



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office Fax: (503) 378-5518

Third Floor/Measure 37 Fax: (503) 378-5318

Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

November 9, 2006

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Jefferson County Plan Amendment
DLCD File Number 005-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: November 24, 2006

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
Amanda Punton, DLCD Natural Resource Specialist
Sandy Mathewson, Jefferson County

<paa> ya



FORM 2

DLCD NOTICE OF ADOPTION DEPT OF

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18

NOV 06 2006

(See reverse side for submittal requirements)

**LAND CONSERVATION
AND DEVELOPMENT**

Jurisdiction: Jefferson County Local File No.: 06-PA-02
(If no number, use none)

Date of Adoption: Nov. 1, 2006 Date Mailed: Nov. 2, 2006
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: July 10, 2006

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Amended the Comp Plan to add approximately 41 acres to the inventory of Mineral and Aggregate sites.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same

Plan Map Changed from : — to _____

Zone Map Changed from: — to _____

Location: 11-13-21-302, northwest of Metolius Acres Involved: 41

Specify Density: Previous: — New: _____

Applicable Statewide Planning Goals: 5

Was an Exception Adopted? Yes: _____ No:

DLCD File No.: 005-06(15369)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: DOGAMI,
City of Metolius

Local Contact: Sandy Mathewson Area Code + Phone Number: 541-475-4462

Address: 85 SE 'D' St. City: Madras

Zip Code+4: 97741 Email Address: sandy.mathewson@co.jefferson.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON FOR
THE COUNTY OF JEFFERSON**

**IN THE MATTER OF AMENDING THE)
COMPREHENSIVE PLAN INVENTORY)
OF MINERAL AND AGGREGATE SITES)
AND APPROVAL OF A CONDITIONAL)
USE PERMIT TO ALLOW A MINING)
OPERATION, and DECLARING AN)
EMERGENCY)**

Ordinance No. 0-178-06

WHEREAS, Downing Construction, Inc. operates the Metolius Rock Quarry on a portion of tax lot 302 in Township 11 South, Range 13 East, Section 21. The property is owned by Donald and Margaret Williams and is zoned Exclusive Farm Use A-1. Downing Construction wishes to expand the mining operation; and

WHEREAS, ORS 215.298 states that a permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan. Currently six acres of the property is included in the Jefferson County Comprehensive Plan inventory of Mineral and Aggregate Sites. Downing Construction submitted an application to add approximately 41 acres to the inventory, and a concurrent request for a conditional use permit to allow the site to be mined, Casefiles 06-PA-02 and 06-CU-02; and

WHEREAS, the Jefferson County Planning Commission held a public hearing on the application on September 28, 2006, and after considering the staff report and public testimony presented, voted to recommend that the Board of Commissioners approve the Comprehensive Plan amendment and conditional use permit; and

WHEREAS, the Jefferson County Board of Commissioners conducted a public hearing on October 25, 2006, and after considering all evidence in the record and public testimony presented, voted to ACCEPT the Planning Commission recommendation.

NOW THEREFORE, the Jefferson County Commission hereby **ORDAINS** as follows:

1. Adoption of Comprehensive Plan Amendment

Jefferson County hereby **AMENDS** its Comprehensive Plan Mineral and Aggregate Inventory to add approximately 41 acres located in the northeast portion of tax lot 302 in Township 11 South, Range 13 East, Section 21 as shown on Exhibit A attached hereto and incorporated herein by this reference.

2. **Adoption of Findings**

The Board of Commissioners hereby adopt the findings of fact and conclusion set forth in Exhibit B, a copy of which is attached hereto and incorporated herein by this reference.

