolated to represent 50 trucks per day or 12 percent of the available ESAL of Quaglia Road (See Finding of Fact #6, below.)

6. Street pavement has a fixed strength, or capability to withstand repeated number of loads, often expressed in terms of Equivalent Single Axle Load (ESAL). The ESAL is the repetitive load equivalent to 18,000 lb of axle load, as defined in the American Association of State Highway and Transportation Officials (AASHTO)'s Guide for Design of Pavement Structures (Green Book). The better the construction materials used, the higher ESAL they can withstand. Asphalt concrete (AC) being the superior construction material can sustain relatively high ESALs. It is also eventually subject to fatigue as more ESALs pass over it. Axle loads cause a pavement to fatigue at different rates. For example, a typical sport utility vehicle (gross weight 4500lb) would have to pass 2,600 times ($1.30/0.0005$) to cause the same amount of damage as a fully loaded dump truck. Quaglia Road has never had a specified ESAL bearing capacity as would be found in an engineered roadway because it was not built to any road standards and has had no improvements on its roadway in the past 30 years of maintenance history. Considering the existing contaminated base materials, it can be inferred that Quaglia Road has a remaining life of an estimated 2,500 ESAL.

Chart 1 provides various vehicle types by ESAL data (damage factors):

CHART 1

<u>Vehicle Type</u>	<u>ESAL (Exhibit 117)</u>
Sports utility vehicle	0.0005
Delivery van	0.24
Dump Truck (loaded)	1.30
Dump Truck Empty	0.13
Low-Boy Equipment Delivery	2.38

A limited ESAL may be stretched to serve a lot more passenger automobiles if few heavy vehicles are present. With the available 2,500 ESAL on hand, a roadway should be able to pass 5 million ($2,500/0.0005$) passenger cars without any visible distress.

To determine the estimated impact from the proposed use one must start with some facts supplied by the Appellants:¹

- The quarry's maximum production is 20,000 cubic yards of aggregate per year.
- An average aggregate truck can haul 10 cubic yards of aggregate.
- It would take 2,000 one-way truck loads to haul the quarry's annual maximum production.
- Daily traffic volume, assuming a 365 day year, would be 5.6 one-way trips or a truck ADT of 11. (The actual number of work-days per year is closer to 350 days.)

Using the data in Chart 1, it can be estimated that the quarry operation would use 8.01 ESAL per day to operate 5.6 dump trucks ($5.6 * 1.30 + 5.6 * 0.13$).² Assuming a 37-year lifetime of the quarry³, its use would contribute 105,191 ESAL to Quaglia Road, 56,857 ESAL over a 20-year period of operation, or 2,843 ESAL per year. At this rate, quarry use would deplete Quaglia Road's ESAL reserve in 10 ½ months although the roadway would develop potholes, cracks and ruts before reaching zero ESAL, probably within six months.

Quaglia Road will need a 4.25" thick AC overlay to strengthen the existing pavement to meet future growth and the quarry traffic and to bring it up to County standards. AASHTO's "Design of Pavement Structures, page II-35, indicates that two inches of Asphalt Concrete over a four inch good base can provide a range of between 50,000 to 150,000 ESAL. Considering that Quaglia Road does not have a good base, as it is contaminated with inferior materials, it is reasonable to assume that two inches of AC would add around 48,000+ ESALs to the life expectancy of Quaglia Road. This is 84 percent of the quarry's actual impact over 20 years and 46 percent of its impact over the life of the quarry. It represents 32 percent of the total ESALs that a county-built project would support.

7. Based upon the Appellants' projections, two wide-body trucks will likely be passing each other on Quaglia Road frequently. The proposed trucks exceed 8 feet in width. Currently, two school buses are present on any school-day on the road. These buses arrive at least 15 minutes apart and can complete round trips on Quaglia Road without conflicting with each other. In a worse case scenario, the two school buses may pass each other once. Eight dump trucks as part of the regular traffic on Quaglia Road will significantly change the traffic volume composition. In the AM peak hour, the quarry trucks will be passing the school buses of comparable sizes. During the busy construction season, all eight trucks could be delivering the minerals during the AM peak hour. Any other large vehicles they encounter will not be able to pass. In a

¹ Based upon the figures provided in a July 28, 2008 letter from Damien Gilbert, P.E. to Joseph Leahy, Attorney.

² During the construction season it is estimated that the dump trucks will average around 28.5 trips per day.

³ A quarry capacity of 600,000 to 700,000 cubic yards divided by 20,000 cubic yards of extraction per year.

worse case scenario, the school buses may be subject to conflict with quarry trucks 16 times (two inbound school buses opposing 8 outbound quarry trucks), not counting any other incidental large vehicles such as delivery vans. At other times, two dump trucks, one outbound and one in-bound, may encounter each other. The 16-18 foot wide roadway is not adequate for two trucks maneuver.

If Lane County Road standards in LC 15.705 were to be followed, Quaglia Road would need to be widened to a 20-foot wide paved surface and roadside slopes rectified to allow for quick recovery from accidental incursion into roadside ditches. Mailboxes, utilities poles, and other appurtenances would be relocated as needed. Quaglia Road as an "un-engineered" road would be rehabilitated from the subgrade level to replace any contaminated rock base (Quaglia Road base is contaminated with inferior materials) Because of the expected (but unknown) upgrade costs, the County has proposed bare minimum improvements that would allow two dump trucks to pass along Quaglia Road. These improvements would consist of partial improvements such as turnouts at opportune locations.⁴ For other areas, roadside slope mitigation would be required to provide recovery opportunity for trucks, with impacts to utility poles and mailboxes to be minimized. The Appellants have estimated that these improvements, excluding the cost of AC overlay, would cost about \$36,059. Such improvements would not be suitable for long logging trucks and these trucks would not be able to use these turnouts, but they could be effectively used by relatively short dump trucks.

8. It is difficult to discern the cost to the applicant of adding a 2-inch asphaltic concrete layer to Quaglia Road and constructing necessary pullouts. In June of 2008, the Appellants' engineer provided an estimated cost of providing a 4.8-inch overlay and the creation of nine pull outs to Quaglia Road.⁵ The total cost of this project option was estimated at \$127,259. If all components of that calculation remained the same except for the thickness of the asphaltic concrete overlay, the project would cost about \$53,000 for a 2-inch overlay ($2/4.8 * \$127,259$). I consider this to be a very rough, ballpark estimate (in 2008 dollars) of what the project might cost the Appellants considering that nine pullouts are not required by the modified conditions of approval.

⁴ The turnouts would provide a minimum of 20 feet of road width for a distance of 30 feet with 15-foot long taper lengths at both ends (See LC 15.710 diagram for details) and would be spaced no more than 400 feet apart.

⁵ June 26, 2008 letter from Damien Gilbert, P.E. to Shashi Bajracharya, P.E. (Option 2 of Overholser Quarry County Road Upgrade attachment).

Decision

THE PLANNING DIRECTOR'S CONDITIONAL APPROVAL OF THE OVERHOLSER /MATHEWS REQUEST (PA 07-5298) FOR A SITE REVIEW PERMIT TO ALLOW A QUARRY EXTRACTION OPERATION WITHIN A QUARRY MINING OPERATIONS DISTRICT IS AFFIRMED subject to the following modified conditions:

1. The Appellants shall improve the structural capacity of Quaglia Road by applying adequate asphalt concrete overlay required to handle the estimated 105,000 estimated life-time, quarry-generated Equivalent Single Axle Load (ESAL). A minimum 2" thick asphalt concrete overlay is required from the private access easement to the intersection of Mosby Creek Road.
2. The Appellants shall improve the roadway safety of Quaglia Road by providing the following geometric improvements:
 - a. Widen the road surface at select locations and at a spacing no greater than 400 feet, to provide for truck turnouts to a minimum of 20 feet wide, for a distance of 30 feet with 15 feet taper length at both ends (see LC15.710 diagram 15 for detail). The turnouts are to be constructed only within the existing right-of-way of Quaglia Road, and in areas devoid of conflicting appurtenances.
 - b. For other areas, where turnouts are not provided, provide a minimum two-foot wide clear zone from the edge of the travel lanes on both sides (between turnouts). The slope of such clear zones must not exceed a ratio of 1 vertical to 3 horizontal. In areas where site constraints exist, the Appellants may seek design deviation to this standard as per LC 15.709 Deviation From Design Standards and Facility Permit Requirements during the facility permitting process⁶.
3. The Appellants shall submit Oregon registered-engineer prepared documentation certifying that conditions (1) and (2) have been duly fulfilled.
4. The Appellants shall obtain a facility permit to implement road improvements specified above and shall meet the requirements specified in the facility permit.
5. With the exception of personal vehicles of quarry employees, and the occasional use of long, non-dump truck style vehicles to bring equipment into the quarry and the occasional use of smaller dump trucks, regular quarry traffic is limited to dump trucks with up to a 20-foot long wheel base, 8-feet in width and 31-feet in overall length.

⁶ There is no guarantee that a request for design standard deviation will be approved. The design standards deviation process follows the guidelines in LC 15.709(1) and (2), and requires a fee as per the fee schedule in <http://www.lanecounty.org/Departments/PW/Pages/rowpermits.aspx>

6. The Appellants shall provide a minimum 5-day advance mailed notice for blasting activity to all landowners taking access off Quaglia Road and Pitcher Lane. In addition, the Appellants must post sign notification of the blasting 5 days in advance along Quaglia Road, Pitcher Lane, and the private easement which serves the quarry. Appellants must keep blasting records as required by LC 16.216(7)(b).
7. No quarry related ingress/egress is allowed through Pitcher Lane (except for sign posting per above).
8. Hours of operation are limited to 6:30 AM – 4:30 PM for May through October, and 6:30 AM - 4:00 PM for November through April. No quarry operations are permitted on Sundays, or on the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Rock crushing is permitted on an “as needed” basis, but forbidden on Saturdays (in addition to the preceding time/date restrictions).
9. Identification signs (two) are limited per LC 16.216(4)(m). Small, non-illuminated signs posted in the immediate quarry area for purposes of notice of no trespass and dangerous conditions, are exempt from LC 16.216(4)(m).
10. The above condition notwithstanding, no (additional) lighting is permitted, except for security lights, which shall be hooded and directed away from adjoining properties.

Prior to the start of the quarry operation, the Appellants must complete conditions #1-#4. Per LC 14.700(4), these conditions shall be completed within two years of the date of this decision becoming final, or when all appeal remedies are exhausted, whichever occurs later. Extension(s) can be requested per LC 14.700(2).

Justification for Decision (Conclusion)

The subject property is zoned Quarry and Mine Operations (QM), the regulations for which are found in Lane Code 16.216. Lane Code 16.216(4)(a) allows “Extracting and storing of minerals, including equipment and materials necessary to carry out these functions” and Lane Code 16.216(5) provides that “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).”

In approving the application, the Planning Director attached seventeen conditions in order to satisfy Lane Code 16.257(4). The Appellants have filed an appeal relating to nine of these conditions. Opponents of the site review permit application did not appeal the ruling. Therefore, the scope of this decision shall be limited to the allegations of error raised by the Appellants.

The nine conditions of approval challenged by the Appellants are related to the satisfaction of Lane Code 17.257(4)(f), which reads:

"That, based on anticipated traffic generation, adequate additional right-of-way, road improvements, and on-site vehicular, bicycle and pedestrian improvements connecting directly to off-site roads, paths and sidewalks 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 streets to specifications of LC Chapter 15, "Roads," and also to the necessity for such additional improvements as lighting, sidewalks, bicycle lane and path connections, and turn and deceleration/acceleration lanes. Improvements shall be consistent with access management, spacing standards, and other requirements of LC Chapter 15."

The nine challenged conditions of approval shall be addressed in numerical order.

- 1. The Applicant shall improve the structural capacity of Quaglia Road by applying adequate asphalt concrete overlay required to handle the estimated 35,200 quarry-generated Equivalent Single Axle Load (ESAL). A minimum 2" thick asphalt concrete overlay is required from the private access easement to the intersection of Mosby Creek Road. Alternatively, the Applicant may propose an alternative structural improvement design that adequately serves the ESAL demand by the quarry. The Applicant may pursue such alternative structural design in satisfaction of this condition only if approved in writing by the County.**

In an August 5, 2010 supplemental memo to the Hearings Official, the Planning Director has recommended that the last two lines of the above-quoted condition of approval be removed. This modification removes the opportunity for the development of a new condition that has not been reviewed by all parties.