3. **Decision**

The Commissioners, having conducted a public hearing, accepted public testimony, reviewed the record, deliberated fully, adopted findings, accepted the Planning Commission recommendation, and amended the Comprehensive Plan inventory of Mineral and Aggregate Sites, hereby APPROVES application 06-CU-02 to allow a mining operation within the portion of tax lot 302 in Township 11 South, Range 13 East, Section 21 that has been added to the Comprehensive Plan inventory, subject to the following conditions:

1. The applicant shall maintain a valid operating permit issued by the Oregon Department of Geology and Mineral Industries (DOGAMI). Operations and reclamation of the site shall be in accordance with DOGAMI requirements.
2. All equipment and processing machinery shall comply with Department of Environmental Quality (DEQ) noise and air quality standards. Copies of the DEQ permits for all processing equipment shall be submitted to the Community Development Department. The operation and equipment shall remain in compliance with DEQ standards at all times.
3. The operation shall comply with all Mine Safety and Health (MSHA) regulations.
4. Hours of operation shall comply with the following:
 - A. Mining, crushing and stockpiling activities shall be limited to 6:00 am to 7:00 pm Monday through Saturday, unless special permission to exceed these hours is obtained from the Jefferson County Community Development Department.
 - B. Hauling material shall be limited to 7:00 am to 7:00 pm Monday through Saturday, unless special permission to exceed these hours is obtained from the Jefferson County Public Works Department.
 - C. Any blasting shall occur only on weekdays (Monday through Friday) between 8:00 am and 5:00 pm.
 - D. No operations or hauling are permitted on Christmas, New Years, Memorial Day, July 4th, Labor Day, Veteran's Day or Thanksgiving.
5. Santiam Drive shall be the designated haul road for trucks leaving and entering the site. Snyder Drive and Hawthorne Lane shall not be used by trucks leaving or entering the quarry except when given special permission by the Jefferson County Public Works Director.

0-178-06

6. Manual for Uniform Traffic Control Device (MUTCD) approved signs stating "Trucks Entering Roadway" shall be placed 500-feet from the quarry entrance on Santiam Drive and McKenzie Lane, and an MUTCD approved stop sign shall be placed at the quarry exit. The quarry operator shall be responsible for placing and maintaining the signs.
7. Prior to import or export of any material from the site, a maintenance agreement shall be executed between the property owner and the Jefferson County Public Works Department, providing for adequate maintenance, dust abatement and repair to the gravel portion of Santiam Drive, between the quarry and SW Dover Lane.
8. The operator shall pay the Jefferson County Public Works Department a per cubic yard rock extraction fee, as established in the Jefferson County Fee Schedule. The fee shall be paid annually or as otherwise agreed to by the Jefferson County Public Works Director.
9. The conditional use permit is approved for five years, and may be renewed for additional five year periods if the operator submits a written request for renewal and the county determines that the operation remains in compliance with all conditions of approval. The permit may be scheduled for review after a shorter period of time if complaints are received or the County observes that the conditions are not being complied with.

Dated this 1st day of November, 2006.

BOARD OF COMMISSIONERS:


Walter Ponsford, Commission Chair


Bill Bellamy, Commissioner


Mary Zenke, Commissioner

Attest:

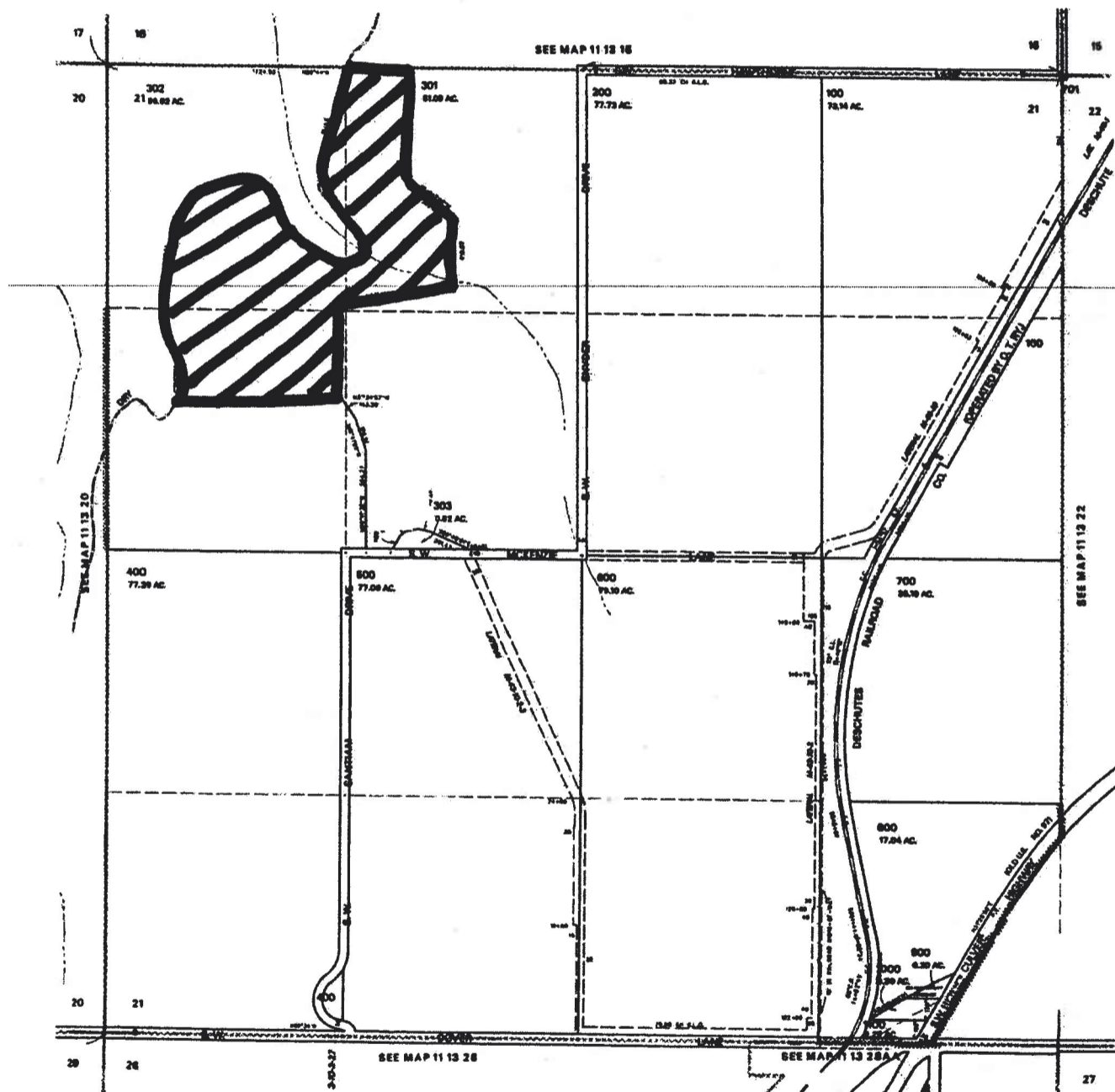


0-178-06

EXHIBIT A

AREA ADDED TO COMPREHENSIVE PLAN INVENTORY
OF MINERAL AND AGGREGATE SITES

SECTION 21 T.11S. R.13E. W.M.
JEFFERSON COUNTY
1"=400'



ORDINANCE – Downing Construction mineral and aggregate site

EXHIBIT B

FINDINGS OF FACT AND CONCLUSION

1. The applicant has requested a Post Acknowledgement Plan Amendment (PAPA) to amend the Comprehensive Plan to include the subject property on the inventory of Mineral and Aggregate sites. OAR 660-023-0180(9) requires the county to amend its Comprehensive Plan and land use regulations to include procedures and requirements consistent with the rule for the consideration of PAPAs. Until such regulations are adopted, or unless the county Comprehensive Plan contains specific criteria regarding the consideration of a PAPA to add a site to the list of significant aggregate sites, the procedures and requirements of the OAR must be applied directly.

Finding: The County's Comprehensive Plan and Zoning Ordinance do not contain specific criteria to add potential aggregate sites to the county inventory, so the OAR must be applied directly.

2. OAR 660-023-0180 contains the procedures for completing the Goal 5 inventory process for mineral and aggregate resources and determining whether a site is significant. OAR 660-023-0180(3) states:

An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

- (a) *A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;*
- (b) *The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or*
- (c) *The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.*
- (d) *Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:*
 - (A) *More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or*

- (B) *More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:*
- (i) *60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;*
 - (ii) *25 feet in Polk, Yamhill, and Clackamas counties; or*
 - (iii) *17 feet in Linn and Benton counties.*

Finding: Information from Carlson Testing, Inc. was submitted that shows that rock samples from the subject property exceeded ODOT specifications. The application states that the estimated amount of rock easily exceeds 500,000 tons based on the depth presently being mined and eight test holes drilled throughout the area. This complies with (a). Regarding (d), according to NRCS information, the soils within the area that is proposed to be added to the Mineral and Aggregate Inventory are Class III and VII and are not Unique soils. Since the standards in (a) and (d) are met, the site is significant.