The Appellants raise several constitutional issues in regard to this condition of approval that relate to the U.S. Supreme Court decision in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). First, the Appellants argue that the County has not shown the essential nexus between the condition (exaction) and the legitimate government interest, which in this case is safety. Second, the Appellants argue that the required asphalt concrete overlay is not roughly proportional to the impacts from the proposed use.

The record in this matter has been extended several times to allow the Appellants to consider the implications of the recent opinion of the Oregon Supreme Court in *West Linn Corporate Park, L.L.C. v. City of West Linn*, 349 Or 58, 240 P.3d 29 (2010). In the *West Linn* case, the United States Court of Appeals for the Ninth Circuit certified several questions to the Oregon Supreme Court. One of these questions was whether under Oregon law, a condition of development requiring off-site public improvements can constitute an exaction or physical taking. The Oregon Supreme Court answered in the negative.

In its determination, the Oregon court examined decisions by Oregon courts, the Ninth Circuit Court of Appeals, and the United States Supreme Court. In its analysis,

it chose to rely upon United States Supreme Court decisions that clarified the *Nollan*⁷ and *Dolan*⁸ decisions. Particular significance was placed on the United States Supreme Court's decisions in *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 US 687, 119 S Ct 1624, 143 L Ed 2d 882 (1999) and in *Lingle v. Chevron USA Inc.*, 544 US 528, 125 S Ct 2074 161 L Ed 2d 876 (2005). In *Del Monte Dunes*, the Court stated that it had not extended the application of *Nollan* and *Dolan* beyond the special context of exactions (702) and in *Lingle*, the Court clarified the difference between takings cases and exactions cases (536).

In *Lingle*, the court summarized that there were three categories of situations that constitute an unconstitutional taking; a physical invasion of property, a regulation that deprives a person of all economically beneficial use of property, and a regulation that, on balance, imposes economic impacts that constitute a taking. Distinguished from this list were situations where the government requires a property owner to give up the constitutional right to receive just compensation in exchange for a discretionary benefit conferred by the government. The latter category, referred to as the "doctrine of unconstitutional conditions," are subject to the stricter scrutiny required under the *Nollan* and *Dolan* decisions.

In the *West Linn* case, the Oregon Supreme Court used *Lingle* as its compass and found "... a clear distinction between a requirement that a property owner dedicate property to the public and a requirement that a property owner spend money to mitigate the effects of development." It found this conclusion to also be consistent with the Ninth Circuit's opinion in *McClung v. City of Sumner*, 548 F3d 1219 (9th Cir 2008), *cert den*, 129 S Ct 2765 (2009). The fact pattern in the present case is a clear example of a requirement for a property owner to spend money to mitigate the effects of a proposed development. The proper theory to be applied in this case is one associated with the general, ad hoc regulatory takings challenge delineated in the *Penn Central* case.⁹

Under the *Penn Central* takings theory, as opposed to specific applications of the doctrine of unconstitutional conditions, the *Nollan* "nexus" requirement is not applicable. Rather, it only need be shown that the regulation is guided by a public purpose. Regardless, it is clear that the imposition of the proposed conditions requiring road improvements are closely related to the County's mandate to promote safety on public roads. Lane Code Chapter 15 regulates public roads and the sections 15.700 – .710 of that chapter deal with design standards. Lane Code 15.700 provides that one of the purposes of the design standards section is to provide standards for the construction and reconstruction of roads to provide for a safe road network. Lane Code 15.701(1)(a)(iv) provides that roadway design elements not addressed in that section of the code shall conform to the American Association of State and Highway Transportation Officials' (AASHTO) *Guide for Design of Pavement Structures*. This

⁷ *Nollan v. California Coastal Comm'n*, 483 US 825, 107 S Ct 3141, 97 L Ed 2d 677 (1987)

⁸ *Dolan v. City of Tigard*, 512 US 374, 114 S Ct. 2309, 129 L Ed 2d 304 (1994)

⁹ *Penn Central Transportation Co. v. City of New York*, 438 US 104, 98 S Ct 2646, 57 L.Ed.2d 631 (1978)

latter document notes that the economic evaluation of alternative pavement strategies contain “user costs,” which include accidents related to “the roughness or serviceability history of the pavement.”¹⁰ By definition, then, the road design standards employed by Lane County have a built-in safety component.

While the County has not introduced into the record any direct evidence that attempts to correlate road surface conditions with vehicular safety, the record does reflect that Quaglia Road is not improved to Lane County standards and has received a relatively low degree of maintenance over the years. It is also known that the current surface of the road has a finite life expectancy, which can be measured in terms of Equivalent Single Axle Loads (ESAL), estimated to be 2,500 ESAL. Using a figure of 11 dump truck trips per day from the quarry for 365 days of the year, the quarry traffic would deplete the life expectancy of the Quaglia Road surface in less than eleven months. The 11 dump truck trips per day is, of course, a yearly average and represents a much lower usage than can be expected when the quarry is active during the construction season and when aggregate is most needed.

At some point prior to reaching its life expectancy, Quaglia Road will begin to significantly deteriorate through the development of potholes, cracks and ruts. It can be anticipated that this deterioration will be serious as the road base is limited or non-existent in locations. Common sense leads one to conclude that a road with serious potholes, cracks and ruts represents a significant safety concern.

The *Penn Central* takings standard is essentially one of balancing various factors, which include the character of the governmental action, the magnitude of a regulation’s economic impact and the extent to which that regulation interferes with distinct investment-backed expectations. In the current case, the condition imposed by Lane County is intended to partially mitigate the off-site impacts from the quarry operation. The application of industry-based standards (AASHTO’s ESAL assumptions) provides an objective and rational method to measure the impact of the proposed quarry on Quaglia Road and to quantify the improvements necessary to offset that impact. The governmental action is based upon a legitimate governmental responsibility for the safety to the travelling public on a County Road (Quaglia Road).