3. OAR 660-023-0180(5) contains the requirements for deciding whether to authorize mining at the site, as follows:

For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.

- (a) *The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.*
- (b) *The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*

- (A) *Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;*
- (B) *Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;*
- (C) *Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR Chapter 660, Division 013;*
- (D) *Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;*
- (E) *Conflicts with agricultural practices; and*
- (F) *Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;*

Finding: The property is surrounded by large irrigated farm parcels to the north, east and south, and by uncultivated dry land to the west, across Dry Creek Canyon. The nearest residential zoning is approximately 4500 feet away in the city of Metolius. No factual information exists to indicate that there are potential conflicts beyond 1500 feet surrounding the proposed expansion area, so that distance is an adequate impact area. Other than a dwelling on the subject property, there is only one dwelling within the impact area. It is located on tax lot 303, approximately 850 feet from the area that is proposed to be added to the Mineral and Aggregate Inventory. There are no other existing or approved land uses within the 1500-foot impact area that would be adversely affected by proposed mining operations. Potential conflicts between mining operations and the dwelling on tax lot 303 would be caused by noise and dust.

Road access to the site is from SW McKenzie Drive and SW Santiam Drive. The nearest arterial is Culver Highway 361, which is slightly less than one mile from the proposed site. There are two potential routes that haul trucks might take. To head north towards Madras, trucks leaving the site could head east on SW McKenzie Lane, north on SW Snyder Drive, east on SW Hawthorne Lane, north on SW Columbia Drive, then east on Belmont Lane to Madras. McKenzie, Snyder and Columbia are gravel roads. The Public

Works Director has requested that a condition be placed on the concurrent conditional use application prohibiting use of this route except when special permission is granted by the Public Works Director. The route the Public Works Director has indicated should be the designated haul road for trucks entering and leaving the site is south on SW Santiam Drive then east on SW Dover Lane to Culver Highway 361 or Highway 97. Although Santiam Drive is a gravel road, this route has adequate capacity and is constructed in a manner that can accommodate heavy truck traffic. Using Santiam Drive as the haul route will also direct trucks away from the dwelling on tax lot 303.

There will be no safety hazard from birds being attracted to the site because no open water impoundments are proposed and the site is more than three miles from the nearest public airport. Other than the six acres of the site that are already on the Mineral and Aggregate Inventory, there are no designated Goal 5 resources within the 1500-foot impact area.

Surrounding agricultural lands are used to grow various field crops. Normal agricultural practices include use of machinery for cultivation, planting and harvesting; application of insecticides and herbicides, including by aerial spraying; irrigating; and possible field burning of crop residues. The mining operation will have no off-site impacts other than dust, noise and truck traffic on roads, so will not conflict with agricultural uses.

- (c) *The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.*

Finding: Measures to minimize conflicts to local roads include designating Santiam Drive as the designated haul road, requiring the applicant to execute a maintenance agreement for upkeep and repair of Santiam Drive, and requiring payment of a fee for all material removed from the site to be dedicated to county road improvements. Measures to minimize conflicts to the dwelling on tax lot 303 include imposing hours of operation, prohibiting operations on holidays, and requiring the operation to comply with all Department of Environmental Quality (DEQ) noise and air quality standards. These measures will be suggested as conditions of approval of the conditional use permit.

ORS 215.296 requires that a proposed use will not force a significant change in, or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use. Mining and processing operations may produce dust and noise similar to that produced by farming activities. There is an existing mining and processing operation in the northeast portion of the parcel that has been active for more than ten years. There have been no complaints regarding the operation, or of conflicts with agricultural activities. This indicates that the proposed expanded area for mining and processing will have minimal conflicts with agricultural processes.

Reasonable and practical measures can be taken to minimize all identified conflicts, so mining should be allowed at the site.