The magnitude of the economic impact from the condition is less clear as the record does not contain precise information about the cost of adding a two-inch asphaltic concrete overlay onto the road service and constructing necessary pullouts. A ballpark estimate is that it would have cost the applicant about \$53,000 in 2008. There is no information regarding the profit that the Appellants believe the quarry can generate over the next 20 years, or during the life of the quarry. However, a \$53,000 outlay, spread out over just 20 years, equates to a little over \$2,600 per year. Common sense would dictate that this figure is relatively small when compared to the income that might be generated by the sale of 20,000 cubic yards of aggregate a

¹⁰ *AASHTO Guide for Design of Pavement Structures 1993*, AASHTO, pp 1-44, 1-45 & 1-46.

year. It must also be pointed out, that the 2 inches of asphaltic concrete will replace less than half of the degradation to Quaglia Road from the estimated ESALs generated by the quarry over its lifetime.

And finally, the *Penn Central* court looked a whether the regulation can be viewed as supporting rather than interfering with the investment-backed expectations of the application. The proposed improvements do not interfere in any way with the operation of the quarry. Indeed, the safety and longevity of Quaglia Road directly benefits the operation of the quarry, which will be the heaviest user (in terms of road surface degradation) of the road, and protects adjacent property owners who also must use the road. To quote the *Penn Central* court, the required improvement most closely represents an adjustment of "...the benefits and burdens of economic life to promote the common good." (438 U.S. 104, 124)

The Appellants have proposed an alternative method of measuring the contribution to Quaglia Road wear from the proposed operation of the quarry. This method relies upon a comparison of quarry-generated vehicle trips to the total number of vehicle trips over the road. Unfortunately, this method has several built-in shortcomings. First, there is serious concern that the Appellants' assumptions regarding the existing daily truck volume is overly generous. Anecdotal evidence in the record supports a finding that the truck volume measured during a one-hour period in February of 2008 was episodic and did not represent typical truck traffic for a full year. This conclusion is also supported by the condition of Quaglia Road pavement, which would have deteriorated a long time ago if this traffic pattern had persisted for any extended period. The Appellants' traffic projections were also based upon relatively short traffic count samples that suggest a large margin of error exists in any conclusion derived therefrom. In summary, I believe that the above-described ESAL analysis is a more objective yardstick and is most appropriate in this situation to forecast the quarry's impact on the pavement of Quaglia Road.

2. **The Applicant shall improve the intersection of the private (easement) driveway and Quaglia Road to provide safe departure sight triangle. The Applicant must keep the sight triangles at the intersection of Quaglia Road and the private driveway free of visual obstructions 3.5 feet above the ground for a minimum distance of 425 feet either side of the intersection. Applicant must obtain written permission of the property owner for any vegetative clearing on neighboring property.**

The Planning Director recommends that this condition be deleted as being unnecessary and the Hearings Official agrees.

3. **The Applicant shall improve the roadway safety of Quaglia Road by providing the following geometric improvements:**

- i.) **Widened the road surface at select locations to provide for truck turnouts to a minimum of 20 feet, for a distance of 30 feet with 15 feet taper length at both ends (see LC15.710 diagram 15 for detail).**
- ii) **Space road turnouts no more than 400 feet apart.**
- iii) **For other areas, where turnouts are not provided, provide a minimum two-foot wide clear zone from the edge of the travel lane on both sides. The slope of such clear zones must not exceed a ratio of 1 Vertical to 3 Horizontal.**

The Planning Director recommends that subsection (i) of this condition be modified to allow flexibility in the placement of the turnouts, reducing the likelihood that appurtenances will have to be removed but still consistent with Lane Code 15.710. The modification to i.) makes ii.) redundant and the Planning Director recommends that it be deleted. The Hearings Official concurs.

4. **The Applicant is responsible for the cost of any removal of appurtenances within the right-of way necessary for improvements specified in (1), (2), and (3).**

The Planning Director has recommended that this condition be deleted as Public Works staff has opined that the required improvements can be designed so as not to require removal of appurtenances within the right-of-way. The Hearings Official concurs.

5. **The Applicant shall submit Oregon registered-engineer prepared documentation certifying that conditions (1), (2) and (3) have been duly fulfilled.**

This condition should be modified to remove the reference to the original Condition of Approval #2, which has been deleted.

6. **The Applicant shall obtain a facility permit to implement road improvements specified above and shall meet the requirements specified in the facility permit.**

The Planning Director contends that this condition is necessary as the facility permit is the mechanism through which it can be assured that requirement improvements are implemented. As long as it is clear that the facility permit is limited to implementation of the required road improvements the Hearings Official agrees.

7. **Applicant must restrict truck size shall to 19.4 foot long wheel base, 8 foot wide, and 30.2 foot overall length.**

The Hearings Official agrees that this condition should be modified to reflect the occasional need to utilize long, non-dump truck style vehicles to bring equipment into the quarry and the occasional use of smaller dump trucks. Accordingly, Condition of Approval #7 can be revised to read:

“With the exception of personal vehicles of quarry employees, and the occasional use of long, non-dump truck style vehicles to bring equipment into the quarry and the occasional use of smaller dump trucks, regular quarry traffic is limited to dump trucks with up to a 20-foot long wheel base, 8-feet in width and 31-feet in overall length.”

8. **Applicant must ensure that daily truck traffic to and from the site does not exceed the proposed 16 trips in any day.**

The Planning Director recognizes, and the Hearings Official concurs, that this condition does not reflect the actual use pattern of the quarry, where a majority (75%) of the rock hauling occurs during the June – October construction season. During the construction season the dump trucks will average around 28.5 trips per day. This condition should be deleted with the understanding that the findings of fact will reflect this level of usage during the construction season (Footnote 2, page 6) and also the average amount of truck activity throughout the year.

9. **Applicant must ensure that the travel speed of the quarry trucks does not exceed 20 mph along the entire route, from the rock pit to the intersection of Quaglia Road and Mosby Creek Road (as proposed by the Applicant).**

The Appellants apparently disagree that a 20 mph speed was stipulated in the application or supplemental materials. The “basic speed rule” is 25 mph in residential districts and is applicable regardless of being stated as a condition of approval. This condition is deleted.

Conclusion

As conditioned, the proposed site review permit is consistent with the approval criteria of Lane Code 16.257(4) and constitutional law, as it is understood by the Hearings Official.