- (d) *The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:*
- (A) *The degree of adverse effect on existing land uses within the impact area;*
 - (B) *Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and*
 - (C) *The probable duration of the mining operation and the proposed post-mining use of the site.*

Finding: All identified conflicts can be minimized by the placement of conditions on the conditional use permit. Consequently, subsection (d) is not applicable and an ESEE analysis is not required.

- (e) *Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:*
- (A) *For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;*
 - (B) *Not requested in the PAPA application; or*
 - (C) *For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.*

Finding: The Comprehensive Plan will be amended to add the site to the mineral and aggregate inventory. The County does not have provisions in its Zoning Ordinance to allow mining as a permitted use. The JCZO requires that mining and processing operations obtain conditional use approval. The majority of the conditional use approval criteria are subjective, they exceed the minimum review necessary to assure that identified conflicts will be minimized, and they provide the opportunity to deny the application or attach additional approval requirements. Application of the majority of the conditional use criteria does not comply with OAR 660-023-0180(5)(e). These findings list the JCZO criteria, but indicate those that exceed the scope of review allowed by the

OAR.

- (f) *Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.*

Finding: The reclamation plan that was submitted to DOGAMI states that the site will be planted with grass. Because of a lack of irrigation water and top soil, reclamation for growing crops is likely not feasible. The site does not contain class I, II or Unique farmland, so does not have to be reclaimed for agricultural use.

- (g) *Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.*

Finding: Processing of material at or from a different site is not proposed.

4. OAR 660-023-0180(7) states:

Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site.

OAR 660-023-0180(2)(d) states:

For significant mineral and aggregate sites where mining is allowed, except for aggregate sites that have been determined to be significant under section (4) of this rule, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

OAR 660-023-0180(1)(a) defines “conflicting use” as “a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site.”

Finding: All surrounding land within the 1500-foot impact area is zoned EFU A-1. Any proposed new use within the impact area that requires administrative review or conditional use approval will also be subject to review for potential conflicts with mining and processing activities following the ESEE process in OAR 660-023-0040 and -0050.

5. Part V of the Comprehensive Plan, Administrative Procedures, contains applicable procedures for quasi-judicial revisions to the Comprehensive Plan. It states:

In order to submit a favorable recommendation for the proposed change to the County Court, the Planning Commission shall establish the compelling reasons and make the following findings of fact for the proposed change:

- A. *The proposed change will be in conformance with the statewide planning goals.*
 B. *There is a demonstrated public need for the proposed change.*

Finding: Statewide Planning Goal 5 requires that the county adopt a program to identify and protect mineral and aggregate resources and sites for removal and processing of such resources. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and “second use” utilization as well as for the primary use. Further requirements for compliance with Goal 5 are found in OAR 660-023. OAR 660-023-0180 contains provisions specific to mineral and aggregate resources, as addressed in the previous findings. OAR 660-023-0180(9) requires the county to apply the OAR directly. The provisions in Subsection -0180 do not allow consideration of other county approval criteria when determining whether an aggregate site is significant and should be added to the county’s Comprehensive Plan inventory. Consequently, criterion (B) is not applicable.

6. JCZO Section 301(B) lists uses that may be permitted when approved by the Planning Commission, following a Public Hearing in accordance with the requirements of Article 6 of this Ordinance, and subject to the applicable criteria OAR 660-033. Subsection (2)(b) lists operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.

Finding: The proposed operation falls into the category of mining, crushing and stockpiling of aggregate. OAR 660-033-0120 indicates that the proposed use may be allowed subject to review for compliance with ORS 215.296 and subject to ORS 215.298. ORS 215.296 is addressed in Findings 3 and 9(E). ORS 215.298 is addressed in finding 7, below.

7. ORS 215.298 contains requirements for mining in an exclusive farm use zone, as follows:
- 1) *For purposes of ORS 215.213 (2) and 215.283 (2), a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A county may set standards for a lower volume or smaller surface area than that set forth in this subsection.*
 - 2) *A permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan.*
 - 3) *For purposes of ORS 215.213 (2) and 215.283 (2) and this section, “mining” includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method*

including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads. "Mining" does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction or other on-site construction or nonsurface impacts of underground mines.

Finding: The proposal is to mine more than 1000 cubic yards and more than an acre, so land use approval (a permit) is required. As indicated previously, since the site is significant it will be added to the Comprehensive Plan inventory of mineral and aggregate sites, so subsection (2) will be met. The proposed mining operation conforms to the definition in (3).

8. JCZO Section 301(C) states:

In addition to the general standards and conditions that may be attached to the approval of a Conditional Use the following limitations shall apply:

1. *Conditional uses permitted by Subsection B of this Section may be established on nonproductive agriculture lands subject to the criteria set forth in this Section following a public hearing by the Planning Commission and a written finding that each such use complies with the following:*
 - a. *Is compatible with farm uses described in Subsection (2) of ORS 215.203, and is consistent with the intent and purposes set forth in ORS 215.243, the County's Comprehensive Plan and this Ordinance.*
 - b. *Does not interfere seriously with accepted farming practices as defined in paragraph (c) of Subsection (2) of ORS 215.203 on adjacent lands devoted to farm uses.*
 - c. *Complies with such other conditions as the governing body of the county considers necessary, and specifically complies with the intent and purposes of the County's Comprehensive Plan.*
 - d. *Is situated on generally unsuitable land for production of farm crops and livestock, considering the terrain, adverse soils or land conditions, drainage and flooding, vegetation, location and size of tract.*
 - e. *Does not materially alter the stability of the overall land use pattern of the area.*

Finding: The application was considered at a public hearing before the Planning Commission. As indicated previously, OAR 660-023-0180(5)(e) requires additional

review to be limited to the minimum necessary to minimize conflicts with identified conflicting uses. The criteria in this section exceed the review allowed by the OAR.

2. *The following criteria shall be used when evaluating a Conditional Use for an EFU area:*
 - a. *Immediate and future impact on public services, existing road systems and traffic demands.*
 - b. *Soil type and its development limitations, including slides, erosions, flooding and drainage.*
 - c. *Agricultural productivity which includes not only food productivity, but the production of any other useable agricultural product which requires open space and non-urban environment.*
 - d. *Development is to be designed to minimize the effects of terrain, slope and ground cover.*
 - e. *Development shall be compatible with the existing land use pattern and the overall character of the overall area.*
 - f. *An adequate quantity and quality of water and either sub-surface or other sanitary disposal system, and adequate provisions for solid waste disposal.*
 - g. *Conversion of agricultural lands to non-farm uses shall be based upon*
 - (1) *Environmental, energy, social and economic consequences if Goal V resources are effected.*
 - (2) *Unavailability of an alternative suitable location for the requested use.*
 - (3) *Compatibility of the proposed uses with related agricultural land.*
 - (4) *The retention of Class I through VI soils in farm use and the retention of range lands.*

Finding: The application states that water for the crusher and for dust control is already being provided by Deschutes Valley Water District. A portable toilet is on-site for use by employees. No other provisions are needed for sewage disposal, and the operation will not generate solid waste. No other public services will be needed other than road access. The Public Works Director has requested that conditions be placed on the approval designating Santiam Drive to Dover Lane as the designated haul route, requiring that an agreement for maintenance of Santiam Drive be executed, and requiring payment of a fee based on the amount of material removed to offset impact to other county roads.

Mining activities at the site are regulated by DOGAMI, which has imposed operating standards to prevent landslides, erosion and runoff based on terrain and slope. Existing ground cover on the site consists solely of grass and a few junipers, which will be removed as part of the operation. Any top soil that is removed must be stockpiled and used later for site reclamation. The property is not in a mapped flood hazard area. There is a small drainage way within the site that leads to Dry Creek Canyon. The DOGAMI operating permit requires 25-foot setbacks from the drainage, sloping of the pit floor to prevent runoff from entering the drainage way, and other measures to protect the vegetation within, and prevent impacts to, the lower portion of the drainage.

Agricultural productivity of the mining area or conversion of agricultural land cannot be considered because the site has been found to be significant under Goal 5. Compatibility with the land use pattern and character of the area cannot be considered other than to identify conflicting uses within the impact area, as discussed previously.