Respectfully Submitted,



Gary Darnielle
Lane County Hearing Official

ATTACHMENT A
PA 07-5298

BASS MARCUS P & LORI M
78086 MOSBY CREEK RD
COTTAGE GROVE, OR 97424

BEDORTHA FAMILY TRUST
78190 PITCHER LN
COTTAGE GROVE, OR 97424

BEDORTHA L BONNIE TE
78190 PITCHER LN
COTTAGE GROVE, OR 97424

BEDORTHA MILTON W
78190 PITCHER LN
COTTAGE GROVE, OR 97424

LESTER JACQUELYNN & RONALD
77914 CHISHOLM TRAIL DR
COTTAGE GROVE, OR 97424

MATHEWS RODNEY G
75936 LONDON RD
COTTAGE GROVE, OR 97424
MATHEWS RODNEY G
30397 COT GROVE-LORANE RD
COTTAGE GROVE, OR 97424

MELTON ROYLIN A
77812 QUAGLIA RD
COTTAGE GROVE, OR 97424

MOCK LIVING TRUST
PO BOX 1379
COTTAGE GROVE, OR 97424

MOCK ROBERT & CAROL TE
PO BOX 1379
COTTAGE GROVE, OR 97424

MODER JENS FRED
78009 PITCHER LN
COTTAGE GROVE, OR 97424

NORD MARJORIE A
77812 QUAGLIA RD
COTTAGE GROVE, OR 97424

OVERHOLSER DONALD J
75936 LONDON RD
COTTAGE GROVE, OR 97424

OVERHOLSER DONALD J
30397 COT GROVE-LORANE RD
COTTAGE GROVE, OR 97424

PITCHER WALTER & LAVERNA
77708 QUAGLIA RD
COTTAGE GROVE, OR 97424

TAYLOR SHEILA M
2400 CHARNELTON ST
EUGENE, OR 97405

WALKER DANIEL L & BONNIE J
78001 PITCHER LN
COTTAGE GROVE, OR 97424

WALKER DANIEL L & BONNIE J
78001 PITCHER LN
COTTAGE GROVE, OR 97424

WEYERHAEUSER COMPANY
PO BOX 9777
FEDERAL WAY, WA 98063

EUGENE WATER & ELECTRIC BOARD
ATTN: KARL MORGENSTERN
500 E 4TH AVE
EUGENE, OR 97401

SOUTH LANE RFPD
233 E HARRISON AVE
ANDY MCCLEAN
COTTAGE GROVE OR 97424-2497

DEQ
811 SW SIXTH AVENUE
PORTLAND OR 97204

DEPT GEOLOGY & MINERAL IND - MLR
ATTN FRANK SCHNITZER
229 BROADALBIN ST SW
ALBANY OR 97321-2246

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SALLY BROOKS
78120 PITCHER LN
COTTAGE GROVE, OR 97424

MARJORIE A NORD & ROYLIN MELTOR
77812 QUAGLIA RD
COTTAGE GROVE, OR 97424

JENS MODER
78009 PITCHER LN
COTTAGE GROVE, OR 97424

DEBBIE FERGASON
78066 PITCHER LN
COTTAGE GROVE, OR 97424

CARLETTA FERGASON
78066 PITCHER LN
COTTAGE GROVE, OR 97424

EDWARD L. FERGASON
78066 PITCHER LN
COTTAGE GROVE, OR 97424

MATT SNAUER
KIM SNAUER
78078 PITCHER LN
COTTAGE GROVE, OR 97424

JOHN R SNAUER
78110 PITCHER LN
COTTAGE GROVE, OR 97424

MARVIN GOINS
MELINDA M. GOINS
78126 PITCHER LN
COTTAGE GROVE, OR 97424

FRED CRANMER
RONDA GRANMER
78155 PITCHER LN
COTTAGE GROVE, OR 97424

BILL & MARYANN CROFTS
78178 PITCHER LN
COTTAGE GROVE, OR 97424

GREG HELGEN
DAWN HELGEN
778119 PITCHER LN
COTTAGE GROVE, OR 97424

MARTIN L. GASCOYNE
78022 PITCHER LN
COTTAGE GROVE, OR 97424

DANIEL L. WALKER
BONNIE WALKER
78001 PITCHER LN
COTTAGE GROVE, OR 97424

JOANN DENEEN
78161 PITCHER LN
COTTAGE GROVE, OR 97424

CURTIN MITCHELL
2700 CHARNELTON
EUGENE, OR 97405

PENELOPE A PILLING
77752 QUAGLIA RD
COTTAGE GROVE, OR 97424

DONNA DENNIS-TRUE
77742 QUAGLIA RD
COTTAGE GROVE, OR 97424

LAVERNA M. PITCHER
77708 QUAGLIA RD
COTTAGE GROVE, OR 97424

BOB FRITZ
77703 QUAGLIA RD
COTTAGE GROVE, OR 97424

DEBRA & DENNIS JOHNSON
77778 QUAGLIA RD
COTTAGE GROVE, OR 97424

HOWARD & CHARLENE DAWSON
77793 QUAGLIA RD
COTTAGE GROVE, OR 97424

KATHRYN BALANCE
77677 QUAGLIA RD
COTTAGE GROVE, OR 97424

BARBARA GRAVES
77932 QUAGLIA RD
COTTAGE GROVE, OR 97424

BILL KUSHER
77562 QUAGLIA RD
COTTAGE GROVE, OR 97424

KEVIN FERGASON
78099 MOSBY CREEK RD
COTTAGE GROVE, OR 97424

STACEY MARPLE
KEITH FULLER
78092 MOBSY CREEK RD
COTTAGE GROVE, OR 97424

PATRICIA COOK
78030 QUAGLIA RD
COTTAGE GROVE, OR 97424

CARL L. DEMANETT
78016 QUAGLIA RD
COTTAGE GROVE, OR 97424

MARY ELLEN GONZALES
SIDNEY GONZALEZ
PO BOX 753
COTTAGE GROVE, OR 97424

ROBERT E. NICKLIN
77899 QUAGLIA RD
COTTAGE GROVE, OR 97424

TANNER WALSH
77910 QUAGLIA RD
COTTAGE GROVE, OR 97424

LARRY & JOANNA NEWTON
778112 MOSBY CREEK RD
COTTAGE GROVE, OR 97424

BRENDA & CURT MUNSELL
WANDA DENNIS
DONNA DENNIS TRUE
MICKY TRUE
77742 QUAGLIA
COTTAGE GROVE, OR 97424

BRAD PALMER
COVERED BRIDGE HONEY
77591 PITCHER LN
COTTAGE GROVE, OR 97424

WATER MASTER
OR WATER RESOURCES DEPT
MICHAEL J MATTICK
220 5TH STREET
SPRINGFIELD OR 97477

LANE COUNTY FIRE DIST. 1
ATTN HEATHER HILL
PO BOX 275
VENETA OR 97487

KATHY J JOHNSON
78492 CURRIN BLVD
COTTAGE GROVE, OR 97424

JOHN PETSCH
COUNTY ROAD MAINTENANCE

DAN STOFFER
408 SW MONROE AVE., #1163
CORVALLIS, OR 97333

LCOG

LANE COUNCIL OF GOVERNMENTS

March 25, 2011

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401

Re: *Appeal of Hearings Official decision in Overholser (PA 07-5298)*

Dear Mr. Howe:

On March 8, 2011 I issued a decision affirming, with modification, the Planning Director's conditional approval of the Overholser request for a site review permit for a quarry operation on tax lots 600 and 606, Assessor's Map 21-03-02. On March 19, 2011, opponents of the application appealed my decision. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted.

The March 8, 2011 Hearings Official decision contained a ruling based upon an interpretation, regarding the applicability of the recently amended Lane Code Chapter 14, that denied the appellants party status. I strongly recommended that the Board of Commissioners review this ruling. If the Board affirms the Hearings Official's interpretation then that interpretation should receive deference before the Oregon Land Use Board of Appeals. If the Board does not agree with the interpretation then it could remand the matter for a de novo hearing before the Hearings Official.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my March 8, 2011 decision without further consideration. Please advise interested parties of this decision.

Sincerely,


Gary L. Barnielle
Lane County Hearings Official

cc: Jerry Kendall (file)

FILE #	PA
EXHIBIT #	265



LAND MANAGEMENT DIVISION



APPEAL OF A HEARING'S OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401
Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

For Office Use Only: FILE # PA075298 BCODE: BCNOREV FEE: \$250/2K

Appellant: Families For A Quarry-free Neighborhood, et al. (attached)
Mailing address: C/O Stotter & Associates LLC, 408 SW Monroe Ave, Corvallis OR
Phone: (541) 738-2601 Email: dstotter@gwestoffice.net 97333
Signature: [Signature] Date: March 19, 2011

Appellant's Representative: Daniel J. Stotter, Stotter & Associates LLC
Mailing address: 408 SW Monroe Ave, Ste. L163, Corvallis, OR 97333
Phone: (541) 738-2601 Email: dstotter@gwestoffice.net
Signature: [Signature], Attorney at Law Date: March 19, 2011

LOCATION (subject property) 21-03-02 Lots 600 + 606
Township - Range - Section - Taxlot Subdivision/partition lot/parcel

You have one of two appeal options. Your appeal will be rejected if it does not contain all the required submittals

Required Option 1 submittals

Option 1 (The appellant requests Hear Review in a Hearing.) OR Board of Commissioner

- 1. Fee is \$3,812 appeal fee, payable to Law or important fee information)
2. A copy of the decision being appealed, with the Department file number. File #
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision)
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:

- I am the owner or contract purchaser of the subject property;
I am the applicant for the subject application;
Prior to the decision by the Hearings Official, I submitted written testimony into the record
I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.

- 5. A letter that addresses each of the following three standards:
a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

BCC EXHIBIT # 2 - 6 pp.

FILE # PA EXHIBIT # 259-33A

b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:

- The Hearings Official exceeded his or her authority;
- The Hearings Official failed to follow the procedure applicable to the matter;
- The Hearings Official rendered a decision that is unconstitutional;
- The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.

c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.

6. Any additional information in support of your appeal.

EXPLANATION OF THE APPEAL PROCESS UNDER OPTION 1

There are 3 steps involved in an appeal of a Hearings Official decision. Each requires a fee for services.

Step 1

When the appeal is submitted, the Hearings Official has the option to reconsider the decision (Refer to LC 14.535). If the Hearings Official reconsiders the decision, the fee is \$1,242.

Step 2

If the Hearings Official elects not to reconsider the decision, the appeal is forwarded to the Board of County Commissioners. The fee is \$1,584.80. The Board then decides whether or not to hear the appeal (Refer to LC 14.600)

Step 3

If the Commissioners elect to hear the appeal, the fee for the Board hearing is \$2,227.20. If the Board does not elect to hear the appeal, the parties of record may appeal the decision to the Land Use Board of Appeals (LUBA). If the Commissioners do not hear the appeal, \$150 of the \$1,534.80 fee (Step 2 above) will be refunded, in addition to the \$2,227.20, for a total refund of \$2,377.20.

Explanation of the Appeal Fee Under Option 1

The total due when submitting the appeal is \$3,812. You will get a refund if the Hearings Official reconsiders the decision, or the County Commissioners elect not to hear the appeal.

If the Hearings Official reconsiders the decision, the refund is \$2,570.

If the County Commissioners elect not to hear the appeal, the refund is \$2,377.20.

If the Board elects to hear the appeal, there is no refund.

Required Option 2 submittals:

Option 2; The appellant requests that the Board not conduct a hearing on the appeal and deem the Hearing's Official decision the final decision of the County. (Note, the Board may still choose to review the appeal pursuant to Lane Code 14.500(2) or the Hearing's Official may still reconsider the decision pursuant to LC 14.535).

1. Fee is a non-refundable \$250 appeal fee, payable to Lane County.

2. A copy of the decision being appealed, with the department file number. File # PA-075298

3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) 3/21/11

4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:

I am the owner or contract purchaser of the subject property;

I am the applicant for the subject application;

Prior to the decision by the Hearings Official, I submitted written testimony into the record

I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision.

5. Any additional information in support of your appeal.

See Attached.

EXPLANATION OF THE APPEAL PROCESS UNDER OPTION 2

LMD Staff will prepare a memorandum (with an Order) for the Board to review the appeal during their regular public meetings as an item under the Public Works section. The parties of record will be notified of the tentative meeting date on which the Board will review the appeal.

There may be no separate discussion of this item. If Board discussion is desired, that item will be considered separately in an Elect to Hear appeal hearing pursuant to Lane Code 14.600.

If the Board approves an Order and elects to not conduct a hearing, the final County land use decision may be appealed to Land Use Board of Appeals.