9. Section 602 states: *To determine whether a conditional use proposal shall be approved or denied, the Planning Director in the case of Administrative Permitted Uses or Planning Commission shall provide the following findings:*

- A. *The proposal will be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies of the County.*

Finding: The Comprehensive Plan contains goals, objectives and policies that are generally implemented through the Zoning Ordinance. Goal 5, Objective 5-B states that the county should provide for continued availability of mineral and aggregate resources. This application is in conformance with that objective. All applicable Zoning Ordinance requirements are addressed in these findings.

- B. *Taking into account location, size, design and operation characteristics, the proposal will have a minimal adverse impact on the (a) livability, (b) value, and (c) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright.*

Finding: The conflicting use analysis required by OAR 660-023-0180 found that the operation will have minimal impact on surrounding uses.

- C. *The applicant has a bona fide intent and financial capability to use and develop the land as proposed to ensure that the permit, once issued, will be acted upon in an appropriate manner.*

Finding: The quarry is already in operation on part of the parcel, having been approved in 1993. The original approval was for only six acres of the parcel, and there is now a need to expand the site. This shows the applicant's intent and financial capability to continue the operation. The applicant has indicated that he will continue to remove approximately the same amount of material annually as has been removed in each of the past three years (approximately 19,700 cubic yards).

- D. *In permitting a new conditional use or the alteration of an existing conditional use, the Planning Director in case of Administrative Permitted Uses, or Planning*

Commission may impose, in addition to those standards and requirements expressly specified by this ordinance, additional conditions which the Planning Director or Planning Commission considers necessary to protect the best interests of the surrounding area or the County as a whole. These conditions may include but are not limited to the following:

1. *Increasing the required lot size or yard dimension.*
2. *Limiting the height, size, or location of buildings.*
3. *Controlling the location and number of vehicle access points.*
4. *Increasing the street width.*
5. *Increasing the number of required off-street parking spaces.*
6. *Limiting the number, size, location, and lighting of signs.*
7. *Required dike, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.*
8. *Designating site for open space.*
9. *Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibrations, air pollution, glare and odor.*
10. *The owner shall sign and record a "Waiver of Remonstrance" for the property regarding any future formation of a local road improvement district. The owner shall sign and record a "Waiver Of Right To Remonstrate Against Accepted Farm Use Practices and The Maintenance Or Construction Of County Roads" and "Waiver Of Right To Remonstrate Against Formation Of A Local Fire Protection District" for the property.*

Finding: This subsection is not an approval criterion, but authorizes the imposition of conditions regulating the location, operating characteristics or other aspects of the proposed mining operation. Mining operations, setbacks from property lines and drainage ways, slope gradients and other factors are regulated by DOGAMI. Conditions to ensure that the operation complies with all DOGAMI, DEQ and Mine Safety and Health Administration regulations are appropriate.

No buildings are proposed. The only access point is in the southeast corner of the parcel at the corner of Santiam Drive and McKenzie Lane. Both roads have adequate width to accommodate haul trucks, although the Public Works Director has requested that Santiam Drive be made the designated haul route because it will involve the least amount of travel and impact to gravel roads. The Public Works Director has also requested that a condition be imposed requiring the execution of a maintenance agreement for dust

abatement and repair of Santiam Drive to minimize the impact that haul trucks have on the roadway.

No signs have been proposed. The property is fairly remote and is bordered on all sides by farm land, so fencing, screening or landscaping are not warranted. Designating the site for open space is also not appropriate because of the location of the site and the nature of the mining operation. Conditions limiting the hours of operation are appropriate in order to limit impacts to property owners in the vicinity and along the haul route. Requiring waivers of remonstrance to be recorded is not warranted since the property already is in a fire protection district and farming practices will not adversely impact the mining operation.

D. In the case of a use existing prior to the effective date of this ordinance and classified in this ordinance as a conditional use, any change in the use or in lot area, or an alteration of structure shall conform to the requirements for conditional use.

Finding: The proposal is to expand the size of the operation, which led to the need to submit applications for a Comprehensive Plan amendment and conditional use permit.

E. A use allowed under 215.283(2) may be approved only where the County finds the use will not:

- 1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*
- 2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

Finding: There are no surrounding lands devoted to forest use. As indicated previously, surrounding lands to the north, east and south are devoted to farm use, while lands to the west are not irrigated so are not being farmed. The mining and processing operations involve the use of large machinery, and produce dust and noise. Farming activities also involve the use of machinery for cultivation, planting and harvesting, and can cause dust, noise and smoke if fields are burned. Field crops and livestock are not significantly affected by noise and limited amounts of dust. The mining operation was first approved in 1993, and since that time has not forced a significant change in or significantly increased the cost of surrounding farming practices. The application states that the amount of material removed annually from the site will remain approximately the same, so there will be no increase in dust or noise.

10. Section 603(D) contains additional standards for mining, quarrying or other extraction activity, as follows:

Extraction of resources may be allowed as a conditional use when in compliance with the following:

1. *Plans and specifications submitted to the Planning Commission for approval must contain sufficient information to allow the Planning Commission to consider and set standards pertaining to the following:*
 - a. *The most appropriate use of the land.*
 - b. *Setback from the property line.*
 - c. *The protection of pedestrians and vehicles through the use of fencing and screening.*
 - d. *The protection of fish and wildlife habitat and ecological systems through control of potential air and water pollutants.*
 - e. *The prevention of the collection and stagnation of water of all stages of the operation.*
 - f. *The rehabilitation of the land upon termination of the operation.*
2. *Surface mining equipment and process, and necessary access roads shall be constructed, maintained, and operated in conformance with the standards and regulations of the Oregon Department of Geology and Mineral Industries.*
3. *A permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged Comprehensive Plan.*

Finding: The property contains a significant rock deposit and has minimal value as agricultural land due to shallow soils and topography. Consequently, mining is the most appropriate use of the land. Section 301(F) requires 15-foot setbacks in the A-1 zone, which the applicant has agreed to comply with. The mining site is approximately 800 feet from the nearest public road and there is little if any pedestrian use in the area, so fencing and screening are not warranted. The property is not in a designated deer, elk or antelope winter range area, nor are there any designated bird sites in the vicinity. Dry Creek Canyon does not contain a fish-bearing stream. The DOGAMI operating permit requires that measures be taken to prevent debris and runoff from entering the drainage. It is highly unlikely that there would be any impact to fish habitat since the nearest stream is more than four miles down canyon. The only water that will be used will be for processing and dust abatement. The DOGAMI permit requires that the pit floor and access road be sloped so that all water and stormwater will drain internally. DOGAMI requires submittal of a reclamation plan prior to issuing an operating permit, and is responsible for verifying that the plan is completed. DOGAMI also regulates mining operations, but to staff's knowledge does not regulate access roads or equipment. Mining and processing equipment must comply with DEQ air and noise quality regulations. The conditional use permit for expansion of the existing mining operation cannot be approved unless the Comprehensive Plan amendment is approved to add the additional acreage to the Mineral and Aggregate Inventory.

0-178-06

CONCLUSION: The site meets the requirements of OAR 660-023-0180(3) to be deemed significant, so the Comprehensive Plan must be amended to add the site to the Mineral and Aggregate inventory. A 1500-foot impact area is adequate to consider potential impacts to surrounding properties. The only potential conflicts that have been identified within the impact area are the effects to roads and possible noise and dust related impacts to one dwelling. Adequate measures can be taken to minimize the potential impacts by the imposition of conditions of approval.

OAR 660-023-0180(5)(e) limits any land use review to the minimum review necessary to assure compliance with clear and objective standards related to mining and processing activities. Consequently, many of the county's conditional use approval criteria cannot be applied. The proposed mining and processing operation can comply with all criteria that are applicable. Conditions of approval are needed to minimize potential conflicts to roads and surrounding properties and to ensure that mining operations comply with regulatory requirements.

0-178-06

Appeal Information

Planning Casefile #06-PA-02 and 06-CU-02

This decision may be appealed to the Land Use Board of Appeals within 21 days of the Jefferson County Board of Commissioners Decision. Oregon Revised Statute (ORS) 197.830 sets forth the review procedures. Copies of the Board of Commissioners decision and the state statute are available from the Community Development Department located at 85 SE "D" Street, Madras, Oregon 97741.

Board of Commissioners adoption date: November 1, 2006

The complete file is available for review at the Jefferson County Community Development Department. For further information, contact the Community Development Department. Phone (541) 475-4462.