3/19/11

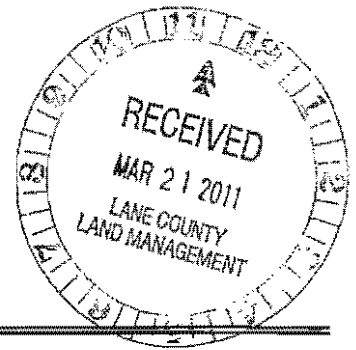
List of Families For A Quarry Free Neighbor Appellants (PA 07-5298)

Jens Moden & Cari Kelch, 78009 Pitcher Ln., Cottage Grove
Brenda & Curt Munsell, 77827 Quaglia Rd., Cottage Grove
Daniel & Bonnie Walker, 78001 Pitcher Ln Cottage Grove
Laverna Pitcher, 77708 Quaglia Rd., Cottage Grove
Randy Pitcher, 27224 McDole Rd., Cottage Grove
Martin Gascoyne, 78022 Pitcher Ln, Cottage Grove
Bill Kuskie, 77562 Quaglia, Cottage Grove
Graig & Karen Munsell, 77882 Quaglia Cottage Grove
Marcus & Lori Bass, 78086 Mosby Creek Rd. Cottage Grove
Sid & Mary Ellen Gonzalez, 77825 Quaglia Cottage Grove
Bruce Brooks, 78120 Pitcher Ln. Cottage Grove
Louis Melton, 77812 Quaglia Cottage Grove
Dennis & Debbie Johnson, 77778 Quaglia Cottage Grove
Penelope Pilling, 77752 Quaglia, Cottage Grove
Micky & Donna True, 77742 Quaglia, Cottage Grove
John Ulbricht, 136 N 8th St., Cottage Grove
Barbara Graves, 77982 Quaglia, Cottage Grove
Kathryn, Josh & Maxwell Bellance, 77677 Quaglia, Cottage Grove
Benjamin & Mandi Hunt, 78161 Pitcher Ln., Cottage Grove
Eduardo Lamóthe, 78119 Pitcher Ln., Cottage Grove
Fred, Ronda, Jennifer & Julie Carmen, 78155 Pitcher Ln., Cottage Grove
Robert & Aoele Fritz, 77703 Quaglia, Cottage Grove
John, Sharon & Anna Snauer, 78110 Pitcher Lane, Cottage Grove
Matt Snauer, 78078 Pitcher Lane, Cottage Grove
Jim & Barbara McQueary, 78178 Pitcher Lane, Cottage Grove
Rob & Nancy Farquhar, 78173 Pitcher Lane, Cottage Grove
Jennifer Cranmer, 78155 Pitcher Lane, Cottage Grove

STOTTER & ASSOCIATES LLC

Attorneys at Law

408 SW Monroe Ave., Suite L163
Corvallis, Oregon 97333
(541) 738-2601 (Tel)
(541) 738-0611 (Fax)



March 19, 2011

Lane County Land Management
c/o Jerry Kendall, Associate Planner
Lane County Land Management
125 East 8th Ave.
Eugene, OR 97401

Re: PA 07-5298 (Overholser / Mathews) (Option 2 Appeal of Hearings Official Decision)

Dear Lane County Land Management:

Pursuant to Lane Code 14.500(2) and ORS 215.422, Families For a Quarry Free Neighborhood, as an association, and also on behalf of each of the individual members of this organization set forth in the attached listing of association members, hereby appeal the March 8, 2011 decision of the Lane County Hearings Official in the above referenced matter. I have enclosed a completed Lane County Land Management Division's Appeal Form for an Appeal of a Hearing's Official Decision, a copy of the challenged decision referenced above, and a check in the sum of \$250 made payable to "Lane County" for the Option 2 appeal fee in this matter.

My clients, Families For a Quarry Free Neighborhood, are adversely affected and aggrieved parties as to this appeal, both as an association, and also as individual neighbors who would be directly and adversely impacted by the dust, noise, and traffic safety impacts of the modified March 8, 2011 decision of the Lane County Hearings Official in the above referenced matter. More specifically, my clients are adversely affected and aggrieved by the Hearings Official's amendment and modification of the Planning Director's March 18, 2010 decision as to four prior mandatory conditions of approval set forth in the original decision of the Planning Director¹, which were needed to address the impacts of dust, air pollution, noise, and traffic safety impacts of this proposal to my clients, who are directly impacted neighbors of the proposed quarry mining operation which is at issue for this land use appeal.

¹ In particular, Families for a Quarry Free Neighborhood object to the Hearings Official's modification of the following conditions that were previously set forth in the Lane County Planning Director's March 18, 2010 Decision: **Condition 2** (previously required removing traffic intersection obstructions for traffic safety), **Condition 7** (limitation on truck size to minimize neighborhood impacts and to address traffic safety concerns), **Condition 8** (previously required maximum of 16 daily truck traffic trips size to minimize neighborhood impacts and for traffic safety), **Condition 9** (required 20 mph speed limit to minimize neighborhood impacts and for traffic safety).

The grounds for this appeal are that the challenged decision of the Hearings Official: (1) fails to properly address the applicable approval criteria of Lane Code 16.257(4)(a) (compatibility with surrounding uses) and Lane Code 16.257(4)(a) (traffic safety, including vehicular, bicycle and pedestrian safety issues), (2) fails to include adequate findings as to the applicable approval criteria of Lane Code 16.257(4)(a) and Lane Code 16.257(4)(a), (3) is not supported by substantial evidence in the record as to the approval criteria of Lane Code 16.257(4)(a) and Lane Code 16.257(4)(a), and (4) the Approval Authority failed to follow the appropriate procedures in this matter, by not allowing Families For a Quarry Free Neighborhood, who had participated and presented testimony to the Planning Director in the proceedings below, the right to participate as parties to the appeal, or to present any briefing, evidence, or any testimony in the appeal before the Hearings Official in this matter to address new proposals modifying the existing approved land use decision presented by Staff in the Hearings Official Appeal for this land use application.

Respectfully,



Daniel J. Stotter
Attorney at Law

Encl.

cc: Clients
Joseph J. Leahy, Esq.

**NOTICE OF PENDING LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR
(Evidentiary Hearing)**



LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Mailing Date:	March 18, 2010
File:	PA 07-5298
Report Date:	March 18, 2010
Property Owner/Applicant:	Donald J. Overholser & Rodney Mathews
Agent:	Joseph J. Leahy/Attorney
Address:	Vacant land (see notice map)
Assessor's Map:	21-03-02, tax lots 600 & 606
Acreage:	20+/- acres
Base Zone:	QM/Quarry and Mine Operations Zone, LC 16.216
Combining Zone(s):	None
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff Planner:	Jerry Kendall, 541/682-4057

PROPOSAL

This is a request for a Site Review per LC 16.257(4), for a quarry extraction operation (20,000 cubic yards annual) pursuant to LC 16.216(4)(a).

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Review of the application for verification of conditions shall be an administrative action without further notice and opportunity for appeal. If you disagree with any aspect of this approval, you may appeal the decision to the Hearings Official by following the directions on the attached appeal sheet. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

BCC EXHIBIT # 3-25pp.

FILE #	PA
EXHIBIT #	165 - 25p.

PA 07-5298

Action approved by this request: a quarry mining operation, subject to the conditions listed in Exhibit "A", located at the end of the decision report.

Enclosed is a plot plan, Exhibit "B", showing the proposed location of the development. Exhibit "C" is the approved Site Plan

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact Jerry Kendall and the telephone number where more information can be obtained is 541/682-4057.

This decision will become final at 5 P.M. on March 30, 2010, unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form. The appeal fee is \$2,277.20.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

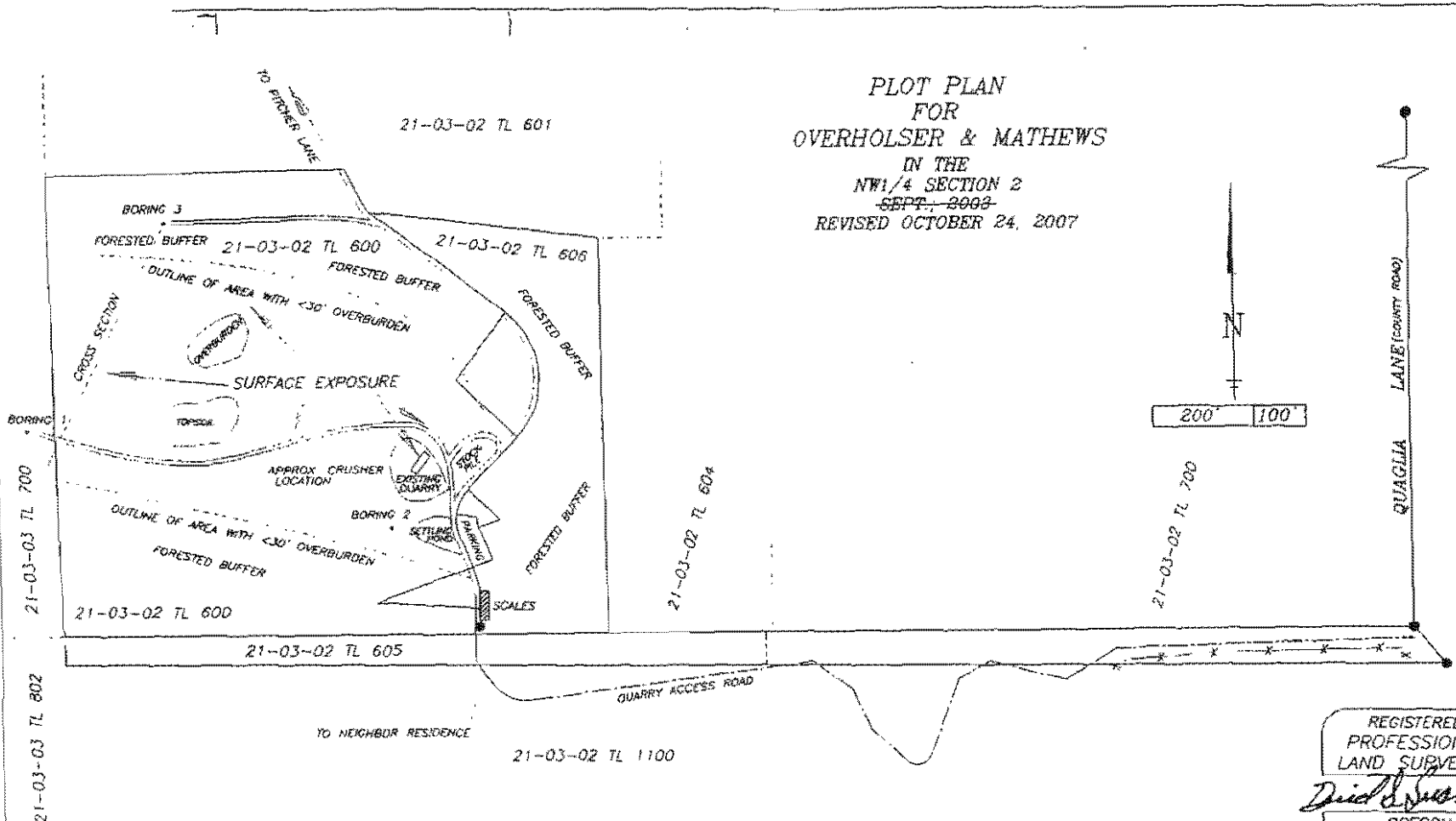
Prepared by: J. Kendall
Jerry Kendall/Associate Planner

Date: 3-18-10

Authorized by: Kent Howe
Kent Howe/Planning Director

Date: 18 Mar 10

PLOT PLAN
 FOR
 OVERHOLSER & MATHEWS
 IN THE
 NW1/4 SECTION 2
~~SEPT., 2003~~
 REVISED OCTOBER 24, 2007



LEGEND

- COMPUTED POINT
- x— FENCE

AGENT: LAND PLANNING CONSULTANTS
 1071 HARLOW ROAD
 SPRINGFIELD, OREGON 97477

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
David S. Swanson
 OREGON
 JULY 22, 1977
 DAVID S. SWANSON
 1103
 RENEWAL DATE: 6-30-08

PREPARED BY: SWANSON LAND SURVEYING
 P.O. BOX 41626
 EUGENE, OREGON 97404

PA 07-5298
 ATTACHMENT 'C'
 Approved Site
 Plan